

ROCHESTER HEIGHTS SUBDIVISION

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS: THAT TODD CAMPBELL CONSTRUCTION, INC. AND DEAN AND CHRISTI BRADSHAW, HUSBAND AND WIFE, IS THE OWNER OF THE PROPERTY DESCRIBED AS FOLLOWS:

A PORTION OF LOT 3 OF ELMER DAVIS FIRST SUBDIVISION LOCATED IN THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 19, T. 4N., R. 2E., B.M., ADA COUNTY, IDAHO, AS SAME IS RECORDED IN BOOK 3 OF PLATS AT PAGE 137, RECORDS OF ADA COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE 1/4 CORNER COMMON TO SECTION 30 AND THE SAID SECTION 19, FROM WHICH THE WEST 1/16 CORNER COMMON TO SAID SECTIONS BEARS NORTH 89°58'40" WEST, 1337.73 FEET; THENCE NORTH 89°58'40" WEST, 358.03 FEET TO THE SOUTHWEST CORNER OF POPLAR GLEN SUBDIVISION, AS SAME IS RECORDED IN BOOK 65 OF PLATS AT PAGE 8718, RECORDS OF ADA COUNTY, IDAHO, SAID POINT BEING THE REAL POINT OF BEGINNING; THENCE CONTINUING AND ALONG THE NORTH BOUNDARY OF FORCE VILLAGE TOWNHOUSES SUBDIVISION, AS SAME IS RECORDED IN BOOK 73 OF PLATS AT PAGE 7525, RECORDS OF ADA COUNTY, IDAHO, NORTH 89°58'40" WEST, 154.45 FEET TO THE SOUTHEAST CORNER OF BLASER SUBDIVISION NO. 7, AS SAME IS RECORDED IN BOOK 7 OF PLATS AT PAGE 1185, RECORDS OF ADA COUNTY, IDAHO, THENCE ALONG THE EAST AND NORTH BOUNDARY OF SAID SUBDIVISION NORTH 00°00'56" EAST, 197.98 FEET; THENCE NORTH 89°59'04" WEST, 148.17 FEET TO A POINT ON THE WEST BOUNDARY OF SAID LOT 3 OF ELMER DAVIS FIRST SUBDIVISION; THENCE DEPARTING THE NORTH BOUNDARY OF SAID BLASER SUBDIVISION NO. 7 ALONG SAID WEST BOUNDARY NORTH 00°00'27" WEST, 351.94 FEET; THENCE DEPARTING SAID WEST BOUNDARY NORTH 89°58'21" EAST, 103.04 FEET; THENCE NORTH 00°00'27" WEST, 95.04 FEET TO A POINT ON THE SOUTH BOUNDARY OF SAID LOT 3 OF ELMER DAVIS FIRST SUBDIVISION; THENCE ALONG SAID RIGHT-OF-WAY NORTH 89°58'55" EAST, 184.25 FEET; THENCE ALONG SAID RIGHT-OF-WAY NORTH 00°00'27" EAST, 213.02 FEET; THENCE NORTH 89°54'42" EAST, 13.58 FEET TO THE NORTHWEST CORNER OF SAID POPLAR GLEN SUBDIVISION; THENCE ALONG THE WEST BOUNDARY OF SAID SUBDIVISION SOUTH 00°00'12" EAST, 432.17 FEET TO THE POINT OF BEGINNING, CONTAINING 3.51 ACRES, MORE OR LESS.

IT IS THE INTENTION OF THE UNDERSIGNED TO HEREBY INCLUDE THE ABOVE DESCRIBED PROPERTY IN THIS PLAT AND TO DEDICATE TO THE PUBLIC, THE PUBLIC STREETS AS SHOWN ON THIS PLAT. THE EASEMENTS AS SHOWN ON THIS PLAT ARE NOT AND SUCH OTHER PUBLIC, HOWEVER, THE RIGHT TO USE SAID EASEMENTS IS HEREBY PERPETUALLY RESERVED FOR PUBLIC USE AND SUCH OTHER USES AS DESIGNATED WITHIN THIS PLAT, AND NO PERMANENT STRUCTURES ARE TO BE ERECTED OR PLACED ON THE LOTS OF SAID EASEMENTS. ALL LOTS WITHIN THIS PLAT WILL BE ELIGIBLE TO RECEIVE WATER FROM THE BECKING UNITED WATER IDAHO, INC., MAIN LINE LOCATED ADJACENT TO THE SUBJECT SUBDIVISION, AND THE UNITED WATER IDAHO, INC., HAS AGREED IN WRITING TO SERVE ALL THE LOTS IN THIS SUBDIVISION.

TODD CAMPBELL CONSTRUCTION, INC.

