

IN WITNESS WHEREOF, we the undersigned, owners of the property in said subdivision, have hereunto placed our hand on the 11<sup>th</sup> day of NOVEMBER, 1996.

By: [Signature]  
Monte J. Silliman

Walnut Ridge Partnership

By: [Signature]  
James M. Rees

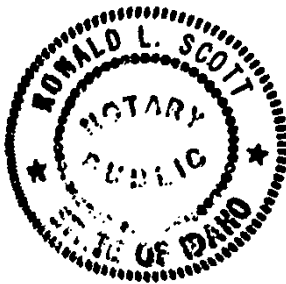
ACKNOWLEDGEMENT - Partnership

STATE OF Idaho, County of Ada, ss.

On this 11<sup>th</sup> day of NOVEMBER, in the year of 1996, before me RONALD L. SCOTT, a notary public, personally appeared Monte J. Silliman and James M. Rees, known or identified to be the partners in a partnership, of Walnut Ridge Partnership and the partner or one of the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.

Notary Public: [Signature]

Residing at: BOISE, IDAHO



96098051

ADA CO. RECORDER  
J. DAVID HAVARRO  
BOISE ID.

[Signature]  
96 NOV 27 AM 10 23  
FEE 48<sup>00</sup> DEP [Signature]  
RECORDED AT THE REQUEST OF

**DECLARATION OF PROTECTIVE  
RESTRICTIONS AND COVENANTS  
AZURE MEADOWS SUBDIVISION**

**KNOW ALL MEN BY THESE PRESENTS:** That the undersigned, Walnut Ridge Partnership, does hereby certify and declare:

1. That Grantor is the owner of all the lots in Azure Meadows Subdivision, according to the official plat thereof, on file in the office of the County Recorder of Ada County, State of Idaho in Book 77 of Plats at pages 7268 and 7269.

The term "Grantor" wherever used herein, shall refer to Walnut Ridge Partnership; a partnership or any person or persons or corporation to whom the rights of the Grantor, as set forth in these Restrictions, shall be specifically transferred.

All lots in said subdivision shall be known and described as residential lots and restricted to residential use as allowed by current applicable zoning regulations and no other structure shall be erected upon any building site without consent of Architectural Control Committee.

The Grantor(s) hereby covenants for all of said property; and each Grantee by ratification of these covenants, conditions, and restrictions, or by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance is deemed to covenant and agree to comply with and abide by these covenants, conditions and restrictions and agrees for himself, his heirs, administrators, and assigns to be bound by each of such covenants, restrictions, reservations, and servitude jointly, separately and severally.

Should the Grantee violate or attempt to violate any of the provisions of these Restrictions, Grantor(s), Architectural Control Committee, or any other person or persons owning any real property embraced in the Plat, at its or their option, shall have full power and authority to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of the said Restrictions, either to prevent him or them from so doing, to mandate compliance, or to recover damages sustained by reason of such violation.

Should the Grantor employ counsel to enforce any of these restrictions, by reason of such violation, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the owner of such lot or lots, and the Grantor shall have a lien upon such lot or lots to secure payment of all such accounts.

The breach of any of these covenants, conditions, restrictions, by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lot or lots or portions of lots in such premises, but these covenants, conditions, reservations, and restrictions shall be binding upon and effective against any such mortgagee or trustee or owner thereof, whose title thereto or whose title is or was acquired by foreclosure, trustee's sale, or otherwise.

No delay or omission on the part of the Grantor or the owners of other lots in the properties in exercising any rights, power, or remedy herein provided, in the event of any breach of the covenants, conditions, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action be brought or maintained by anyone whatsoever against the Grantor for or on account of his failure to bring any action on account of any breach of these Covenants, conditions, or restrictions herein which may be unenforceable by the Grantor.

These covenants, conditions and restrictions, are cumulative, and all remedies provided herein for breach are in addition to any rights and remedies provided by local or state laws, and not in lieu thereof.

In validation of any provisions, sentence, or paragraph contained in the Restrictions by judgment or court order shall in no wise affect or invalidate any of the other provisions, but the same shall be and remain in full force and effect. In the event the provisions of these restrictions are declared void by a

court by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against suspension of alienation as set forth in the laws of the State of Idaho.

