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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS:
WEST WINDS CPB PROPERTY**

ARTICLE I: DECLARATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS:

("Declaration") is made and entered into this 22nd day of December, 2008, by CASCADE DEVELOPMENT, INC., a Montana corporation ("Declarant") and CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole and its successors and/or assigns ("CPB").

WITNESSETH:

WHEREAS, Declarant owns certain real property in the City of Bozeman, Gallatin County, Montana, as described on **Exhibit 1**, attached hereto, which Declarant has contracted to sell to CPB and which is hereinafter referred to as the "CPB Property";

WHEREAS, the CPB Property lies within a master planned development known as West Winds Community Planned Unit Development ("West Winds PUD") and Major Subdivision as initially conditionally approved by the City of Bozeman on May 24, 2004 and subsequently supplemented or amended;

WHEREAS, per the approved Master Plan depicted on **Exhibit 2**, attached hereto, the CPB Property will not be used for residential purposes, but will instead be a religious

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worship center utilized by congregations of The Church of Jesus Christ of Latter-day Saints;

WHEREAS, the CPB Property in lieu of individual residential lots, has been sold and developed as a single ownership parcel consistent with Option 1 of the approved West Winds PUD and such single parcel ownership was not, for this section of the West Winds development, consistent with the restrictions and uses described in the West Winds Declaration of Covenants, Conditions and Restrictions recorded September 23, 2005 under Document No. 2202936, records of the Gallatin County Clerk and Recorder, Gallatin County, Montana, and as amended by the First Amendment to Declaration of Covenants Conditions and Restrictions West Winds Master Homeowners' Association, Inc. recorded July 12, 2007 under Document No. 2272319, records of the Gallatin County Clerk and Recorder, Gallatin County, Montana (collectively the "WWCCR");

WHEREAS, Article 17.7 of the WWCCR authorizes the Declarant to withdraw properties from the coverage of WWCCR, provided such withdrawal is not contrary to the overall scheme of development of West Winds;

WHEREAS, the Declarant wishes to withdraw the CPB Property depicted on Exhibit 1 from the coverage of the WWCCR, and replace said coverage with this new Declaration in order to provide more appropriate regulations and controls for the CPB Property; and

WHEREAS, withdrawal of the CPB Property from the WWCCR will not discharge the owner of the CPB Property from conforming to the requirements of the City of Bozeman, including, but not limited to the requirements of the West Winds PUD Conditions of Approval and Final PUD Plan; Bozeman's Uniform Development Ordinance ("UDO"); and the requirements of the Bozeman Municipal Code ("BMC") to the extent they may apply to the CPB Property and the use of the CPB Property.

NOW, THEREFORE, the Declarant and CPB adopt this Declaration as set forth herein.

ARTICLE II: DEFINITIONS

- 2.1 **"Articles"** means the Articles of Incorporation of West Winds Master Homeowners' Association, Inc., as amended from time to time, and of any successor thereto.
- 2.2 **"Association"** means the West Winds Master Homeowners' Association, Inc., which under the WWCCR, is defined as Cascade Development, Inc.
- 2.3 **"Common Areas"** means all real property and the improvements or amenities thereon held by the Association for the common use and enjoyment of all owners and occupants of West Winds, including but not limited to all areas depicted as "common areas" on the recorded plats of West Winds.
- 2.4 **"CPB Property or Property"** includes all property as described as such on Exhibit 1 as removed from the West Winds Declaration of Covenants, Conditions and Restrictions by the Declarant.
- 2.5 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions West Winds: CPB Property.
- 2.6 **"Declarant"** means Cascade Development, Inc, a Montana corporation, its successors and assigns.
- 2.7 **"Initial Design"** means initial construction design, including building materials for improvements to CPB Property already approved by declarant.
- 2.8 **"Owner" or "Owners"** means the record Owner, whether one or more persons or entities, of a fee simple title to the CPB Property.
- 2.9 **"Occupant"** means any person, other than an Owner, in rightful possession of any portion of the Property.
- 2.10 **"West Winds"** means the "West Winds Community Planned Unit Development and Major Subdivision, #Z-04050 and #P-04009" and subsequent files, as approved by the City of Bozeman, Montana.

