Instrument # 330083
REXBURG, MADISON, IDAHO
2006-08-04 09:29:00 No. of Pages: 5
Recorded for : KIRBY FORBUSH
MARILYN R. RASMUSSEN Fee: 15.00
Ex-Officio Recorder Deputy

DECLARATION OF COVENANTS "WILLOW BROOK ESTATES"

THIS DECLARATION OF COVENANTS, conditions, and restrictions, hereinafter called "Declaration" is made and executed this 4th day of August, 2006, by Willow Brook Partners, L.L.C., an Idaho Limited Liability Company, of P.O. Box 674, Rexburg, Idaho, 83440, hereinafter called "Declarant".

WITNESSETH

WHEREAS, Declarant is owner of that certain real property described in 1.1 hereof, and desires to divide the property into lots for residential, and desires to impose upon the property mutually beneficial restrictions upon improvement thereto and uses thereof. Declarant does hereby publish and declare that all of the property described in 1.1 hereof is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved, subject to all of the conditions, covenants, restrictions, uses, limitations, and obligations contained in this declaration, all of which are declared and agreed to be to the mutual benefit and for the improvement of the said property, and each part thereof, and the division of the property into tracts, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors, assigns, heirs and personal representatives, and any person acquiring or owning an interest in the real property and improvements thereon, their grantees, successors, heirs, personal representatives, and assignees.

NOW THEREFORE, Declarant hereby declares as follows:

ARTICLE I

PROPERTY OWNED

1.1 Property Description. The property covered by this description is located in the City of Rexburg, Madison County, State of Idaho, and described as follows, to-wit:

Part of the SW 1/4 of Section 25, Township 6 North, Range 39 East, B.M., Madison County, Idaho described as:

Beginning at a point that is N 89°47'54" E, 477.99 feet and N 00°12'06" W, 1358.81 feet from the southwest corner of said Section 25, said point being the southeast corner of Lot 8 Block 3 of Willow Brook Estates Division No. 2 an addition to the City of Rexburg, Madison County, Idaho and running thence N 00°12'06" W, 140.76 feet to a point on the southerly right-of-way of Coyote Willow Way as shown on said Willow Brook Estates Division No. 2; thence N 18°09'19" W, 34.00 feet; thence S 71°50'41" W, 42.97 feet; thence N 18°09'19" W, 34.00 feet to a point on the northerly right-of-way of Coyote Willow Way; thence along said right of way the following three (3) courses (1) S 71°50'41" W, 7.23 feet to a point of curvature; thence (2) right along said curve 20.30 feet. (Curve data delta = 17°37'22", R = 66.00 feet) chord bears S 80°39'22" W, 20.22 feet; thence (3) S 89°28'09" W, 78.45 feet; thence N 00°22'09" W, 435.00 feet; thence N 89°48'21" E, 1002.59 feet; thence S 00°19'03" E, 241.20 feet; thence S 89°40'47 W, 215.00 feet; thence S 00°19'03" E, 7.75 feet; thence S 89°48'21" W, 314.77 feet; thence S 00°12'06" E, 370.96 feet; thence S 89°37'36" W, 113.06 feet; thence S 89°39'14" W, 191.86 feet to the point of beginning.

Parcel contains 9.039 acres

1.2 Filing of Plat. Declarant has prepared and contemplates recording with this declaration a plat of the property, under the name of "Willow Brook Estates Division 5", dividing it into thirteen lots. Uses and restrictions specified on the plat are incorporated herein by reference and the plat and this declaration shall be construed together.

ARTICLE II

RESIDENTIAL STANDARDS

2.1 Plan Approval. No construction of a residence, major alteration thereto, building of fences, shops or other major improvement, or major landscaping construction, shall be undertaken until plans for each such project have been submitted in writing to the Architectural Controls Review Board "Board", hereinafter formed, for its approval. See Section 3.1. The Board shall act upon each application within ten days of the date of submission of the written plan, and if the application is not approved, construction may not be undertaken. Failure to do so may result in the demolition of unapproved construction at the owner's expense. In addition, the owner agrees to reimburse the Board or any aggrieved party for legal fees or demolition costs incurred to enforce compliance with the provisions of these covenants.

2.2 Harmony with Area. The plan of Willow Brook Estates is to have a beautiful, well kept residential area, but with open space and outbuildings not possible on smaller city lots. It is desired that there be no bizarre or unsightly structures on the premises, nor property not properly cared for, and that to the extent possible, there should be an aesthetic harmony between the various improvements on the entire project and the natural surroundings. It is also desired that appropriate distances be maintained between structures on adjoining properties. To that end is the board vested with discretion in approving or disapproving plans for construction and improvements.

