

INSTRUMENT NO. 109948

THIRD AMENDED AND RESTATED  
DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
MEADOWCREEK SUBDIVISION

**Instrument # 109948**

COUNCIL ADAMS, IDAHO

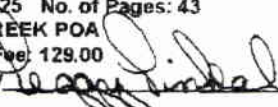
2005-09-13 01:33:25 No. of Pages: 43

Recorded for : MEADOWCREEK POA

MICHAEL FISK Fee: 129.00

Ex-Officio Recorder Deputy

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**FOR MEADOWCREEK SUBDIVISION**

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**THIRD AMENDED AND RESTATED DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MEADOWCREEK  
SUBDIVISION**

**THIS THIRD AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MEADOWCREEK SUBDIVISION** ("Declaration"), dated this 8 day of September, 20 05, is made by the MeadowCreek Property Owners' Association, Inc., an Idaho Nonprofit Corporation, ("Association") acting on behalf of the membership with reference to the following Recitals and is as follows:

**RECITALS**

**WHEREAS**, the Association is acting on behalf of the Owners of the real property referred to in Article II of this Declaration and described in **Exhibit A** attached hereto; and

**WHEREAS**, the Association desires to provide for the preservation of the values and amenities within the MeadowCreek Community and for the maintenance of the parks, open spaces, utilities and other common facilities within said community; and to this end, desires to subject the real property described in Article II (together with such additions as may hereafter be made thereto pursuant to Article II) 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

**WHEREAS**, the MEADOWCREEK PROPERTY OWNERS' ASSOCIATION, INC. was formed and incorporated under the laws of the State of Idaho, as a nonprofit corporation, hereinafter referred to as the "Association", for the purpose of exercising the powers and responsibilities of maintaining and administering the Common Areas and Facilities, and administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created;

THE ASSOCIATION HEREBY declares that the real property described in Article II of this Declaration, and such additions thereto as may hereafter be made pursuant to Article II hereof, is held and shall be held, conveyed, hypothecated, encumbered, mortgaged, leased, rented, used, managed, operated, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and in any amendments to this Declaration as may be made from time to time, and in such other rules and regulations as are instituted pursuant to the provisions of this Declaration. All such declarations, limitations, covenants, conditions, and restrictions shall constitute covenants running with the real property described in said **Exhibit A** attached hereto, and such additions thereto as may be made pursuant to Article II hereof, and equitable servitudes and liens, and shall be binding upon and for the benefit of each such Lot conveyed, as that term is herein defined, and the Owner of each such Lot, and upon and for the benefit of all parties having or acquiring any right, title, interest, or estate in the Existing Properties, or any part thereof, including without limitation the heirs, executors, administrators, successors, and assigns of any such parties and all subsequent owners of all or any part of the Existing Properties.

**ARTICLE I  
DEFINITIONS**

**Section 1.01 ARTICLES:** The term "Articles" shall mean and refer to the Articles of Incorporation of the Association as said Articles may be amended from time to time.

**Section 1.02 ASSESSMENT:** The term "Assessment" shall mean and refer to that portion of the cost of maintaining, repairing, improving and managing the Common Areas and Facilities, defined below, which is to be paid by each Owner as determined by the Association.

**Section 1.03 ASSOCIATION:** The term "Association" shall mean and refer to the MeadowCreek Property Owners' Association, an Idaho Nonprofit Corporation created to own and provide management, maintenance, preservation and control of the Common Areas and Facilities.

**Section 1.04 BOARD:** The term "Board" or "Board of Directors" may be used interchangeably herein and shall mean the Board of Directors of the Association as the same may, from time to time, be constituted.

**Section 1.05 BYLAWS:** The term "Bylaws" shall mean the Bylaws adopted by the Association as the same may be duly amended from time to time.