Approval by a city or county governing board, vested with the responsibility of reviewing planning and zoning, having jurisdiction over this subdivision, or an application made by any Grantee which is in conflict with any covenants, conditions, or restrictions of this Declaration shall in no wise affect or invalidate this Declaration, but this Declaration shall remain in full force and affect, and subject to enforcement and remedies for violation hereof.

2. APPROVAL OF PLANS: No house, garage, outbuildings, fence or other structure shall be built, erected, placed, materially altered or materially repaired including, without limitation, the altering, repair of surface colors or textures on any lot in the unit or subdivision unless and until the building plan specifications and plot plan have been reviewed in advance by the Architectural Control Committee and the same has been approved conditionally or otherwise. Said review and approval shall include without being restricted to topography, finish ground elevations, landscaping, drainage, color material design, artistic conformity to the terrain and other residences in the area, and architectural symmetry. It shall not be the intent of these restrictions to control the interior layout or design of said structures.

Plans of all buildings and fences to be erected on any building site embraced in the plat must be submitted to the Architectural Control Committee of not less than three members, hereinafter call "Committee" which shall exercise the rights herein reserved. Complete plans and specifications of all proposed buildings and structures, together with a detailed plan showing proposed location on the particular building site, shall be submitted to the committee before any construction or alteration is started, and such construction or alteration shall not be commenced until written approval therefore is given by the Committee.

No plans shall be deemed to have been approved by the Committee unless its approval is in writing executed by at least two members of the committee, provided that approval shall be deemed given if the Committee fails to approve or disapprove a proposed change or to make additional requirements or request additional information within Thirty (30) days after a full and complete description of the proposed change has been furnished in writing to the Committee with a written and specific request for approval.

Grantee agrees that the actions of the committee shall be wholly discretionary and shall be binding upon Grantee whether exercised or not. As to all improvements, construction and alterations upon any building site, the Committee shall have the right to refuse improvements, construction or alterations, which, in its opinion are not suitable or desirable for any reason, aesthetic or otherwise. In so passing upon such design, the Committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed building or other structure, 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 Committee may also consider whether the proposed structure and design shall be in harmony with the surroundings, the effect of the building or other structure or alterations therein as planned when viewed from the adjacent or neighboring property, effect or impairment that said structure will have on the view of surrounding building sites, and any and all other desirability of such proposed structure, improvements or alterations. Actual construction shall comply substantially with the plans and specifications as approved.

That the Architectural Control Committee, herein above designated, shall constitute a committee subject to the aforementioned ordinances and rules and regulations of the various zoning and planning commissions having jurisdiction to determine and designate the location upon such easements of all irrigation and drainage ditches, pole lines, sewer lines, and other public utilities distribution lines which designation shall be effective to best the right to utilize such easement area.

Said Committee shall be composed of Monte J. Silliman, James M. Rees, and Donna Jacobsen and their successors, and shall serve for the time and on conditions as the Grantor, in its sole discretion,

shall prescribe, provided that the Committee may appoint successor members from the residents in the properties who shall serve as long as they are residents, and may also appoint residents as successor members upon their resignation.

Grantee specifically agrees with Grantor that such Committee, its members, and the Grantor shall incur no liability for any omission or act by any of above named parties. In the event of death or resignation of a member, the remaining two members shall have full authority to act, and within a reasonable time after the occurrence of such vacancy, shall appoint a replacement.

Grantor reserves the right to construct residences and other improvements upon any residential lot building site in said subdivision, and to offer said lots, together with the completed residence and structures thereon, for sale to individual grantees.

**3. BUILDING SITE:** A building site shall consist of at least one of the residence tracts as platted in said official plat, and as described in a deed or conveyance or a parcel composed of such residence tracts or portions thereof, of which the depth, frontage and area of said parcel or building site shall equal or exceed the depth frontage and area of residence tracts as platted in the same block of said plat, providing such parcel will allow full compliance with minimum set back restrictions and other covenants as stated herein.

**4. PROSECUTION OF CONSTRUCTION WORK:** The construction of each dwelling and associated structure shall be prosecuted diligently and continuously from time of commencement thereof until such dwellings and associated structures are fully completed and painted. All structures shall be completed as to external appearance, including finish painting within eight (8) months from the date of commencement of construction, unless prevented by causes beyond the control of the owner or builder and only for such time as that cause continue.