TODD CAMPBELL, PRESIDENT

ACKNOWLEDGEMENT

STATE OF IDAHO

COUNTY OF ADA

ON THIS 19th DAY OF April, 2004, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED TODD CAMPBELL, known or identified to me to be the President of TODD CAMPBELL CONSTRUCTION, INC., AN IDAHO CORPORATION, THE CORPORATION THAT EXECUTED THIS INSTRUMENT OR THE PERSON WHO EXECUTED THIS INSTRUMENT ON BEHALF OF SAID CORPORATION, AND ACKNOWLEDGED TO ME THAT SAID CORPORATION EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES 12-15-08

ACKNOWLEDGEMENT

STATE OF IDAHO

COUNTY OF ADA

ON THIS 23rd DAY OF April, 2004, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED DEAN AND CHRISTI BRADSHAW, HUSBAND AND WIFE, KNOWN OR IDENTIFIED TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED WITHIN AND WHO ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES 03-13-08

COUNTY RECORDER'S CERTIFICATE

STATE OF IDAHO

COUNTY OF ADA

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD AT THE REQUEST OF Bailey Engineering, INC., ON THIS 30th DAY OF July, 2004, AT 10:40 AM, IN BOOK 85 OF PLATS AT PAGES 10327 AND 10328.

Fee: \$11.-

10/10/04

Deborah Newman

OFFICIAL RECORDER



NOTARY PUBLIC FOR IDAHO
RESIDING IN MERIDIAN, IDAHO

My Commission Expires 12-15-08

NOTARY PUBLIC FOR IDAHO
RESIDING IN EMERET, IDAHO

My Commission Expires 03-13-08

NOTARY PUBLIC FOR IDAHO
RESIDING IN EMERET, IDAHO

My Commission Expires 03-13-08

CERTIFICATE OF SURVEYOR

I, D. TERRY PEUGH, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED BY THE STATE OF IDAHO, AND THAT THIS PLAT, AS DESCRIBED IN THE "CERTIFICATE OF OWNERS" WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION, AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON, AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

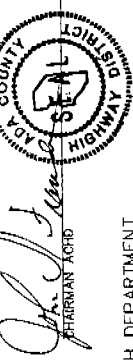


D. TERRY PEUGH

IDAHO NO. 4431
4-7-05

APPROVAL OF ADA COUNTY HIGHWAY DISTRICT

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ON THE 12th DAY OF May, 2004.



CHAIRMAN AND DISTRICT COMMISSIONER

APPROVAL OF CENTRAL DISTRICT HEALTH DEPARTMENT

SANITARY RESTRICTIONS OF THIS PLAT ARE HEREBY REMOVED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER OR HIS AGENT LISTING THE CONDITIONS OF APPROVAL.

ADA - Please see front page
CENTRAL DISTRICT HEALTH DEPARTMENT

APPROVAL OF CITY ENGINEER

I, THE UNDERSIGNED, CITY ENGINEER IN AND FOR THE CITY OF BOISE, ADA COUNTY, IDAHO, HEREBY APPROVE THIS PLAT.

Robert Jensen 7/09/04
CITY ENGINEER

APPROVAL OF CITY COUNCIL

I, THE UNDERSIGNED, CITY CLERK IN AND FOR THE CITY OF BOISE, ADA COUNTY, IDAHO, DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 1 DAY OF June, 2004, THIS PLAT WAS DULY ACCEPTED AND APPROVED.



Annette L. Jensen 6-30-04
CITY CLERK, BOISE, IDAHO

CERTIFICATE OF COUNTY SURVEYOR

I, THE UNDERSIGNED, COUNTY SURVEYOR, IN AND FOR ADA COUNTY, IDAHO, DO HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND THAT IT COMPLES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.



John F. Fisher 7/10/04
COUNTY SURVEYOR

CERTIFICATE OF THE COUNTY TREASURER

I, THE UNDERSIGNED, COUNTY TREASURER IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO, PER THE REQUIREMENTS OF I.C. 50-1308 DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.



7-29-04
DATE

Angela Fischer by Jodi Nigamant
COUNTY TREASURER

185

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

ROCHESTER HEIGHTS

ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 07/30/04 04:29 PM
DEPUTY Bonnie Oberbillig
RECORDED - REQUEST OF
Title One
AMOUNT 63.00



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THIS DECLARATION is made on the date hereinafter set forth by Todd Campbell Construction Inc., hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Ada County, State of Idaho, hereinafter referred to as "the properties," more particularly described as follows:

*89 ROCHESTER HEIGHTS SUBDIVISION, according to the official plat thereof, recorded in book of plats at pages 10327 and 10328 as Instrument No. 0409719, records of Ada County, Idaho; and

WHEREAS, Declarant desires to subject the above described properties, certain protective covenants, conditions, restrictions, reservations, easements, liens and charges for the benefit of the properties and their present and subsequent owners as hereinafter specified, and will convey the properties subject thereto;

NOW, THEREFORE, Declarant hereby declares that all of the properties above described except Lot 4 Block 1 thereof shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions, and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the properties and be binding on all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

The following terms shall have the following meaning:

Section 1. "ASSOCIATION" shall mean and refer to the Rochester Heights Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors and assigns, which said association may not be dissolved without the express written consent of the City of Boise.

