

3325300

Thomas Development

ADA COUNTY, ID. FOR Co.

J. DAVID NAYARRO

RECORDER BY *Klauson*

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DECLARATION

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OF COVENANTS, CONDITIONS AND RESTRICTIONS

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THIS DECLARATION, made on the date hereinafter set forth by Thomas Development Co., an Idaho Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Boise, Ada County, State of Idaho, which is more particularly described as:

Lots 1 and 2 and Lots 4 through 21 of Block 1, together with Lots 1 through 7 of Block 2, of Birchwood Subdivision, according to the official plat thereof filed April 7, 1993, as Instrument No. 9325136, records Ada County, Idaho.

Lot 3 of Block 1, Birchwood Subdivision, according to the official plat thereof filed April 7, 1993, as Instrument No. 9325136, records of Ada County, Idaho, is specifically excluded from these Covenants, Conditions and Restrictions and is not included in the Birchwood Homeowners' Association, Inc.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and 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 inure to the benefit of each owner thereof.

ARTICLE I

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DEFINITIONS

Section 1. "Association" or "Corporation" shall mean and refer to Birchwood Homeowners' Association, Inc., its successors and assigns.

Section 2. "Board" shall mean and refer to the Board of Directors of the Association.

Section 3. "Common Area" shall mean all real property (including the improvements thereto) 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 is described as follows:

There is no Common Area. The Properties consist entirely of the Lots and public streets and easements shown upon the recorded subdivision map of the Properties.

Section 4. "Declarant" shall mean and refer to Thomas Development Co., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5. "Dwelling Unit" shall mean and refer to the residential improvement to be constructed on each Lot by Declarant.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Mortgagee" shall mean and refer to the holder of any mortgage or deed of trust encumbering any Lot within the Properties.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities 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 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. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer

signed by 2/3rds of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, guests, invitees or contract purchasers who reside on the Properties.

Section 3. Encumbrance of Common Area. The Common Area cannot be mortgaged or conveyed without the approval of at least two-thirds (2/3) of the Owners of Class A Lots. If ingress or egress to any Dwelling Unit is through the Common Area, any conveyance or encumbrance of the Common Area shall be subject to an easement of Owner of such Dwelling Unit for the purpose of ingress and egress.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class 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 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.

Class B. The Class B Member(s) shall be the 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 earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31, 1997.

ARTICLE IV

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USE AND REGULATION OF USES

Section 1. Use. (a) Each Lot shall be used for single family residential purposes only, on an ownership, rental or lease basis; and for the common social, recreational or other reasonable uses normally incident to such use, and also for such additional uses or purposes as are from time to time determined appropriate by the Board. Lots may be used for the purposes of operating the Association and for the management of the Association if required. The provisions of this Section shall not preclude use by Declarant for any purposes permitted under this Section, and Declarant may conduct sales activities for all Lots in Dwelling Units owned by Declarant.

(b) Unenclosed parking spaces are restricted to use for parking of operative motor vehicles. Motor homes, campers, trailers, boats and other recreational vehicles may be temporarily parked in unenclosed parking spaces for a maximum of forty-eight (48) hours, provided that such units are parked directly in front of the garage door of each Dwelling Unit or some other locations designated by the Board. Permanent

parking of motor homes, campers, trailers, boats and other recreational vehicles is prohibited. The Board may require removal of any inoperative vehicle, or any unsightly vehicle, and any other vehicle, motor home, camper, trailer, boat, equipment or item improperly parked or stored. If the same is not removed after three (3) days written notice, the Board may cause removal at the risk and expense of the Owner thereof. Any other item or equipment determined by the Board to be objectionable may be similarly removed.

(c) Nothing shall be done or kept in any Dwelling Unit or in the Common Area which will increase the rate of insurance on the Common Area or Dwelling Units without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Dwelling Unit or in the Common Areas which will result in the cancellation of insurance on any Dwelling Unit or any part of the Common Areas, or which would be in violation of any laws.

(d) No waste will be committed in the Common Area or any Dwelling Unit.

(e) No sign of any kind shall be displayed on any Dwelling Unit without the prior consent of the Board; provided however, one sign of not more than 5 square feet advertising the Lot for sale or rent may be installed on the Lot, but the sign shall be removed within five (5) days following sale or lease.