**5. OIL AND MINING OPERATIONS:** No oil drilling, oil development operations, oil refining quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.

**6. MOVING OF BUILDINGS-CONSTRUCTION OF OUTBUILDINGS:** No building or structures shall be moved onto said real property or building site except a new professional structure of a type and design approved by the Architectural Control Committee. No trailer house or mobile home shall be parked on any street, lot or building site within this subdivision and no basement, tent, shack, garage, barn or other outbuilding erected or placed on a building site shall at any time be used as a residence, either temporarily or permanently, nor shall any residence of a temporary character be permitted. At the discretion of the undersigned original owner, a temporary material and tool storage building or enclosure and/or a contractors construction or sales office will be permitted during the initial development of said subdivision all of which shall be removed as soon as practical or on direction of the owner not later than termination of development.

**7. TYPE AND SIZE OF BUILDING:** Two (2) story Units shall not have less than 1,400 square feet of total interior floor area, exclusive of porches and garages. All other Units shall not have less than 960 square feet of interior floor area on the ground floor of the main structure, exclusive of porches and garages. Each Unit constructed within the Property shall include at least a two (2) car, enclosed garage which is an integral part of the Unit structure. The existing residence on Lot 1, Block 1, Azure Meadows Subdivision, is exempted from the requirement for an attached garage.

No gravel roofs or split entry homes will be allowed without Architectural Committee approval.

Each house in this subdivision SHALL TRY to include some brick, stone, or stucco on the front exposure. Bay windows, broken roof lines, gables, hip roofs, etc., are strongly encouraged. Exterior colors of earth tones or blues or grey shall be encouraged. Bright or bold colors or very dark colors shall be discouraged.

Only one outbuilding per lot will be allowed. All outbuildings shall be constructed of good quality building material, completely finished and painted on the outside and shall be of good quality and character that will be in harmony with the other buildings on said property and must be approved by the Architectural Control Committee.

8. **LANDSCAPING:** All front yards of residential lots shall be sodded or hydro-seeded. On each residential lot there shall be at least one tree having a trunk measurement no less than two inches in diameter and there shall be at least three shrubs or bushes of no less than five gallons each and at least five shrubs or bushes of no less than two gallons each. All landscaping shall be completed on a professional, first class basis and berms and other landscape amenities shall be installed to enhance the attractiveness of the subdivision. All landscaping and landscaping improvements shall be completed within thirty (30) days of substantial completion of the residential dwelling, or prior to occupancy, whichever shall first occur; weather permitting.

9. **BUILDING LOCATION:** Minimum building setback lines shall be 20' front, 20' side street, 15' rear, and 5' per story from interior side property lines.

10. **ANIMALS:** Keeping or raising of farm animals or poultry shall be prohibited. All dogs and cats or household pets kept on these premises shall be properly fed and cared for and shall be adequately fenced so as not to annoy or trespass upon the property of others. Dogs shall not be allowed to run at large. Habitually noisy dogs shall not be permitted.

11. **ANTENNAE:** Installation of radio and/or T.V. antennae is prohibited outside any building without written permission from the Architectural Control Committee.

12. **DOMESTIC WATER:** Each lot and dwelling unit (s) thereon shall be connected to the Capitol Water Corporation municipal water provided for and installed in said subdivision. Grantee shall be responsible for the hook-up fees, cost, charges and assessments and Grantor may recover funds advanced, if any to obtain preliminary construction.

13. **PRESSURIZED IRRIGATION SYSTEM:** As required by Nampa Meridian, the Developer will provide pressurized irrigation water to each homeowner in Azure Meadows Subdivision.

A. **Purpose:** Pressurized irrigation systems are designed and provided as a supplementary system. They are not capable of meeting all water requirements, especially during high demand months of July and August. The systems are not intended for year round water requirements. Lot Owners shall be required to pay an assessment based on Lot area to the District whether or not water is actually used. Lot Owners are prohibited from making any cross connection or tie in between the irrigation water system and their domestic water systems.