Section 2. "PROPERTIES" shall mean and refer to that certain real property hereinabove described.

Section 3. "COMMON AREA" shall mean all real property (including the improvements thereon) owned by the association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot shall be as indicated on the official plat of the properties filed in the office of the County Recorder, Ada County, State of Idaho, and shall consist of Lot 5 Block 1 and Lot 1 Block 2.

Section 4. "LOT" or "LOTS" shall mean and refer to any plot of land shown upon any recorded subdivision map of the property, with the exception of the Common Area.

Section 5. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "DECLARANT" shall mean the undersigned.

Section 7. "DECLARATION" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to the Properties recorded in the Office of the County Recorder of Ada County, State of Idaho.

Section 8. "DWELLING UNIT" shall mean that portion or part of any structure intended to be occupied by one family as a dwelling unit, together with the vehicular parking garage next thereto, and all projections therefrom.

Section 9. "Plat" shall mean a final subdivision plat covering any real property in Rochester Heights Subdivision, as recorded in the office of the county recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Section 10. "MORTGAGE" shall mean any mortgage, deed of trust or other security instrument by which a Dwelling Unit or any part thereof is encumbered.

Section 11. "MORTGAGEE" shall mean any person or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any mortgage, as mortgage is defined in Section 10.

Section 12. "FIRST MORTGAGEE" shall mean any Mortgagee, as defined in Section 11, possessing a lien on any Dwelling Unit first and prior to any other Mortgage, as that term is defined in Section 10.

Section 12. "INSTITUTIONAL HOLDER" shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company or any federal or state agency.

ARTICLE II: COMMON AREA

Section 1. Enjoyment of Common Area: Each owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following provisions:

- A. The right of the Association to charge reasonable maintenance and other fees for the use and maintenance of any landscaping improvement situated upon the Common Area.

- B. The right of the Association to suspend the voting rights and right to use of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- C. The right of the Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interests of securing maximum safe use of any of the Common Area by the members of the Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of the Properties, including without being limited to, rules restricting persons under or over designated ages from using certain portions of the Common Area during certain times, rules regarding use by an Owner's guests, and reasonable regulations and restrictions regarding vehicle parking.
- D. The rights of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, in aid thereof, to place a mortgage or trust deed thereon, which shall be a first and prior lien thereagainst; provided that the Common Area may not be mortgaged or conveyed without the consent of at least 66-2/3 % of the Owners (excluding Declarant), and that any conveyance or mortgage of Common Area shall be subject to and subordinate to rights of ingress and egress of an Owner to his/her Lot.
- E. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and recreational facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly held for this purpose.

Section 2. Delegation of Use: Any member may delegate, in accordance with the rules and regulations adopted from time to time by the directors, his right of enjoyment to the Common Area to the members of his family, his tenants or contract purchasers, provided they reside on the property.

ARTICLE III: HOMEOWNERS ASSOCIATION

Section 1. Membership: Every Owner of a Lot which is subject to assessment 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 payment of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate and lapse when such ownership in said property shall terminate or be transferred. Absolute liability is not imposed on Owners/members for damage to Common Areas or Lots in the subdivision.

Section 2. Voting Rights: The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Class A members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional votes shall not be allowed. The vote applicable to any said Lot being sold under contract of purchase shall be exercised by the contract seller, unless the contract expressly provides otherwise.

Class B: Class B member(s) shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- B. On June 1, 2010

Section 3. Assessments

A. Creation of Lien and Personal Obligation of Assessments: Each Owner of any Lot, by acceptance of a deed therefor (whether or not is shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association:

- 1. Regular annual or other regular periodical assessments or charges; and
- 2. Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The regular and special assessments, together with late fees, costs of collection and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with late fees, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed, but shall not be a personal obligation of successors in title, unless expressly assumed.

B. Purpose of Assessments: The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties, for the operation, maintenance, repair and improvement of the Common Areas and other improvements located thereon, for the reasonable expenses incurred in the operation of the affairs of the Association, for the expenses incurred by the Association in connection with any of its obligations contained in this Declaration or in the

bylaws of the Association, and for any other purpose reasonably authorized by the Directors of the Association.