(f) No animals (which term includes livestock, domestic animals, poultry, reptiles and any other living creature of any kind) shall be raised, bred or kept in any dwelling unit or in the Common Area, whether as pets or otherwise, except as may be allowed by rules and regulations adopted by the Board; provided however, this

provision shall not prohibit Owners from having domestic dogs or cats. The Board may at any time require the removal of any animal including domestic dogs and cats, which it finds is creating unreasonable noise or otherwise disturbing other Owners unreasonably, in the Board's determination, and may exercise this authority for specific animals even though other animals are permitted to remain. All dogs shall be walked on a leash only and shall not be allowed to roam or run loose, whether or not accompanied by an Owner or other person. All Owners shall be responsible for picking up and properly disposing of all organic waste of their domestic dogs and cats.

(g) No noxious or offensive activity shall be carried on in any Dwelling Unit or Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners.

(h) Nothing shall be altered or constructed in or removed from the Common Area except upon written consent of the Board and after procedures required herein or by law.

(i) No Owner shall install or place any item on the exterior of his Dwelling Unit or on any building without the consent of the Board.

#### ARTICLE V

#### EXTERIOR APPEARANCE AND MAINTENANCE

Section 1. Uniform Appearance. In order to preserve a uniform exterior appearance of the Dwelling Units, the Board shall provide exterior maintenance upon each Lot which is subject to assessment, including paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks

and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the Dwelling Unit thereon is caused by the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

The Board shall have the authority of control over such exterior maintenance as otherwise provided in this Declaration of Covenants, Conditions and Restrictions.

Section 2. Entry for Repairs. In the event of an emergency which in the judgment of the board presents an immediate threat to the health and safety of the Members, their tenants, guests or invitees, or an immediate risk of harm or damage to any of the Dwelling Units or any part of the Properties, the Board and its agents or employees, may enter any Dwelling Unit to make repairs or perform maintenance. Such entry shall be repaired by the Board out of the common expense fund if the entry was due to an emergency (unless the emergency was caused by an Owner in which case the cost shall be specially assessed to the Lot owned by said responsible Owner). If the repairs or maintenance were necessitated by or for the Dwelling Unit entered or its Owners, or requested by its Owners, the costs thereof shall be specially assessed to such Dwelling Unit.



## ARTICLE VI

## PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties 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 in proportion 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 negligent 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 Owner's successors in title.

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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

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and 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 to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Properties 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 Lot 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.

Section 2. Purposes of Assessments. The assessments levied by the

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Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Sixty and no/100 Dollars (\$360.00) for each Class A Lot and Sixty and no/100 Dollars (\$60.00) for each Class B Lot.

(a) From and after January 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%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual 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; 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 that purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not 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 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.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the recordation of the final plat of the Properties. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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 specific 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.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the date of delinquency at a rate equal to four percent (4%) over the highest prime rate, fully floating, published by the Wall Street Journal. The date of delinquency is the date which is thirty (30) days after the due date of any assessment. Additionally, each late fee shall be added to and charged on each assessment which is not paid by the date of delinquency. 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.

Section 9. 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 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 or from the lien thereof.

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#### ARTICLE VIII

##### AUTHORITY OF BOARD OF DIRECTORS

Section 1. Authority of Board. The Board for the benefit of the Corporation and the Owners shall enforce the provisions of this Declaration or the By-Laws, shall have all powers and authority permitted to the Board under the By-Laws and this Declaration, and shall acquire and shall pay for out of the common expenses fund hereinafter provided for, all goods and services requisite for the proper functioning of the Corporation and the Properties, including but not limited to the following:

(a) Water, sewer, garbage collection, electrical, and any other utility service as required for the Common Area. If one or more Dwelling Units or the Common Area are not separately metered, the above-described utility services may be paid as a common expense, and the Board may by reasonable formula allocate a portion of such expense to each such Dwelling Unit involved as a portion of its common expense. The Board may arrange for special metering of utilities as appropriate.

(b) Policies of insurance providing coverage for fire and other hazard, public liability and property damage, and fidelity bonding as the same are more fully described in the By-Laws or this Declaration. Each Owner shall be responsible for his own insurance on the contents of his Dwelling Unit, his additions and improvements to his Dwelling Unit, and decorating and furnishings, and his personal property stored

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elsewhere on the Properties, and his personal liability or injury, to the extent not  
covered by the Corporation for all Owners in common Corporation policies. **1530000583**

(c) The services of persons or firms as required to properly manage the affairs of the Corporation to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Properties.

(d) Legal and accounting services necessary or proper in the operation of the Corporation affairs, administration of the Properties, or the enforcement of this Declaration.

(e) Painting, maintenance, repair, lawn care and watering, landscaping, gardening and fencing for Properties; provided that the interior of each Dwelling Unit shall be maintained and repaired by the Owner thereof as previously provided in this Declaration.