B. **Restrictions:**

1. Water is provided for exterior use only. i.e. Lawns, gardens, etc.
2. System can not be cross connected to city water supply.
3. **WATER FROM THE IRRIGATION WATER SYSTEM IS NOT DRINKABLE; EACH LOT OWNER SHALL BE RESPONSIBLE TO ENSURE THAT IRRIGATION WATER WITHIN THE BOUNDARIES OF HIS LOT IS NOT CONSUMED BY ANY PERSON OR USED FOR CULINARY PURPOSES. THIS IS IRRIGATION WATER ONLY AND SHOULD NOT BE CONSUMED BY MOUTH UNDER ANY CIRCUMSTANCES.**

C. **Limitations:**

1. Amount of available water is limited by Nampa Meridian Irrigation District. Allotment to this land is not unlimited availability.

2. Availability of irrigation water is also determined by yearly allotment. Normal irrigation season is May through September - October.
3. AZURE MEADOWS SUBDIVISION HOMEOWNERS' ASSOCIATION, INC. must establish a rotation schedule for daily and hourly use for each lot.
4. Homeowner will be required to set automatic timers as per watering schedule.
5. Additional water demands during peak watering times will be the homeowners responsibility using domestic water supply (City Water) if necessary.

14. **EXCAVATION, DEFACING OF LANDSCAPE DITCHES:** No excavation for stone, sand, gravel, earth, or minerals shall be made upon a building site unless such excavation is necessary in connection with the execution of any improved structure.

15. **SEWAGE DISPOSAL:** No individual sewage disposal system shall be permitted on any residential lot or parcel in said subdivisions. All sewage disposal shall be through an underground collection system approved by and constructed to the standards of State and local health authorities. Sewage effluent shall be collected from the Subdivision by the Boise City Sewer, the hook-up fees, costs, charges and assessments for which shall be the responsibility of Grantee, and Grantor may recover funds advanced, if any, to obtain preliminary construction.

16. **REFUSE DISPOSAL, STORAGE OF MATERIALS:** No machinery, vehicles, appliance or structure or unsightly material may be stored upon the real property, nor shall trash, garbage, ashes, or other refuse be thrown, dumped, burned or otherwise disposed of upon the real property. No building material of any kind shall be placed or stored upon a building site until the Grantee is ready to and able to commence construction, and then such materials shall be placed within the property line of the building site upon which structure is to be erected. The Grantor shall have the right to enter upon any vacant building site for the purpose of burning or removing weeds, brush, growth or refuse at the expense of the Grantee.

17. **SIGHT OBSTRUCTIONS:** No fences, wall, hedge or shrub planting which obstructs sight lines at elevations between 3 and 8 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet 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 intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

18. **NOXIOUS USE OF PROPERTY-SPITE FENCES:** Nothing of an offensive, dangerous, odorous, or noisy kind shall be conducted or carried on nor shall anything be done or permitted in said subdivision which may be or become an annoyance or nuisance to the other property owners in said subdivision. Weeds shall be kept cut to less than 4 inches high on occupied lot.

The Grantor shall have the unqualified right to determine whether any such act or activity is noxious or undesirable and such determination shall be binding upon all parties including Grantee and his successors in interest.

19. **BILLBOARDS - SIGNS:** No sign of any kind shall be displayed to the public view on any residential building site except one sign of not more than six square feet advertising the property for sale or rent, or signs used by the builder of the development to advertise the property, during the construction and sales priced.

20. **EASEMENTS:** That the owner of said real property, herein above described reserves unto itself, its successors and assigns, or for public dedication by the owner, its successors and assigns, all easements as shown on the recorded plat, for the purpose of constructing water mains, electric distribution lines, telephone lines, irrigation ditches, sewer lines, gas pipelines, and such other public utilities as shall

be necessary, convenient, and desirable for the Grantees and owners of said lots and parcels henceforth; that the same is required and practical for the public conveniences and health. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which a public authority, Azure Meadows Home Owners' Association, Inc. or utility company is responsible. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may obstruct or change the direction of flow of water through or drainage channels in the easements.

An easement is hereby granted to the Idaho Power Company, a corporation, its licensees, successors, and assigns, a permanent and perpetual easement and right-of-way, sufficient in width to install and maintain, and repair underground power lines through, under and across said lands, together with the right, at the sole expense of grantee, to excavate and refill ditches and trenches, for the location of said power lines, and the further right to remove trees, bushes, sod, flowers, shrubbery, and other obstructions and improvements, interfering with the location, construction and maintenance of said power lines on and across the following premises, belonging to the said owner in Ada County, State of Idaho in the following locations, to-wit.