- C. Maximum Annual Assessments: Until May 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments shall be \$150.00. With a \$150.00 Association setup fee.
1. From and after May 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%), or the maximum percentage increase allowable by Federal National Mortgage Association, if any (whichever is greater), above the maximum assessment as set forth above.
 2. From and after May 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount set forth in the preceding paragraph by a vote of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.
 3. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum; and said assessments shall be payable to the Association in regular monthly, quarterly or annual installments as may be determined by the Board of Directors.
- D. Special Assessments for Capital Improvements: In addition to the regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, the storm drainage facilities, or for any of the Associations' obligations set forth in Article VII below, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Any such special assessment shall be payable over such a period as the Association shall determine.
- E. Notice and Quorum for Any Action Authorized Under Sections 3C and 3E: Written notice of any meeting called for the purpose of taking any action authorized under Section 3C or 3E, above, shall be sent to all members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- F. Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all Lots except those which are exempt as provided for in paragraph J, below, and may be collected on a monthly, quarterly or annual basis as may be determined by the Board of Directors.
- G. Date of Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall commence as to a Lot sold on the first day of the month following the initial conveyance of the said Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.
- H. Effect of Nonpayment of Assessments; Remedies of Association: In the event any assessment is not paid within thirty (30) days after the due date, the Owner shall be subject to a late fee in the amount of \$25.00 for each month or part thereof that the assessment shall be delinquent, which said late fee shall be added to and become a part of the assessment provided for in this Section. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.
- I. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due of from the lien thereof.
- J. Exempt Property: The following property subject to this Declaration shall be exempt from the assessments created herein:
1. All property expressly dedicated to and accepted by a local public authority;
 2. The Common Area;
 3. All other properties owned by Declarant or the Association;
 4. All Lots owned by Declarant, until title is transferred to another, or until occupancy, whichever occurs first.

ARTICLE IV: COMMON DRIVEWAYS

No Lots in the Rochester Heights Subdivision are using common driveways for ingress egress access. No Access is provided by common driveways to be owned and maintained in common by the owners of each of the said two lot groups. The said common driveways are dedicated and restricted to the perpetual and indefeasible right of ingress and egress to and from the said Lots for the exclusive use and benefit of the Owners and residents of the said Lots, their guests and invitees. The perpetual right of ingress and egress to and from the said Lots as provided herein shall run with the land and may not be terminated or extinguished without the written consent of all Owners of the affected Lots and the City of Boise.

ARTICLE V. EASEMENTS

Section 1. Future Easements: The association shall have the future right to provide for such easements across, upon and under the surface of Common Area as platted herein as may be reasonably necessary to serve the interests and convenience of the property owners of this subdivision for public or private ways, public utilities (including cable television), drainage access, subterranean irrigation lines, eave and balcony overhangs.

Section 2. Encroachments: In the event that, by reason of the construction, settlement or shifting of the building, any part of any unit or drainage water from any Lot or Unit encroaches or shall hereafter encroach upon any part of the Common Area or any adjacent Lot, easements for the maintenance of such encroachment and for such use of the areas encroached upon are hereby established and shall exist for the benefit of said unit, so long as all or any part of the buildings shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Area or adjacent units be created in favor of any Owner of such encroachment or use if it is detrimental to or interferes with the reasonable use and enjoyment of the property by other Owners and if it occurred due to the willful conduct of any Owner.

Section 3. Easement for Maintenance: The Association shall have a permanent easement to go upon the privately owned property of Owners in this subdivision to perform its maintenance obligations as set forth herein, including, but not limited to utility service and drainage system maintenance, private street maintenance and perimeter fence maintenance, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement and the operation, maintenance and repair of utility service connections and drainage systems.

Section 4. Ada County Highway District Storm and Drainage Easement: The Ada County Highway District shall have a permanent, non-exclusive easement for the repair and maintenance of any storm drainage facilities located in the common area, together with all rights of ingress and egress necessary for the full and complete use, occupation, and enjoyment of the easement hereby granted, and all rights and privileges incident thereto in accordance with the provisions of Article VII, below.

ARTICLE VI: PARTY OR CONTIGUOUS WALLS ("PARTY WALLS")

Section 1. **General Rules of Law to Apply:** Each wall which is built as a part of the original construction of the units upon the property and placed on the dividing line between the Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. **Sharing of Repair and Maintenance:** The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall and proportioned to such use.

Section 3. **Destruction by Fire or Other Casualty:** If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

Section 4. **Weatherproofing:** Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. **Right to Contribution Runs with Land:** The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owners, successors entitled.

Section 6. **Arbitration:** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII: MAINTENANCE RESPONSIBILITY

Section 1. **Association Responsibilities:** The Association shall have the responsibility to repair and maintain the following elements of the Properties: (a) the Common Areas and improvements thereon, (b) any storm drainage facilities located outside of the public right of way; in accordance the approved operations and maintenance manual for the Rochester Heights Subdivision. (c) the perimeter fence installed by the Declarant, In the event the need for maintenance and repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which the Owner's Lot is subject.

Section 2. Owner's Responsibility: Each owner shall maintain and keep in good order and repair the exterior of his Dwelling Unit, any private decks, fences, and courtyards contiguous to his Unit, and any landscaping areas enclosed behind an Owner's private fence. In the event any Owner fails to comply with its duties as set forth herein, the Association shall have the right to take such legal action as may be necessary in order to compel such compliance. In the event of damage or destruction of a Dwelling Unit by fire or other casualty, the owner must complete repair and/or replacement of the Dwelling Unit within ninety (90) days of the damage or destruction.