2.3 Quality and Size. It is the intention and purpose of these covenants to insure that all residences within this development shall be of a high quality of workmanship and materials, and that as each home is built, it shall enhance the value of the other homes in the subdivision. All residences shall be single family residential , custom "stick" built type construction on site. Mobile homes, manufactured housing and modular homes are specifically not permitted in the subdivision. **Homes shall contain a minimum 1500 square feet of above ground living area with a minimum foot print of 1200 square feet and an attached two car garage.** The living space is exclusive of any garages, or open porches. The height of the residence shall be no greater than **30** feet from the highest point of the building to the ground.

2.4 Site Location. No building shall be located on any lot nearer to the lot lines than as required by the building codes and ordinances of the City of Rexburg at the time of construction. For the purposes of this covenant, steps, porches and patios without cover shall not be considered as part of the building.

2.5 Commencement Date. An owner shall commence construction of a residence within **two years** of the original purchase date of the lot from Declarant. Otherwise, the owner of said lot may be required to sell the lot back to Declarant, at the sole discretion of Declarant, at the same price as originally paid thereon, with no interest, said interest to be waived as liquidated damages for the inconvenience and detriment to other owners, by not constructing within the period of time. Once construction has commenced, the exterior of the building will be completed within a reasonable period of time.

2.6 Shops and Outbuildings. All outbuildings, when commenced, shall be completed within a reasonable time, and shall not be left in an unfinished condition. The design and exterior of each shall be in harmony with the residence on the lot and surrounding area. The height of the building shall be no greater than **24** feet from the highest point of the building to the ground.

2.8 Landscaping. Diverse kinds of landscaping shall be permitted using various ornamental trees and shrubs which are pleasing to the eye and attractive to bird life. The property shall not be permitted to be overgrown with noxious weeds nor continuously left in an unkept condition. Landscaping shall be substantially **completed within eighteen months** of occupancy of

the residence.

2.9 Sidewalks. Before the occupancy of each residence, the homeowner is responsible to install a 5 foot wide concrete sidewalk approximately 14 feet from the edge of the road along the frontage of their lot. The top of the sidewalk shall be the same height as the top outside edge of the road in front of the property and shall be constructed in accordance the city's standards.

2.10 Fences. No fence, including a solid board, chain link, concrete block, picket or retaining wall shall be erected that does not have an equally pleasing appearance from either side, unless the adjoining lot owners whose property such fence separates, have been given an opportunity , and accepted or rejected the opportunity to participate in the construction. This must be in writing. No fence or wall shall be erected, placed or altered on any lot nearer to any street that the minimum building setback line.

2.11 Drainage Swale. The owners are required to landscape a 12 foot wide drainage swale between the road and the sidewalk. The strip shall be planted in grass and be maintained by the homeowner. Rock, bark or other materials are not allowed in this area. No culverts are allowed under the driveways. The driveway shall be constructed to allow excess storm water to flow to the adjoining property after the retention area on the property has filled. The swale shall be designed in accordance with the city's standards.

2.12 Easements. Easements for installation and maintenance of utilities such as water, power, sewer, heat and telephone are reserved as shown on the recorded plat. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the utilities. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

2.13 Noxious Activities. No noxious or offensive activities shall be carried on upon said property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value.

2.14 Garbage and Refuse. No portion of the property shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste; all of which shall be kept only in sanitary containers which shall be removed at regular intervals. No junked or inoperable vehicles shall remain on any lot for more than 30 days. During construction, the owner or contractor shall be required to construct a temporary retaining fence around the construction scrap pile in order to retain scrap materials on the building site. Reasonable efforts shall be made by the owner or contractor to dispose of such materials at frequent intervals.

2.15 Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

2.16 Animals. No animal or fowls of any kind shall be raised , bred or kept on any lot except that dogs, cats or other household pets may be kept, provided they are not kept or maintained for commercial purposes. No such household pet which is or becomes an annoyance or nuisance to the neighborhood shall thereafter be kept on any lot.

2.17 Signs. No signs of any kind shall be displayed to public view on or from any lot or parcel of land, except a small sign identifying the address and owner's names, and except for temporary advertising signs advertising the property for sale, or signs used by builders or subcontractors or Declarant to advertise property during the construction and sales period, and political signs during elections.

2.18 Commercial Uses. No commercial establishment, industrial venture or business of any type may be constructed, operated, or maintained upon said property. Home occupations will be allowed in accordance the City of Rexburg ordinance, however.