In Azure Meadows Subdivision, Ada County, Idaho, a strip of land 10 feet wide, 5 feet on each side of the boundary line of the actual building sites, running from the street right-of-way or utility easements as shown on the plat to a point on said boundary line which are directly opposite from the electrical service entrance facilities on the buildings constructed on the building sites on each side of the boundary line; thence strips of land each 10 feet wide, on each building site running directly from said point or points on the boundary line to the correspondingly opposite electrical service entrance facilities on the buildings constructed on said building sites. The actual building site may be a lot shown on said subdivision plat or a combination or portions of lots intended to comprise a building site.

The electrical system generally will consist of a buried power wire, transformers, junction boxes, and other equipment, part of which may extend above ground, necessary to serve electric power to these premises and adjacent premises.

**21. RESTRICTION AGAINST USE DETRIMENTAL TO NEIGHBORHOOD:** No part of any building site shall be used or occupied, as a residence or other, so as to have any injurious effect upon the use, occupancy or value of any adjacent premises for the usual and customary residence purpose as established by the manner of use in the general area or neighborhood. No business enterprises shall be conducted on the above property that cannot be conducted within the residence of the owner. No signs shall be installed to advertise said business or profession. As to whether any use or occupancy violates the provisions of these covenants, Grantor and Architectural Control Committee in their sole discretion, may make such determination based upon any reason aesthetic or otherwise, including failure to maintain the premises, that any activity or use violates this provision. This covenant shall attach to and pass with all property in said plat and be binding upon all persons who may from time to time own or claim any right, title or interest in and to any of said property.

**No Unsightliness:** No unsightliness shall be permitted on any property within the Subdivision without limiting the generality of the foregoing. All unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure or appropriately screened from view. Trailers, recreational vehicles, trucks, boats, campers, garden or maintenance equipment, or any other vehicles other than automobiles, shall be kept at all times, except when in actual use, in an enclosed structure or screened from view, and no portion of same may project beyond the enclosed area. Lot 1, Block 1, Azure Meadows Subdivision will be allowed to park the items listed in this paragraph in the area south of the house to the south lot line.

**No Annoying Lights, Sounds, or Odors:** No light shall be emitted from any property within the Subdivision which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any property which is unreasonably loud or annoying and no odor shall be emitted on any property which is noxious or offensive to others.

No working or commercial vehicles of 3/4 ton or greater, recreational vehicle, trailer or boat, shall regularly or as a matter of practice be parked upon any building site nor on the street adjacent thereto, unless properly garaged, or unless stored in the back yard screened from view from the adjacent public right of way.

**22. ASSOCIATION:** Where "Association" is referred to in this document, it shall mean and refer to the AZURE MEADOWS SUBDIVISION HOME OWNERS' ASSOCIATION, INC., an Idaho non-profit corporation, its successors and assigns.

**23. BOISE CITY ANNEXATION:** The recording of this plat by Developer and/or owner shall be deemed and construed as a request for the annexation of its property to the corporate limits of Boise City. Such requests and consents shall be binding on all subsequent purchasers or owners of Developer's property.

## ARTICLE I

### AZURE MEADOWS SUBDIVISION HOME OWNERS' ASSOCIATION, INC.

**1. Organization of Association:** The Azure Meadows Homeowners' Association ("Association") is an Idaho Corporation formed under the provisions of the Idaho Non-Profit Corporations Act and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

AZURE MEADOWS SUBDIVISION HOME OWNERS' ASSOCIATION, INC., the Association is formed to provide for ownership, management, maintenance, and operation of the pressurized irrigation system and street lights of AZURE MEADOWS SUBDIVISION. The Association has duties and obligations not covered in this Declaration, and are set forth in the Articles and By-Laws of the Association recorded in the office of the Recorder of Ada County, Idaho, which by reference herein become part of this Declaration. The Association has the authority to assess the lots for the operation and maintenance of the irrigation system and the street lights, however, the Association does not have any powers to assess the residential lots of the Subdivision for any other purpose whatsoever.

Additional phases of Azure Meadows Subdivision will share proportionately in the ownership of the pumping system, pump building, tanks, etc. In addition to full rights of use, each additional phase is required to share proportionately in the cost of the electricity, maintenance and cost of the water.