**Section 1.06 COMMON AREAS AND FACILITIES:** The term "Common Areas and Facilities" shall mean all Common Areas, fixtures, and personal property, Improvements and Structures thereon, owned, leased, or otherwise held now or in the future by the Association for the common use and enjoyment of the Owners including:

- (a) All roadways in the Existing Properties, including the main entrance roadway running from the Highway 95 to the boundary of the Existing Properties, but excluding any public road within the Existing Properties.
- (b) The community sewer system, including the wastewater treatment facilities and all connecting lines on the Existing Properties;
- (c) The community water system, including the wells, water storage tanks, and all connecting lines on the Existing Properties;
- (d) The community fire protection system;
- (e) All boundary fences;
- (f) All Common Areas;
- (g) The Common Areas that may be a part of property annexed to the Subdivision pursuant to Section 1.07 and Article II, all Improvements and all Structures thereon; and,
- (h) All landscaping, all common furnishings, including all furniture, appliances, fixtures, equipment, and all Improvements, and all other personal property from time to time owned, leased, or held for use by the Association.

If annexation is effected pursuant to Article II herein, the Common Areas and Facilities may then include such additional real and personal property as is annexed as Common Areas and Facilities.

**Section 1.07 COMMON AREAS:** The term "Common Areas" shall mean the real property within the Subdivision to be owned by the Association upon recordation of this Declaration for the common use and enjoyment of the Owners. Said Common Area is more specifically described at **Exhibit C** attached hereto and incorporated herein by reference.

If annexation is effected pursuant to Article II, the Common Areas may then include such additional property as is annexed as Common Areas.

**Section 1.08 COMMUNITY:** The term "Community" as used herein shall refer to the Existing Properties.

**Section 1.09 DECLARATION:** The term "Declaration" shall mean this Third Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions For MeadowCreek Subdivision, and its amendments, modifications and supplements. This Declaration supersedes and replaces that certain Second Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions For MeadowCreek Subdivision recorded with the Adams County, Idaho Recorder on January 2, 2004 as Instrument No. 105220.

**Section 1.10 DEED OF TRUST:** The term "Deed of Trust" shall mean and be synonymous with the word "Mortgage" and the same may be used interchangeably with the same meaning; and likewise, the word "Trustor" shall be synonymous with the word "Mortgagor" and the word "Beneficiary" shall be synonymous with the word "Mortgagee".

**Section 1.11 DESIGN REVIEW COMMITTEE:** The term "Design Review Committee" shall mean the committee created pursuant to Article VII.

**Section 1.12 DWELLING, DWELLING UNIT:** The terms "Dwelling" and "Dwelling Unit" are interchangeable and shall mean any building or portion thereof located on a Lot and designed and intended for use and occupancy as a single family residence, including patio areas and garages. Dwelling Unit shall include a Townhouse Unit, a Village Unit and a Multi Family Unit.

**Section 1.13 EXISTING PROPERTIES:** The term "Existing Properties" shall mean that real property described in **Exhibit A** attached hereto.

**Section 1.14 GOLF COURSE LOTS:** Golf Course Lots shall be those Lots in MeadowCreek any portion of whose boundaries are contiguous with the MeadowCreek Golf Resort, a privately owned facility, as platted on the recorded maps of the MeadowCreek Subdivision.

**Section 1.15 GOVERNING INSTRUMENTS:** The term "Governing Instruments" shall mean this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations of the Association, all amendments and supplements thereof, and all other instruments for the ownership, management and control of the Subdivision.

**Section 1.16 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, ground cover, poles, signs, and all other structures or landscaping improvements of every type and kind.

**Section 1.17 LOT:** The term "Lot" shall mean any parcel of real property which is shown on the recorded plat or plats of the Subdivision and shall for purposes of determining Association voting rights and assessments hereunder shall mean any residential dwelling unit on said Lot. This term specifically includes each Townhouse Unit, Village Unit and Multi Family Unit, each of which shall be considered a Lot for voting and assessment purposes in this Declaration.

**Section 1.18 MEMBER:** The term "Member" shall mean every person or entity that holds a membership in the Association.

**Section 1.19 MORTGAGE:** The term "Mortgage" shall mean any security device encumbering all or a portion of the Subdivision or any Lot, and the term "Mortgage" shall include Deed of Trust.

**Section 1.20 MULTI FAMILY LOT:** The term "Multi Family Lot" shall mean Lot 9 of Block 8, Phase I, MeadowCreek Subdivision, which is approximately 10 acres in size, and may be used for multi-family housing.

**Section 1.21 MULTI FAMILY UNIT:** The term "Multi Family Unit" shall mean the Multi Family Lot; however, at such time as separate residential living units are created in the Multi Family Lot, the term Multi Family Unit shall mean each residential living unit created therein and each such unit shall be considered a separate dwelling unit for the purposes of voting and assessment. Each such unit shall be considered a Lot for voting and assessment purposes in this Declaration.

