

**ARTICLES OF INCORPORATION
OF
WINDING CREEK BUSINESS OWNERS ASSOCIATION, INC.**

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SECRETARY OF STATE
STATE OF IDAHO

The undersigned, being a natural person of full age and a citizen of the United States of America, acting as incorporator of a non-profit corporation (hereafter referred to as 'Association') under the Idaho Nonprofit Corporation Act (hereafter referred to as the 'Act') and, in particular, Title 30, Chapter 3, Idaho Code, has adopted the following Articles of Incorporation for such Association:

ARTICLE I

The name of the Association is:

WINDING CREEK BUSINESS OWNERS ASSOCIATION, INC.

ARTICLE II

Definitions

Articles:

These Articles of Incorporation, including any amendments thereto duly adopted.

Assessments:

Payments required of Members of the Association, including Regular, Special or Limited Assessments as provided in the Declaration.

Association:

Winding Creek Business Owners Association, Inc., an Idaho non-profit corporation.

Board:

The duly elected and qualified Board of Directors of the Association.

Common Area:

All real property within the Subdivision in which the Association owns an interest or controls and which is held or controlled for the common use and enjoyment of all of its Members, including any recreational facilities and other improvements thereon. Unless a different meaning is necessarily implied in the use of the term "Common Area," it shall include any other area or improvements in or outside of the Subdivision which, pursuant to the provisions of the Master Declaration, is either required or permitted to be maintained by the Association.

IDAHO SECRETARY OF STATE
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Declaration:

The Declaration of Covenants, Conditions, and Restrictions for Winding Creek Commercial Subdivision, including any amendments thereto duly adopted and recorded, which Declaration is made a part of these Articles of Incorporation as if set out herein in full.

Grantor:

Retail Development of North America, LLC, and its successor(s) in title to a Lot(s), which Lot(s) is held by such successor in an unimproved condition, (i.e. without a residential dwelling thereon) for resale to a builder or other person for the purpose of constructing thereon a residential dwelling, and to which successor the Grantor has specifically granted the Class B voting rights in writing; provided, that if such voting rights are not so granted, such successor shall be entitled to the voting rights of a Class A Member with respect to each Lot owned.

Lot:

A portion of Winding Creek Commercial Subdivision which is subject to the Declaration, which is a legally described tract or parcel of real property within the Subdivision and subject to Assessment by the Association, and the Owner of which is a Member of the Association.

Member:

Any person who is an Owner of a Lot within a phase of the Subdivision which is subject to the Declaration.

Owner:

A person or persons or other legal entity or entities, including the Grantor, holding fee simple title to any real property in a phase of the Subdivision covered by the Declaration, and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any holder of a Mortgage or beneficiary under a Deed of Trust or other security holder in actual possession of any real property as a result of foreclosure or otherwise, and any person taking title through such security holder, by purchase at foreclosure sale or otherwise.

Subdivision:

The whole of the real property described in the Declaration which was platted under the name "Winding Creek Commercial Subdivision."

ARTICLE III

Purposes and Powers

Section 1. Purposes. This Association does not contemplate any profit or monetary gain to the Members thereof and the specific purposes for which it is formed are to provide and assure the maintenance, preservation and architectural control of the Lots, including the Common Area, within the Subdivision which is subject to the Declaration.

Section 2. Powers. The Association shall have and exercise the statutory powers provided for non-profit corporations in the State of Idaho, as specified in Title 30, Chapter 3, Idaho Code, as the same now exists or may hereafter be amended and, further, the Association shall have the power to do everything necessary, proper, advisable or convenient for the accomplishment of the purposes hereinabove set forth and to do all other things incident thereto or connected therewith, which are not forbidden by the Act, by other law or by these Articles of Incorporation. Without limitation of the foregoing stated powers, and to provide for the health, safety and welfare of the Owners and residents within a phase of the Subdivision which is subject to the Declaration and any additions thereto as may hereafter be brought within the jurisdiction of this Association, the Association shall have the power to:

- (a) Exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;
- (b) Fix, levy, collect and enforce payment by any lawful means, all Assessments and other charges pursuant to the terms of the Declaration; pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association including, but not limited to, all insurance premiums, license fees, taxes or governmental charges levied or imposed against any property owned by the Association;
- (c) Acquire (by gift, purchase, or otherwise), own hold improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the business affairs of the Association;
- (d) Borrow money, and with the assent of two-thirds (2/3) of each class of Members, mortgage, pledge, deed in trust or hypothecate any or all of the real or personal property owned by the Association as security for money borrowed or debts incurred;

- (e) Dedicate, sell or transfer all or any part of the Common Area and any other real or personal property owned by the Association to any public agency, authority or utility.

Section 3. Exercise of Powers Through Board of Directors. The Association shall conduct and manage its property, business and affairs by and through a Board of Directors elected at the annual meetings of the Members, and by the Initial Board of Directors appointed herein until the first election of Directors is held. At the first annual meeting, the Members shall elect three (3) Directors, as set out in the Bylaws. The Board of Directors shall have all the lawful powers necessary or convenient to carry out the duties set out above unless prohibited by law, the Articles of Incorporation, the Bylaws, or the Declaration.

ARTICLE IV

Period of Duration

The period of duration is perpetual.