Section 3. Ada County Highway District Rights of Maintenance of Drainage Facilities: Notwithstanding that the Association is obligated to maintain the storm drainage facilities (facilities") located in the Common Area, the Ada County Highway District (hereinafter ACHD) may elect to maintain any part of the facilities in the event that ACHD determines, in its sole discretion, that the Association is not adequately doing so. In such an event, ACHD shall, before undertaking any such maintenance activities, provide thirty(30) days advance written notice to the Association describing what maintenance activities are required and advising the Association that if the required maintenance is not completed within thirty(30) days of the date of that notice, then the Ada County Highway District may cause the required maintenance to be preformed in accordance with this paragraph. In the event the Association shall fail to complete the necessary maintenance work within the prescribed time period, then ACHD may cause the required maintenance to be performed in which event ACHD shall be entitled to collect its costs and expenses incurred in connection therewith, together with interest at the rate which accrues on judgements and all costs of collection thereof by assessing all Lots which are subject to this Declaration and certifying those assessments in the manner provided for the assessment and collection of real property taxes. This paragraph shall not be amended nor shall the Association be dissolved or relieved of its responsibility to maintain the storm drainage facilities described herein without the prior written approval of ACHD.

ARTICLE IX: PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to the Properties and shall be for the benefit of and limitation upon all present and future Owners of said property, or of any interest therein:

- A. Lot Use: No Lot shall be used except for residential purposes in accordance with applicable conditional use permits and zoning ordinances in effect from time to time. Construction of separate principle buildings on any Lot is prohibited. No Lot or Common Area shall be used for the conduct of any trade, business or professional activity. All Lots and improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes and regulations.
- B. Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said property, except that two dogs, cats or other household pets may be kept within a Unit. Any animals outside a Unit must be on leashes, and the Owner or custodian of the animal shall be responsible for the immediate cleanup of the animal's droppings.

- C. Garbage and Refuse Disposal: No part of said property shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in the sanitary containers approved by the Association for that purpose. Any equipment for the storage or disposal of such material must be kept in the Owner's garage except on regular trash pick-up day.
- D. Nuisance: No noxious or offensive or unsightly conditions shall be permitted upon any part of said property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No exposed radio antenna or satellite dishes shall be erected on the properties without the prior approval of the Architectural Control Committee, which approval may be withheld in its sole discretion. Garage doors shall, to the extent possible, remain closed at all times that the garage is not in active use by the Owner or occupant.
- E. Outbuildings: No trailer, truck camper, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said properties.
- F. Storage of Vehicles and Equipment: Parking of boats, trailers, motorcycles, trucks, truck campers and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any Lot nor on the private streets or Common Area adjacent thereto, except under such circumstances, if any, as may be prescribed by the Board of Directors of the Association. All other parking of equipment shall be prohibited, except as approved in writing by the Association. Any vehicle awaiting repair or being repaired shall be removed from the subdivision within 48 hours.
- G. Sight Distance at Intersections: No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property line connecting them at points twenty-five feet (25') from the intersection of the street lines, or in the case of rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- H. Leasing Restrictions: Any lease (as defined below) between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, the Association's Articles of Incorporation and its Byways, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease. For the purposes of this Declaration, a "lease" shall mean any agreement for the leasing or rental of a Dwelling Unit (including a month-to-month rental agreement); and all such Leases shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Dwelling Unit.

I. Sewer Restrictions: All bathroom, sink and toilet facilities shall be located inside the Dwelling Unit or other suitable appurtenant building, and shall be connected by underground pipe to wet line sewer connection lines which have been provided to each Lot. All recorded Lots within this subdivision shall be subject to and restricted by the following recorded subdivision covenants:

1. A monthly sewer charge must be paid after connection to the Boise City public sewer system, according to the ordinances and laws of Boise City.
2. Owner shall submit to inspection by either the Department of Public Works or the Department of Building whenever a subdivided Lot is to be connected to the sewage system constructed and installed on and within its property.
3. The applicant/Owner of this subdivision or Lot or Lots therein shall hereby vest in Boise City the right and power to bring all actions against the owner of the premises hereby conveyed or any part thereof for the collection of any charges herein required and to enforce the conditions herein stated. This covenant shall run with the land.

J. Parking Rights: Any automobile or other vehicle used by any Owner or occupant of a Dwelling Unit shall be parked in the driveway or garage which is a part of his Dwelling Unit. No vehicle shall be left in a driveway for more than 48 hours without being used. Standing or broken down vehicles will be subject to a fine from the homeowners association in the amount agreed to by the board of directors.