ARTICLE III

ARCHITECTURAL CONTROLS

3.1 Nature and Duties. There is established hereby an Architectural Control Review

Board, "Board" consisting of three members which shall have the duties and powers specified in the declaration, including, but not limited to, control of architecture of buildings, common areas, landscaping, determination of disputed issues under the declaration; approval of variations and amendments; and enforcement of the covenants, conditions and restrictions herein. It is understood that the review board of Divisions 1, 2 and 3 are hereby merged into the review board hereby created for Division 5 with the terms of service described below.

3.2 Election and Term. Sheila Hill, Richard Hill and Kirby Forbush are elected to each serve a term of four years or until the lots in development are sold, whichever occurs last. Kirby Forbush is hereby appointed to be the Chairman of the Review Board. A majority of the Board may designate a chairman to act for it after the initial term. In the event of death or resignation of any member of the Board, the remaining members shall have full authority to designate a successor. Neither the members of the Board nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. After all lots are sold in the entire development being Divisions 1-5, the then owners of record of a three-fourths majority of the lots shall have the power, through a duly recorded written instrument, to change the membership of the Board, to withdraw powers from the Board, or restore to it any of its powers and duties. If said Board ceases to function for any reason, the requirements of this entire section III shall be met by filing plans and specifications for approval or disapproval with the Building Inspector of the City of Rexburg,

3.3 Procedure. The Board shall be responsible to review the plans and specifications for each home proposed for the subdivision, as well as other structures or landscaping which are governed by these covenants. The Board is hereby granted full power to approve or disapprove any house plan or building project proposed for the development. Plan approval shall be in writing and proof of approval rests upon the lot owner and not the Board. A majority of the Board is needed to decide questions. The board shall have the right to investigate, interview witnesses, and seek expert legal, engineering, or other help. Decisions of the Board shall be binding upon all owners, unless arbitrary, capricious or contrary to state or federal law. Out of pocket costs incurred by the Board will be assessed to the affected parties.

3.4 Remedies Preserved. The grant of power and authority to the Board shall not be construed to prevent any property owner from bringing an action to restrain violation by any other party of any of the terms and provisions of this declaration.

ARTICLE IV

DURATION, INTERPRETATION, AMENDMENT

4.1 Initial Term. These covenants shall remain in force and be binding upon the property, and upon all owners and subsequent owners, or users of the property, for a period of fifty years from the date the covenants are recorded.

4.2 Renewal. These covenants shall be automatically renewed for successive periods of ten years each, unless an instrument signed by a three-fourths majority of the then owners of the lots has been recorded prior to the expiration of any term , or renewal thereof, agreeing to change said covenants in whole or in part.

4.3 Liberal Construction. The provisions of this declaration shall be liberally construed to effectuate its purpose of creating a mutually beneficial plan for the development and maintenance of a fine and harmonious residential area.

4.4 Severability. The provisions of this declaration shall be deemed independent and severable, and the invalidity of or partial invalidity or enforce ability of any one provision or portion thereof, shall not effect the validity or enforce ability of any other provision hereof.

4.5 Enforcement. The lots shall be held, sold, and conveyed subject to the easements, covenants, conditions and restrictions set for herein, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the subdivision. No lot shall be sold without attaching a copy of these covenants to the deed conveying title to such lot. Enforcement may be by the Board or any aggrieved party by proceedings at law or equity against any person or

persons violating or attempting to violate any covenant, either to restrain violations or to recover damages, and such are subject to the penalty provisions described in 2.1. Owners shall cooperate with each other in good faith to accomplish the objectives and purposes hereof and to that end from time to time may make, execute and deliver such other and further instruments as may be necessary or convenient in the fulfillment of this declaration as described in 4.6.

4.6 Amendment . These covenants can be amended at any time by Declarant prior to the sale of the lots, and thereafter as set forth in this document, these covenants can be amended by a vote of a three-fourths majority of the then property owners. Such instrument in writing signed and acknowledged by recorded owners holding three-fourths majority of the lots in the sub-division. Said amendments shall be effective upon its recording in the Office of the Recorder of Madison County, State of Idaho. A like majority of owners may permit variances, for good cause, or particular provisions thereof, by like instrument.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand on the date first written above.

Kirby J. Forbush, manager
Willow Brook Partners, L.L.C.

ACKNOWLEDGMENT

STATE OF IDAHO)
:ss
COUNTY OF MADISON)

On this 4th day of August, 2006, before me a Notary Public, in and for said State, personally appeared Kirby J. Forbush, known or identified to be the manager of Willow Brook Partners, L.L.C., who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said name of the Limited Liability Company.

IN WITNESS WHEREOF: I have hereto set my hand and affixed my official seal the day and year first above written.

Lynda Merrill
NOTARY PUBLIC OF IDAHO

Residing at: Parker

Commission Expires: 4-4-2008

LYNDA MERRILL
NOTARY PUBLIC
STATE OF IDAHO