ARTICLE V

Membership

Every person or entity who is an Owner of a Lot, which, by the terms of the Declaration is subject to Assessments by the Association, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation but shall include any mortgagee, beneficiary under a Deed of Trust or other security holder in actual possession of any Lot as a result of foreclosure or otherwise and any person taking title through such security holder, by purchase at foreclosure sale or otherwise. Membership shall be appurtenant to and may not be separated from the ownership of any Lot that is subject to Assessment by the Association.

ARTICLE VI

Voting Rights

The Association shall have two classes of voting membership:

- (a) **Class A:** Class A Members shall be all of the Owners with the exception of the Grantor. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class B:** Class B Members shall be the Grantor (and its successors in title as specified herein). The Class B Members shall be entitled to five (5) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the occurrence of the earlier of the following events: (i) when the total votes outstanding in the Class A Membership is equal to the total votes outstanding in the Class B Membership; or (ii) January 1, 2015.

The Association shall not have any voting rights by reason of its ownership of any Common Area or Lot.

ARTICLE VII

Registered Office and Registered Agent

The location of the Association's initial Registered Office in this State is 1005 E. Winding Creek Drive #225, Eagle, Idaho 83616. The Registered Office of the Association may be relocated to such other place as may be determined by the Board of Directors. The name of the initial Registered Agent of the Association at such address is Ronald W. Bath.

ARTICLE VIII

Initial Board of Directors

The number of Directors constituting the initial Board of Directors of the Association is one (1), who need not be a Member of the Association and the name and address of each person who is to serve as a Director until the first annual meeting of Members or until the election and qualification of a successor(s) is as follows:

<u>Name</u>	<u>Address</u>
Ronald W. Bath	1005 E. Winding Creek Drive # 225 Eagle, Idaho 83616
Teri Bath	1005 E. Winding Creek Drive #225 Eagle, Idaho 83616
Christ T. Troupis	1299 E. Iron Eagle, Ste 130 Eagle, Idaho 83616

After the conversion of Class B Membership to Class A Membership pursuant to Article VI, Section (b) above, the authorized number of directors of the Association may range between 3 and 5, and may be fixed or changed from time to time, within the minimum and maximum, by the Members of the Board of Directors.

ARTICLE IX

Incorporator

The name and address of the incorporator of the Association is as follows:

Name

Address

Ronald W. Bath

1005 E. Winding Creek Drive # 225
Eagle, Idaho 83616

ARTICLE X

Liability of Members

Members shall be personally liable for the Assessments levied and assessed by the Association upon a Lot, whether for fines, penalties, recovery of costs or in the form of Regular, Special or Limited Assessments.

ARTICLE XI

Exemption

This Association is a corporation intended to be classified as a 'Homeowners Association' which, pursuant to §528 of the Internal Revenue Code of 1954, as amended, is considered an organization exempt from income taxes for the purposes of any law which refers to organizations exempt from income taxes. Further, this Association is a residential real estate management association organized and operated to provide for the acquisition, construction, management, maintenance and care of property owned by the Association.

All provisions of these Articles of Incorporation shall be interpreted in accordance with the provisions of §528 of the Internal Revenue Code of 1954, as amended, and in case of a conflict between that or other applicable sections, any provision of these Articles in conflict with either shall be interpreted to be consistent with that provision of the Internal Revenue Code.

ARTICLE XII

Bylaws

The Board of Directors shall have the right to make and amend Bylaws for the Association, in accordance with the provisions of Title 30, Chapter 11, Idaho Code, not inconsistent with any existing law and not inconsistent with these Articles of Incorporation or the Declaration, for the government of the affairs of the Association and the management of its properties.

The Bylaws of the Association may be repealed, amended and new Bylaws enacted as follows:

Articles of Incorporation of Winding Creek
Business Owners Association, Inc.

- (a) By the majority of Members present at any regular meeting of the Members of the Association or at any special meeting at which the intention to so repeal, amend or adopt new Bylaws is stated in the Notice calling the Meeting; or
- (b) By a two-thirds (2/3) vote of the members of the Board of Directors at any regular meeting of the Board or at a special meeting of the Board called for that purpose.

ARTICLE XIII

Dissolution


The Association may be dissolved in the manner required by law for the dissolution of non-profit corporations in Idaho. Upon dissolution of the Association, other than incident to a merger or consolidation, no part of the property of the Association or any of the proceeds shall be distributed to or inure to the benefit of any of the Members, directors or officers of the Association, and all such property and proceeds, subject to the discharge of the valid obligations of the Association, and to the applicable provisions of the Idaho Nonprofit Corporation Act (Title 30, Chapter 3, Idaho Code) shall be distributed by the Board of Directors to another organization(s) for identical uses and purposes, provided that such other organization(s) would then qualify as an Idaho nonprofit corporation and for status similar to that of the Association under applicable provisions of the Internal Revenue Code, or shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created.

ARTICLE XIV

Conflict of Provisions

The provisions contained in these Articles of Incorporation are subject and subservient to the terms and provisions of the Declaration and any conflict between the terms and provisions of these Articles with the Declaration, and any Amendments thereto, shall be controlled by the terms and provisions of the Declaration, as Amended, unless such are contrary to the Idaho Nonprofit Corporation Act (Title 30, Chapter 3, Idaho Code), in which event, the latter shall prevail.

IN WITNESS WHEREOF the undersigned has executed these Articles of Incorporation on this 13th day of December, 2007.



Ronald W. Bath