ARTICLE III: AUTHORITY AND TERMINATION OF AUTHORITY

- 3.1 Declarant has authority to remove certain land from the WWCCR pursuant to Article 17.7 thereof. Once removal of the CPB Property from the WWCCR has been

accomplished, such authority on behalf of Declarant shall expire and CPB shall assume the authority to implement and enforce this Declaration except as set forth below in Article IV.

ARTICLE IV: LAND USE

4.1 **Community Center Use:** The CPB Property shall initially be used as a non-profit community center as defined by UDO 18.80.620, which includes religious worship centers. In the event such use changes, the CPB Property shall integrate back into West Winds and be subject to all terms and conditions of documents and regulation associated with West Winds, including without limitation, WWCCRs.

ARTICLE V: DESIGN GUIDELINES

5.1 **Architectural Review Approval:** Declarant has approved the Initial Design and thus CPB shall not be required to submit subsequent plans, preliminary construction drawings or a description of proposed building materials for proposed buildings, alterations, fences, and other improvements to the Property, or any portion thereof, to any reviewer other than a governmental entity having review authority prior to any construction so long as such drawings, materials alterations and other improvements are consistent with the Initial Design. It shall be the burden of anyone so claiming to prove that such subsequent alterations or improvements on the CPB Property are inconsistent with Initial Design. In addition, all such construction must be compatible with the approved plans and conform to applicable sections of the BMC and Department of Environmental Quality ("DEQ") where applicable. All such plans, preliminary construction drawings and proposed building materials must receive a stamp of approval from the City of Bozeman Planning Department as part of the site plan application or building permit application.

5.2 **Building Setbacks:** All buildings shall have setbacks as required by BMC § 18.16.050.

5.3 **Landscaping:** Landscaping is required to enhance property value and amenities of the Property. Proposed landscaping, site finish grading, irrigation and materials are not subject to submittal or approval to any reviewer other than a governmental entity having

review authority prior to installation and construction. Landscaping shall only be subject to and conform to the provision of BMC Chapter 18.48. Suggested deciduous trees include Aspen, European Green Birch, Rocky Mountain and Big Tooth Maple. Suggested evergreen trees include Colorado Spruce, Lodge Pole Pine, Engleman and White Spruce, Sub Alpine Fir and Scotch Pine. Installation of boulevard street trees as required by the City of Bozeman shall include specifications for a planting hole at least twice the diameter of the root ball, with the root flare of the newly-planted tree visible and above ground, and with a mulch ring three to four feet in diameter around each newly planted boulevard tree.

5.4 Noxious Weeds: Each Owner (initially CPB upon becoming the Owner of the CPB Property) shall be responsible for the control of state and county-declared noxious weeds on his or her Property, to Gallatin County standards. In the event an Owner does not control the noxious weeds on his or her Property, after ten (10) days written notice from the Association, given to an Owner via Certified Mail, at the Owner's address in the records of the Clerk & Recorder of Gallatin County, Montana, the Association may cause the weeds to be controlled. The cost of any such remedial actions shall become a lien against the Property owned by the offending Owner.

5.5 Building Orientation along Arterial and Collector Streets: Buildings located on property adjacent to arterial and collector streets shall provide a front architectural appearance with a sidewalk connection to each building entrance. No fences shall be constructed more than four (4) feet in height on Property adjacent to Davis Lane and Oak Street, if any, and any such fences shall have a design consistent with the aforementioned initial design approval.