ARTICLE X. SOLAR COVENANTS, RESTRICTIONS, AND CONDITIONS

Section 1. Solar Access Definitions:

- A. Exempt Tree: Any preexisting vegetation as defined in Article X, Section 2.b. or any vegetation including on the list of solar friendly vegetation kept by the City of Boise's Public Works and Community Planning and Development Departments.
- B. Front Lot Line: The line represented by the connection of the most distant corners of a Lot, including flag Lots, where said corners are in common with the boundary of a public or private road. For corner Lots, the front line is designated on the plat.
- C. North Slope: The gradient, in percent slope, from the average finished grade of the solar Lot line of a Solar Lot. The slope must be downward or decreasing in elevation from the south to the north.
- D. Restricted Vegetation: A tree or other vegetation which is either evergreen, or if deciduous, tends to retain its leaves late in the fall and/or drop them late in the spring, or has a dense branching pattern which generally tends to block a high level of the sun's rays during the heating season. Refer to the list of "solar friendly" trees on file with the Boise City Public Works and the Community Planning and Development Departments.

- E. **Shade:** That portion of the shadow cast by the shade point of a structure or vegetation which exceeds the 11.5 foot fence at the solar Lot line at solar noon, January 15.
- F. **Shade Point:** That part of a structure, tree or other object, on a shade restricted Lot, which casts the longest shadow (the most northerly shadow) when the sun is due south on January 21 at an altitude of twenty-six (26) degrees above the horizon, except a shadow caused by a narrow object such as a chimney, antenna, utility pole, wire, etc.
- G. **Shade Point Height:** The vertical distance or height measured from the average elevation at the solar Lot Line to the shade point. If the shade point is located at the north end of a ridge line or a structure oriented within 45 degrees of a geodetic north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a geodetic east-west line with a pitch which is flatter than 6 feet (vertical) in 12 feet (horizontal), the shade point will be the eave of the roof. If such a roof has a pitch which is 6 feet in 12 foot or steeper, the shade point will be the peak of the roof.
- H. **Shade Restricted Lot:** Any Lot within the subdivision that is southerly of and adjacent to a solar Lot. These Lots have some restriction on vegetation types and structure height.
- I. **Solar Friendly Vegetation:** A tree or other vegetation which is included on the solar friendly vegetation list kept by the City of Boise's Public Works and Community Planning and Development Departments.
- J. **Solar Lot:** A Lot which has the following characteristics:
- (a) The front Lot line is oriented within thirty (30) degrees of a geodetic east/west bearing;
 - (b) The Lot to the immediate south has a north slope of ten (10) percent or less;
 - (c) Is intended for the construction of an above ground inhabited structure.
- K. **Solar Lot Line:** The most southerly boundary of a solar Lot: the line created by connecting the most distant southerly corners of the solar Lot.
- L. **Solar setbacks:** The minimum distance, measured perpendicular in a southerly direction, from the center of the solar Lot line to the shade point of a structure or to restricted vegetation based upon its height at maturity on the shade restricted Lot.

Section 2. **Solar Access Covenants, Conditions and Restrictions:**

- A. **Shade Restrictions:** Each Lot within the subdivision which is classified as a Shade Restricted Lot shall have the following restriction: Any structure or restricted vegetation (solar unfriendly) cannot cast a shadow height than an imaginary fence 11.5 feet above the solar Lot line on solar noon of January 21 when the sun is at an angle of 26 degrees above the horizon. This sun angle at noon on January 21 causes structures, vegetation, and other objects

to cast a shadow twice as long as their height. The height of the shade point of a structure on the shade restricted Lot is limited to 19 feet at the 15 foot rear yard zoning setback in order that the 11.5 foot high “solar fence” at the north property line of the Shade Restricted Lot in not exceeded. These standards assure that a structure built to the 15 foot rear yard zoning setback, on the solar Lot located to the north, will not be shaded more than 4 feet above grade on its south wall on January 21 at solar noon.

- B. Pre-Exiting Vegetation: Restricted vegetation (solar friendly), which existed when the subdivision was platted is exempt from the provisions of these covenant, conditions and restrictions. Any Lot which would be shaded beyond the allowed shade limit by such vegetation shall not be classified as a Solar Lot.
- C. Slope Exemption: Any Lot with an average finished grade slope along the north/south Lot dimension greater than ten (10) percent shall be exempt from the terms and conditions of these covenants, conditions and restrictions.
- D. Solar Setbacks: Each separate structure and item of restricted vegetation shall have a solar setback dependent on and calculated by its shade point height. All shade restricted Lots shall have the following solar setback:
Solar Setback (in feet)= [Shade Point Height (in feet) –11.5’] x 2. Table 1 below shows a few examples of solar setbacks for given shade point heights:

TABLE 1
SOLAR SETBACKS REQUIRES FOR A GIVEN SHADE POINT HEIGHT

<u>Shade Point Height</u>	<u>Solar Setback</u>
10’	0’
15’	7’
20’	17’
25’	27’
30’	37’

- E. Solar Friendly Vegetation: Certain vegetation is considered “solar friendly” and is not restricted in regards to location or individual Lots. Such vegetation is deciduous, dropping its leaves during early fall and regaining them during late spring. Such vegetation also has sparse branching which allows a high level of sunlight to penetrate through. This growth cycle produces shading during summer but allows sun to penetrate during winter. A list of acceptable friendly trees is maintained by the Boise City Public Works and the Community Planning and Development Department.