**Section 1.22 OWNER:** The term "Owner" shall refer to that person or entity or those persons or entities who hold the ownership interest in any Lot or residential dwelling unit on any Lot as shown on the records of the County Recorder, Adams County, Idaho; including Contract sellers, but excluding those having such interest merely as security for the performance of an obligation; such term shall also include any person, persons, entity, or entities who succeed to such recorded interest by any means.

**Section 1.23 PERSON:** The term "Person" shall mean and includes a natural person, corporation, partnership association, firm or other entity as the case may be and the context may require.

**Section 1.24 RESIDENCE:** The term "Residence" shall mean a building or buildings, including any garage, carport or similar outbuildings, used for residential purposes.

**Section 1.25 RULES AND REGULATIONS:** The term "Rules and Regulations" shall mean those Rules and Regulations adopted by the Association or its Board, including any amendments or additions thereto.

**Section 1.26 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 local municipal rules and regulations.

**Section 1.27 STRUCTURE:** The term "Structure" shall include buildings, outbuildings, roads, driveways, parking areas, fences, walls, stairs, decks and poles.

**Section 1.28 SUBDIVISION:** The term "Subdivision" shall mean and refer to that certain real property located in Adams County, Idaho as more particularly described in Exhibit A and includes the Common Areas and Facilities defined above and any additional lands which may be brought within the framework of this Declaration pursuant to Article II herein.

**Section 1.29 MEADOWCREEK GOLF RESORT:** The term "MeadowCreek Golf Resort" shall mean the resort complex described in **Exhibit B** attached hereto and shall be synonymous with the terms "Resort" and "MeadowCreek Resort".

**Section 1.30 MORTGAGEE:** The term "Mortgagee" shall mean and refer to that entity or person who takes or receives a mortgage.

**Section 1.31 TOWNHOUSE UNIT:** The term "Townhouse Unit" shall mean and refer to a multifamily residential living unit and shall be the equivalent of a residential dwelling unit for the purposes of voting and assessment. This term specifically includes each Unit at the Fairways at MeadowCreek Condominiums. Each Unit shall be considered a Lot for voting and assessment purposes in this Declaration.

**Section 1.32 VILLAGE UNIT:** The term "Village Unit" shall mean and refer to a residential living unit located within MeadowCreek Village and shall be the equivalent of a residential dwelling unit for the purposes of voting and assessment. Each Unit shall be considered a Lot for voting and assessment purposes in this Declaration.

## ARTICLE II PROPERTY SUBJECT TO THE DECLARATION AND ADDITIONS THERETO

**Section 2.01 EXISTING PROPERTIES:** The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is the property described at the attached **Exhibit A**. The Subdivision is a residential recreational community more specifically described at **Exhibit A** attached hereto and incorporated herein by reference.

The MeadowCreek Golf Resort which is subject to assessments pursuant to this Declaration is more specifically described at **Exhibit B** attached hereto and incorporated herein by reference.

The Common Areas alone are specifically described at **Exhibit C** attached hereto and incorporated herein by reference.

The Common Areas and Facilities included in the Subdivision are as described in Section 1.07.

**Section 2.02 ADDITIONS TO EXISTING PROPERTIES:** Under no circumstances shall any property annexed pursuant to this Article II be exempt from payment of its fair share of the operation, repair and replacement expenses for the Subdivision's Common Areas and Facilities.

**Section 2.03 ANNEXATION PURSUANT TO MEMBERSHIP APPROVAL:** Annexation shall require the approval of Sixty-six and Two-thirds Percent (66-2/3%) of the total votes of Association Members.

**Section 2.04 DECLARATION OF ANNEXATION:** The additions authorized under this Article shall be made by filing of record in the Official Records of Adams County, Idaho, a Declaration of Annexation or similar instrument with respect to the additional property which shall be executed by the Board and the Owner of such additional property and set forth a description of the land then to be annexed and a statement declaring such land to be annexed and extending the general plan and scheme of this Declaration to such real property. Such Declaration of Annexation shall also provide for the creation of easements of use and enjoyment within the land annexed for the use and benefit of Lot Owners then located within the Subdivision and for the use and benefit of Lot Owners now or hereafter to be located upon the remaining portions of the land. Upon the recordation of said Declaration of Annexation, the land to which such Declaration applies shall thereafter be subject to the covenants, conditions and restrictions set forth in this Declaration and shall be treated in all respects as Existing Properties.