**2. Membership:** Each Owner of a Lot subject to this Declaration (including the Declarant) by virtue of being such an Owner and for so long as such ownership is maintained, shall be a Member of the Association, and no Owner shall have more than one membership in the Association, except as hereinafter set forth with respect to voting. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and all memberships in the Association shall be appurtenant to the Lot owned by such Owner. The memberships in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.



3. Voting: The Association will have two (2) classes of voting memberships.

(A) Class A: Class A members shall be the Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. 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: The Class B member shall be the Declarant. Upon the recording hereof, Declarant shall be entitled to three (3) votes for each Lot of which Declarant is the Owner. The class B membership shall cease and be converted to Class A membership on January 1, 2000, or when the Declarant no longer owns any Lots within the property subject to the Declaration, whichever event shall first occur.

4. Board of Directors and Officers: The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles, Bylaws, and this Declaration as the same may be amended and supplemented from time to time.

5. Powers and Duties of the Association:

(A) Powers: The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws.

(1) Assessments: The power to levy assessments (Annual, Special and Limited) on the Owners of Lots and to force payment of such assessments, all in accordance with the provisions of this Declaration.

(2) Right of Enforcement: The power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto; to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration of the Articles or the Bylaws, including the Association rules adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise, all provisions hereof.

(3) Delegation of Powers: The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power to delegate.

(4) Association Rules: The power to adopt, amend and repeal by majority vote of the Board such rules, and regulations as the Association deems reasonable and which are consistent with this Declaration (the Association Rules).

(5) Emergency Powers: The Association or any person authorized by the Association may enter upon any Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association.

(B) Duties of the Association: In addition to power delegated to it by the Articles, without limiting the generality thereof, the Association or its agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners, and to perform each of the following duties:

(1) Rule Making: Make, establish, promulgate, amend and repeal the Association rules.

(2) Irrigation Maintenance: Maintain, repair, replace all irrigation lines or channels located on or serving this subdivision, and to pay all maintenance and construction fees of any Irrigation District with respect to the Property, which amounts shall be assessed against each Lot as provided herein.

(3) Street Lights: Control, maintain, and operate all street lights within Azure Meadows Subdivision, and to keep the same in working condition and good repair, provided, that at such time as a governmental entity takes the responsibility for the maintenance and repair of said street lights, the duties of the Association with respect thereto shall end.

(4) Subdivision Approval Responsibilities: Perform all continuing duties and responsibilities imposed upon the Grantor pursuant to any governmental approvals relating to the Property including, without limitation, those set forth in the preliminary plat approval for the Subdivision.

6. Personal Liability: No member of the Board or any committee of the Association or the Architectural Committee or any officer of the Association, or the Declarant, or the manager, if any, shall be personally liable to any Owner, or any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Declarant or the Architectural Committee, any other committee or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

## ARTICLE II

### COVENANT FOR MAINTENANCE AND ASSESSMENTS

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

- (A) Annual regular assessments or charges.
- (B) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and
- (C) Limited assessments as hereinafter provided.

The Regular, Special and Limited assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

2. Purpose of Assessments:

- (A) Regular Assessments: The regular assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties, to pay property taxes and other assessments, to pay the annual assessments of any irrigation district, operation and maintenance of irrigation system, and to pay such other reasonable costs and expenses which are incurred by the Association in carrying out the duties, and business of the Association.
- (B) Special Assessments for Capital Improvement: In addition to the annual 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, costs and expenses of the Association which exceed the regular assessments, provided that any such assessment shall be approved by a two-thirds (2/3) vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Additionally, upon the sale of each Lot by Grantor, the purchaser shall pay a one-time special assessment of Twenty and NO/100 Dollars (\$20.00) per Lot. Such special assessment shall be paid on or before the date of recordation of the deed from Grantor to the purchaser. Grantor, as agent for the Association, shall be entitled to collect this one-time special assessment at the closing of the Lot sale. This one-time special assessment shall be used to defray organizational cost for the Association and general costs of operation.
- (C) Limited Assessments: The limited assessments may be levied against any owner in an amount equal to the costs and expenses incurred by the Association, including legal fees for corrective action necessitated by such Owner, without limitation, costs and expenses incurred for the repair and replacement of any property maintained by the Association damaged by negligent or willful acts of any Owner or occupant of a Lot who is occupying the Lot with the consent of such Owner, or for maintenance of landscaping performed by the Association which has not been performed by Owner as provided herein.