Section 3. Solar Access Rights, Duties and Responsibilities:

- A. Solar Access Rights: The owner(s) of solar Lots shall have a right to unobstructed solar access in accordance with these covenants, conditions and restrictions.
- B. Solar Access Denied: The owner(s) of any Lot shall not build, install, or otherwise allow a structure or non-solar friendly tree on

that Lot to cast more shade at their solar Lot line than permitted under these solar access covenants, restrictions, and conditions.

ARTICLE XI. ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee: In order to protect the quality and value of the homes built on the Properties, and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three or more members to be appointed by the Board of Directors of the Association. The Board of Directors of the Association shall appoint members to the Architectural Control Committee at each annual meeting of the Board.

Section 2. Approvals Required: No building, fence, wall, patio cover, window awning or landscaping improvements of any type shall be commenced, built, constructed, placed, or maintained upon any Lot, Common Area or other property, nor shall any exterior addition, change or alteration of existing improvements be made, until the plans specifications showing the nature, kind, shape, configuration, height, materials, location and such other detail as the Architectural Control Committee may require, shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the Architectural Control Committee in such form as they may require, it shall be deemed approved.

The Architectural Control Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations which, in its opinion, are not suitable or desirable for any reason, aesthetic or otherwise. In so passing on such design, the Committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed structure or alteration, the materials of which it is to be built, and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Architectural Control Committee may also consider whether the design of the proposed structure or alteration is in harmony with the surroundings, the effect of the structure or alteration when viewed from the adjacent or neighboring property, and any and all other facts which, in the Architectural Control Committee's opinion, shall affect the desirability of such proposed improvement, structure or alteration. Actual construction shall comply substantially with the plans and specifications approved.

Section 3. Submission: Requests for approval of the Architectural Control Committee shall consist of such documents and other materials as may be reasonably requested by the Architectural Control Committee including, without limitation, the following:

- A. Two complete sets of plans and specifications, one of which shall be returned to the one making the submission;and

- B. Manufacture's color samples for all exterior colors, including colors for siding, trim, roof coverings and masonry.

Section 4. Rules and Regulations: The Architectural Control Committee is hereby authorized to Adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Committee deems appropriate and in keeping with the spirit of due process of law. The Architectural Control Committee is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations may be amended from time to time, in the sole discretion of the Architectural Control Committee. The failure of the Architectural Control Committee to adopt any such rules and regulations shall not from the basis for an attack upon the exercise of Architectural Control Committee's discretion, it being the intent of this Declaration to provide the Architectural Control Committee with as broad discretion as is permissible under the law.

Section 5. Fees: The Architectural Control Committee may establish, by its adopted rules, a fee schedule for an architectural review fee to be paid by each Owner submitting plans and specifications for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Architectural Control Committee for the cost of professional review of submittals and services of a consultant to administer the matter to its completion, including inspections which may be required.

Section 6. Waivers: The approval of any plans, drawings or specifications for any structure, improvement, or alteration, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications or matters subsequently submitted for approval.

Section 7. Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

Section 8. Certification by Secretary: The records of the Secretary of the Association shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Secretary or Assistant Secretary of the Association showing that the plans and specifications for the improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Association by the Secretary thereof, shall be conclusive evidence that shall fully justify and protect any title company certifying,

guaranteeing or insuring title to said property, or any portion thereof or any lien thereon and/or any interest therein as to any matters referred to in said certificate, and shall fully protect any purchaser or encumbrancer from any action or suit under this Declaration. After the expiration of one (1) year following the issuance of a building permit therefor by municipal or other governmental authority, any structure, work, improvement or alteration shall, as to any purchaser or encumbrancer in good faith and for value and as to any title company which shall have insured the title thereof, be deemed to be in compliance with all the provisions hereof unless a notice of noncompliance executed by the Association shall have appeared of record in the office of the County Recorder of Ada County, State of Idaho, or unless legal proceedings shall have been instituted to enforce completion or compliance.

Section 9. Construction and Sales Period Exception: During the course of construction of any permitted structures of improvements and during the initial sales period, the restrictions (including sign restrictions) contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Dwelling Units; provided that, during the course of such construction and sales, nothing shall be done which will result in a violation of these restrictions upon completion of construction and sale. Further, Declarant shall have the right to select and use any individual Dwelling Units owned by it as models for sales purposes.

ARTICLE XII: INSURANCE AND BOND

Section 1. Required Insurance: The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required in such amounts and in such forms as the Association may deem appropriate from time to time.

- A. A comprehensive policy of public liability insurance covering all of the common areas, commercial spaces and public ways in the properties. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of a Dwelling Unit Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.
- B. Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

Section 2. Optional Insurance: The Association may obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho.

- A. Liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control

Committee and other committees as may be appointed from time to time by the Board of Directors of such association in such amount as may be reasonable in the premises.