Such Declaration of Annexation may contain such complimentary 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 as is not inconsistent with the scheme of this Declaration. In no event, however, shall such Declaration of Annexation revoke, modify or add to the covenants and restrictions established by this Declaration within the Existing Properties.

**Section 2.05 EXPANSION OF ASSOCIATION MEMBERSHIP:** Membership in the Association shall be expanded to include Members within annexed phases of the Subdivision.

(a) Assessments within annexed property shall commence on the first day of the month following the close of escrow for the first sale of a Lot in that annexed property.



(b) Voting rights shall not vest in annexed Lots until assessments on those Lots have been levied by the Association, and paid by the Owner.

### ARTICLE III RIGHTS OF OWNERSHIP AND EASEMENTS

**Section 3.01 MEMBERS' EASEMENTS OF ENJOYMENT:** Subject to the provisions of Section 3.02 herein, every member shall have a right and easement of enjoyment in and to the Common Areas and Facilities and such easement shall be appurtenant to and pass with the title to every Lot.

**Section 3.02 OWNERS' EASEMENTS OF ENJOYMENT:** Every Owner of a Lot shall have an easement and equitable rights of use and enjoyment in and to and throughout the Common Areas and Facilities as well as a non-exclusive easement and equitable right of ingress, egress and support over and through the Common Areas and Facilities. Each such easement and right shall be appurtenant to and pass with the title of every Lot subject to the following restrictions:

(a) The right of the Association, in accordance with provisions of the Articles, Bylaws and this Declaration, to borrow money for the purpose of improving the Common Areas and Facilities, and in aid thereof, to mortgage said properties; provided, however, that in the event of a default upon any such mortgage, the lender's rights hereunder shall be subordinate to the rights of the Members;

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;

(c) The right of the Association, in accordance with its Bylaws and the provisions of this Declaration to temporarily suspend an Owner's rights as a Member of the Association, following notice and hearing, for any period during which any assessment remains unpaid and for a reasonable period for any infraction of its Governing Instruments or published Rules and Regulations. This right shall specifically include the right of the Association to temporarily terminate an Owner's use of the Subdivision's water and sewer system if payment for such billed services becomes more than 120 days in arrears. Notwithstanding the foregoing, the Association shall have no right to interfere with an Owner's right of ingress to or egress from his Lot;

(d) The right of the Association to charge reasonable admission, use and other fees, and to promulgate reasonable rules and regulations for the use of the Common Areas and Facilities;

(e) The right of the Association to dedicate all or any part of the Common Areas and Facilities to any public agency, authority or utility for such purposes; provided that, no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Two-thirds (2/3) of the total membership has been recorded, agreeing to such dedication, transfer, purpose or conditions, and unless written notice of proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken. Each purchaser in accepting a deed to their Lot expressly consents hereto; provided, however, that no such easements may be granted if same would interfere with the use, occupancy or enjoyment by any Owner of their Lot, or the Facilities of the Subdivision; and,

(f) The right of the Association or its agents, to enter any of the Lots after reasonable advance written notice of at least forty-eight (48) hours to the Owner thereof, at any reasonable hour on any day to perform such maintenance as may be authorized herein, Entry may be made with less or no notice in emergency situations originating on or threatening such Lot, whether the Owner is present or not.

**Section 3.03 OTHER EASEMENTS:**

(a) **General Easement:** All Lots are hereby designated as having a permanent utilities, drainage, and irrigation easement, fifteen (15) feet wide adjacent to and on the interior side of all Lot lines unless otherwise noted. The right of ingress/egress on and to said permanent utilities, drainage and irrigation easement for the purpose of inspection, construction and maintenance is hereby granted to authorized representatives and personnel of the Association in accordance with Section 3.02(f) of this Article.

(b) **Drainage Easements And Restrictions:** All natural or constructed streams, whether constant or flowing or not, and all natural or constructed drainage swales of both a major and minor