3. Maximum Annual Regular Assessment: The initial maximum annual regular assessment to be assessed by the Association, shall be One Hundred-Twenty and NO/100 Dollars (\$120.00) per Lot per year.

- (A) The maximum annual assessment may be increased by the Board each year by not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership of the Association as provided below.
- (B) The maximum annual assessment may be increased above ten percent (10%) by a two-thirds (2/3) vote each class of the members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (C) The Board of Directors of the Association may fix the amount of the annual assessment at an amount not in excess of the maximum as established from time to time.
- (D) The total annual regular assessment, levied against the Lots owned by the Declarant, shall be the lessor of (a) the amount of the regular assessment per Lot multiplied by the number of lots owned by the Declarant or (b) the difference between the Total annual assessment levied against lots owned by the other parties, other than the Declarant, and the reasonable expenditure of the Association for the purposes described in Section 2. (A) for the fiscal year.

4. Notice and Quorum for any Action Authorized Under Sections 2. (B) and 3. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3. and 4. shall be sent to all members not less than ten days (10) nor more than fifty (50) 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 may 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.

5. Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual or other basis as determined by the Association from time to time.

6. Date of Commencement of Annual Assessments - Due Dates: The annual regular assessments or any special assessments then in effect as provided for herein shall commence as to a Lot or Lots on the first day of the first year following the conveyance of the Lot or Lots from Declarant to an Owner or Owners. The Board of Directors 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 a 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.

7. **Effect of Non-payment of Assessments - Remedies of the Association:** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date on a rate of twenty-one percent (21%) per annum or at the highest rate allowed by law if such rate is less than 21%. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclosure 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.

8. **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 of 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 payment which become due prior to such sale or transfer but shall not extinguish personal liability. No sale or transfer but shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

That these protective restrictions and covenants shall run with the land described herein and shall be binding upon the parties hereto and all successors in title of interest in said real property or any part thereof, for a period of 30 years, at which time said Protective Restrictions and Covenants shall automatically be extended for successive periods of ten years unless the owner or owners of the legal title to not less than two thirds of the platted residence tracts or plotted lots, by an instrument or instruments in writing, duly signed and acknowledged by them shall then terminate or amend such Protective Restrictions and Covenants, and such termination or amendment shall become effective upon the filing of such instrument or instruments for record in the office of the Recorder of Ada County, Idaho. Such instrument or instruments shall contain proper reference by volume and page numbers to the record plat and record of this Declaration in which these Protective Restrictions and Covenants are set forth, and all amendments thereof.

That should any Grantee violate or attempt to violate any of the provisions of these Protective Restrictions and Covenants, any other person or persons owning any real property embraced in the said subdivision plat; shall have full power and authority to prosecute and proceedings at law of in equity against the person or persons violating or attempting to violate any of the said Protective Restrictions and Covenants and either to prevent him or them from so doing or to recover damages sustained by reason of such violation.

That the invalidation of any provision, sentence, or paragraph contained in these Protective Restrictions and Covenants by judgment or court order shall in no way affect or invalidate any of the provisions, sentences, or paragraphs of said Protective Restrictions and Covenants, but the same shall be and remain in full force and effect.

#### **DECLARATION OF SOLAR COVENANTS, CONDITIONS, AND RESTRICTIONS**

WHEREAS, the Boise City Code requires that private restrictions be recorded with subdivision plats which provide the same level of solar access protection as required under the City's solar setback and new development solar access design ordinances.

NOW THEREFORE, in recognition of the economic and environmental benefits of solar energy use, Declarant desires to provide for the preservation of solar access in the subdivision, and to that end desires to impose, in the form of covenants, conditions, and restrictions running with the land, a general scheme of solar access protection upon the ownership, use, and occupation of all lots therein which shall be binding

on all parties having any right, title, or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