- B. The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the properties, including any personal property of the Association located thereon, its directors, officers, agents, employees and association funds.

Section 3. Additional Provisions: The following additional provisions shall apply with respect to insurance:

- A. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgages.
- B. Each policy of insurance obtained by the Association shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, its officers, the Owners and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any agent, officer, or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.
- C. All policies shall be written by a company licensed to write insurance in the state of Idaho and all hazard insurance policies shall be written by a hazard insurance carrier holding financial rating by Best's Insurance Reports of Class VI or better.
- D. Notwithstanding anything herein contained to the contrary, insurance coverage must be in such amounts and meet other requirements of the Federal Home Loan Mortgage Corporation.

Section 4. Owner's Individual Insurance: The provisions for insurance contained in this Article are not intended to be construed as requiring the Association to secure insurance for the individual dwelling units contained within the Subdivision. Accordingly, each Owner shall obtain such fire, liability, and other insurance coverage as the said Owner may deem appropriate.

ARTICLE XIII: CONDEMNATION

Section 1. Consequences of Condemnation: If at any time or times, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 2. Proceeds: All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association.

Section 3. Apportionment: The condemnation award shall be apportioned among

the Owners equally on a per-Lot basis. The Association shall, as soon as practicable, determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts, one account for each Lot. Each such account shall remain in the name of the Association and shall be further identified by Lot number and the name of the Owner thereof. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens and the balance remaining to each respective Owner.

ARTICLE XIV: MORTGAGEE PROTECTION

Notwithstanding anything to the contrary contained in this Declaration or in the Articles or Bylaws of the Association:

- A. The Association may maintain a reserve fund for the performance of its obligations, including the maintenance, repairs and replacement of those common elements and improvements thereon, and such reserve shall be funded in such amounts and at such intervals as the Board of Directors may determine.
- B. The holders of First Mortgages shall have the right to examine the books and records of the Association and to require annual reports or other appropriate financial data.
- C. Any management agreement for the properties or Common Area, or any other contract providing for services of the developer, sponsor or builder, shall be terminable (i) by the Association for cause upon thirty (30) days written notice thereof, and (ii) by either party without cause and without payment of a termination fee on ninety (90) days or less written notice thereof, and the term of any such agreement shall not exceed one (1) year.
- D. Any lien which the Association may have on any Dwelling Unit for the payment of assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any Mortgage on the Unit recorded prior to the date notice of such assessment lien is duly recorded.
- E. Unless all institutional holders of First Mortgages have given their prior written approval, the Association shall not:
 - 1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area property owned, directly or indirectly, by such Association for the benefit of the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area property shall not be deemed a transfer within the meaning of this clause.)
 - 2. Change the method of determining the obligations, assessments, dues or other charges which may be levied against the Owner.
 - 3. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the

maintenance of the Common Area property, party walls, or common fences and driveways, or the upkeep of lawns and plantings in the subdivision.

4. Fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).
5. Use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.
6. Amend materially this Declaration, the Association's Articles of Incorporation, or its Bylaws.

ARTICLE XV. GENERAL PROVISIONS

Section 1. Enforcement: The Association or any Owner or the owner of any recorded Mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment: The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except easements herein granted, may be amended by an instrument signed by members entitled to cast not less than sixty-six and two-thirds percent (66-2/3 %) of the votes of membership and shall require prior approval of the United States Department of Housing and Urban Development and/or the United States Department of Veterans Administration as long as there is a Class B Membership as provided for herein and provided that the said agencies then have and interest in the property which is the subject of the Declaration. Any amendment must be recorded.

Section 4. Assignment by Declarant: Any or all rights, powers and reservations of Declarant herein contained may be assigned to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned, and upon any such corporation or association evidencing its intent in writing to accept such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by Declarant alone, so long as it owns any interest in any portion of said property.

IN WITNESS WHEREOF, the Declarant has caused its corporate name to be hereunto subscribed and its corporate seal affixed this 30th day of July, 2007. *cc*

DECLARANT:

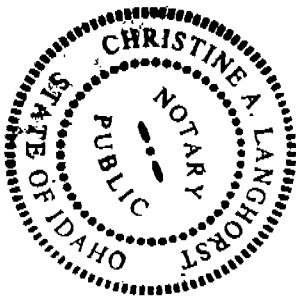
Todd Campbell Construction Inc.

By *Todd Campbell*
Todd Campbell, President

STATE OF IDAHO)
SS.
County of Ada)

On this 30th day of July, 2007, before me, a Notary Public in and for said state, personally appeared Todd A. Campbell, known or identified to me to be the managing member of Todd Campbell Construction Inc. and the persons whose names are subscribed to the foregoing instrument, and acknowledge to me that he executed the same on behalf of Todd Campbell Construction Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year in this certificate first above written.



Christine A. Langhorst
Notary Public for Idaho
My Commission Expires: _____
Residing at Boise, Idaho
Commission Expires: 03/04/2006