ARTICLE VI: MAINTENANCE OF COMMON AREAS

6.1 So long as the CPB Property is used as a community center as set forth in Article IV, the Owner (initially CPB) or its duly delegated representative, shall maintain and otherwise manage surface and landscaping of the parking strips on the CPB Property or within the public right of way directly adjoining the CPB Property. Such maintenance shall meet the standard of care consistent with the remainder of West Winds. If the CPB Property is used for a purpose other than a community center as set forth in Article IV,

the Owner(s) of the CPB Property or any part thereof shall, subject to becoming obligated to pay annual assessments as provided in section 6.2, no longer be responsible for maintenance of the above described Common Areas.

6.2 So long as the CPB Property is utilized as a community center as set forth in Article IV, CPB shall not be responsible for annual payment of a pro-rata share of the expense for maintenance of the Common Areas, including but not limited to West Winds Park, park fixtures, subdivision streets, trails, drives, and storm water facilities. If the CPB Property is used for a purpose other than a community center as set forth in Article IV, the Owner(s) of the CPB Property or any part thereof shall become responsible for annual payment of a pro-rata share of the expense for maintenance of the Common Areas. The terms of this annual payment will be confirmed by a written instrument executed by the Declarant and each Owner and recorded with the Gallatin County Clerk and Recorder, Gallatin County, Montana. Each Owner shall also be responsible for paying its applicable share of assessments to any applicable governmental lighting district or other special improvement district created, which district includes the Property.

ARTICLE VII: AMENDMENT

7.1 Amendment to Declaration: Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration". An amendment may be made only by the affirmative vote of the Owner or Owners owning at least sixty percent (60%) of the land area within the CPB Property, with such amendment to be subject to concurrence by the City of Bozeman Director of Planning & Community Development, confirming that said Amendment is compatible with the West Winds PUD and any other applicable zoning and/or planning regulations.

Each Owner shall have a vote based on the ratio of the total square footage of its land area, in proportion to the total square footage of the CPB Property as a whole. In the event any portion of CPB Property is ever further subdivided or if any portion of CPB Property is submitted to condominium ownership under the Montana Unit Ownership Act, the vote initially allocated to that portion of the CPB Property shall be divided among any new lots and/or units so that the total vote allocated to that portion of the CPB Property for purposes of amendment of this Declaration is maintained.

Any provision required as a condition of the West Winds preliminary plat and / or PUD approval and required by the Bozeman City Commission may not be amended or revoked without the mutual consent of the Owners, obtained pursuant to the requirements of this section, and the City of Bozeman.

An amendment approved pursuant to the requirements of this section shall be recorded in the records of the Clerk and Recorder of Gallatin County, Montana and shall be effective upon recording.

ARTICLE VIII: ADMINISTRATION AND ENFORCEMENT

8.1 Term: The provisions of this Declaration shall be binding for a term of ten (10) years from the date hereof and may be amended during that period only by the affirmative vote of the Owners, pursuant to the amendment provisions of section 7.1. After the initial ten (10) year period, the Declaration shall automatically extend for successive periods of ten (10) years, unless an instrument agreeing to amend the Declaration has been executed and recorded pursuant to section 7.1 of this Declaration.