### I. SOLAR ACCESS DEFINITIONS

1. **EXEMPT TREE:** Any preexisting vegetation as defined in Article II., Section B or any vegetation included on the list of "solar friendly" vegetation on file with the Boise City Public Works and the Community Planning and Development Departments.
2. **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 lot line is designated on the plat.
3. **NORTH SLOPE:** The gradient, in percent slope, from the average finished grade of the front lot line of the shade restricted lot to the average finished grade of the solar lot line of a solar lot. The slope must be downward or decreasing in elevation from south to north.
4. **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.
5. **SHADE:** That portion of the shadow cast by the shade point of a structure or vegetation which exceeds the eleven and one half (11½) feet fence at the solar line at solar line at solar noon, January 21.
6. **SHADE POINT:** That part of a structure, tree or other object on a shade restricted lot which casts the longest shadow (the most northern shadow) when the sun is due south on January 21st at an altitude of twenty-six (26) degrees above the horizon, except for a shadow caused by a narrow object such as a chimney, antenna, utility pole, wire, etc.
7. **SHADE POINT HEIGHT:** The vertical distance 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 of a structure oriented within forty-five (45) degrees of a geodetic north-south line, the shade point height computed according to the preceding sentence may be reduced by three (3) feet. If a structure has a roof oriented with forty-five (45) degrees of a geodetic east-west line with a pitch which is flatter than six (6) feet (vertical) in twelve (12) feet (horizontal), the shade point will be the eave of the roof. If such a roof has a pitch which is six (6) feet in twelve (12) feet or steeper, the shade point will be the peak of the roof.
8. **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 heights.
9. **SOLAR FRIENDLY VEGETATION:** A tree or other vegetation which is included on the list of "solar friendly" vegetation on file with the Boise City Public Works and Community Planning and Development Departments.

10. **SOLAR LOT:** A lot which has the following characteristics:
  1. The front line is oriented within thirty (30) degrees of a geodetic east-west line;
  2. The lot to the immediate south of said lot has a north slope of ten (10) percent or less;
  3. Is intended for the construction of an above ground inhabited structure.
11. **SOLAR LOT LINE:** The most southerly boundary of a solar lot, said line being created by connecting the most distant southerly corners of the solar lot.
12. **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 of the shade restricted lot.

## **II. SOLAR ACCESS COVENANTS, CONDITIONS AND RESTRICTIONS**

1. **SHADE RESTRICTION:** 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 higher than an imaginary fence eleven and one half (11½) feet above the solar lot line on solar noon of January 21st when the sun is at an angle of twenty-six (26) degrees above the horizon. This sun angle at noon of January 21st 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 nineteen (19) feet at the fifteen (15) foot rear yard zoning setback in order that the eleven and one half (11½) feet high "solar fence" at the north property line of the Shade Restricted Lot is not exceeded. These standards assure that a structure built to the fifteen (15) foot rear yard setback of the Solar Lot located to the north will not be shaded more than four (4) feet above grade on its south wall on January 21st at solar noon.
2. **PRE-EXISTING VEGETATION:** Restricted vegetation ("solar unfriendly") which existed when the subdivision was platted is exempt from the provisions of these covenants, 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.
3. **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.
4. **SOLAR SETBACKS:** Each separate structure and item of restricted vegetation ("solar unfriendly") shall have a solar setback dependent on and calculated by its shade point height. All shade restricted lots shall have the following solar setback:

$$\text{Solar Setback (in feet)} = [\text{Shade Point Height (in feet)} - 11\frac{1}{2} \text{ feet}] \times 2.$$

Table 1 below shows a few examples of solar setbacks for given shade point heights:

**TABLE 1**

**SOLAR SETBACKS REQUIRED FOR A GIVEN SHADE POINT HEIGHT**

<u>Shade Point Height (feet)</u>	<u>Solar Setback (Feet)</u>
10	0
15	7
20	17
25	27
30	37

5. **SOLAR FRIENDLY VEGETATION:** Certain vegetation is considered "solar friendly" and is not restricted in regards to location on 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 the summer but allows sun to penetrate during the winter. A list of acceptable solar friendly trees is on file with the Boise City Public Works and Community Planning and Development Departments.

**III. SOLAR ACCESS RIGHTS, DUTIES,  
AND RESPONSIBILITIES**

1. **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.
2. **SOLAR ACCESS DUTIES:** The owner(s) of any lot shall not build, install, or otherwise allow a structure or restricted vegetation (solar unfriendly) on that lot to cast more shade at their solar lot line than permitted under these solar access covenants, restrictions, and conditions.