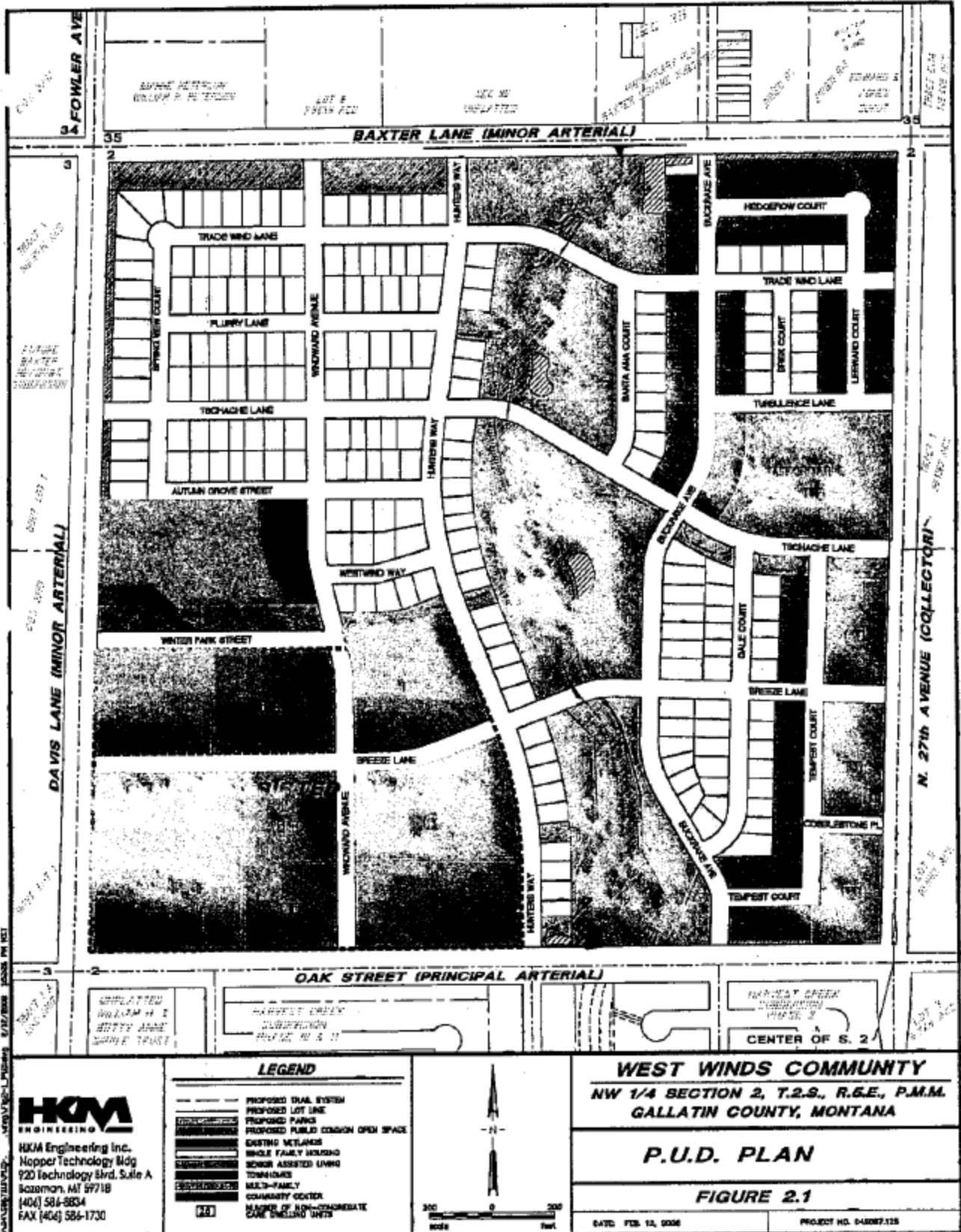
8.2 Enforcement: Enforcement of this Declaration shall be by proceeding either at law or in equity against any person or persons violating, or attempting to violate, any terms of this Declaration; and the legal proceedings may either be to restrain violation of this Declaration by injunctive relief, to recover damages, or both. Should any legal proceeding be instituted by an Owner, the Declarant, or the Association against another Owner, the Declarant, or the Association for alleged violation of one or more of the provisions of this Declaration, and should one party to such legal proceeding be wholly or materially more successful in such proceeding, the materially less successful party shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees and costs associated with the proceeding.

8.3 Invalidation: Invalidation of any term of this Declaration by judgment or by court order shall in no way affect any other term or provision, all of which shall remain in full force and effect.

EXHIBIT "1"

Lot 5 in Block 2 of West Winds Major Subdivision, Phase 5 to the City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. [Plat No. J-494]

EXHIBIT "2"



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 ENGINEERING

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