(f) Exterior maintenance upon each Dwelling Unit which is subject to assessment as follows: Paint, stain, repair, replace and care for roofs, gutters, downspouts, fences and exterior building surfaces except glass surfaces. In the event that the need for such exterior maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become part of the assessment to which such Dwelling Unit (Lot) is subject. Each Owner is responsible for the removal of snow, ice and obstructions from the sidewalks and driveway located on or adjacent to such Owner's Lot.

(g) Any other materials, supplies, labor services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure by law or which in its opinion shall be necessary or proper for the operation of the Properties or for the enforcement of this Declaration; provided that if for any reason such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Dwelling Units or their Owners, the cost thereof shall be specially assessed to the Owners of such Dwelling Units.

(h) Maintenance and repair of any Dwelling Unit, its appurtenances and appliances, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect or preserve the appearance and value of the Properties, and the Owner or Owners of said Dwelling Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner or Owners, provided that the Board shall levy a special assessment against the Dwelling Unit of such Owner or Owners for the cost of such maintenance or repair.

(i) The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the Properties or any part thereof, which is claimed to or against the Properties, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs and expenses incurred by the Board by reason of such lien or liens shall be assessed



against the Owners and the Dwelling Units (Lots) responsible to the extent of their responsibility.

(j) The Board shall not make any non-budgeted expenditure in excess of \$1,000.00 without the approval thereof by two-thirds (2/3) of each class of Members voting thereon at a meeting called for such purpose except for emergency threatening the security of any improvement on the Properties.

Section 2. Easement. The Board and its agents and employees shall have, and are hereby granted, a permanent easement of ingress and egress to enter upon each Lot for the purposes of performing repairs, maintenance and care of the Properties as provided herein or for otherwise discharging the responsibilities and duties of the Board as provided in this Declaration.

Section 3. Non-Waiver. The failure of the Board in any one or more instances to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or of the By-Laws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. Failure by the Board to enforce any such term, covenant, condition or restriction shall not be deemed a waiver of the right to do so thereafter, and no waiver by the Board of any provision hereof shall be deemed to have been made unless express in writing and signed for the Board. This Section also extends to the Declarant exercising the powers of the Board during the initial period

of operation of the Corporation.

Section 4. Limitation of Liability. The Board shall not be liable for any failure of any utility or other service to be obtained and paid for by the Board, or for injury or damage to person or property caused by the elements, or by another dwelling unit or person; or resulting from electricity, gas, water, rain, dust or sand which may lead or flow from pipes, drains, conduits, appliances, or equipment, or from articles used or stored by Owners on the Properties or in Dwelling Units. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Properties or from any action taken to comply with any law, ordinance, or order of a governmental authority. This Section shall not be interpreted to impose any form of liability by implication, and shall extend to and apply also for the protection of the Declarant exercising the powers of the Board during the initial period of operation of the Corporation and the Properties.

Section 5. Indemnification of Board Members. Each member of the Board shall be indemnified by the Corporation and the Owners against all expenses (including attorney's fees), judgments, liabilities, fines and amounts paid in settlement, or actually and reasonably incurred, in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by or against the Corporation or against the Board member and incurred by reason of the fact that he or she is or was a Board member, if such Board member acted in good faith and in a manner such Board member believed to be in or not opposed to the best interests

of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such Board member's conduct was unlawful. This Section shall extend to and apply also for the indemnification of the Declarant during the initial period of operation of the Corporation and the Properties.

#### ARTICLE IX

##### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Charter of Architectural Review Committee. The charter of the Architectural Review Committee is to represent the collective interests of all Owners, and to help individual Owners who wish to make exterior alterations.

Section 2. Authority of Architectural Review Committee. The Association is authorized to appoint an Architectural Review Committee. Each Owner, by acceptance of a deed for his or her Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to be bound by the terms and conditions of this Declaration, including the standards and process of architectural review.

Section 3. Architectural Control. No building exterior, deck, patio, fence, landscaping, permanent exterior affixed decoration, exterior lighting or heating, cooling and other utility systems shall be altered, erected, or placed on the Properties unless and until the building plan and plot plan have been reviewed in advance by the Architectural Committee and same has been approved in writing and a Boise City building permit has been acquired, if required by law. The review and approval may include, without limitation, topography, finish, ground elevations, landscaping, lighting, drainage, color, material, design, conformity to other residences in the area,

and architectural symmetry. Approval of the architectural design shall apply only to the exterior appearance of said improvements. It shall not be the intent of these restrictions to control the interior layout or design of said structures.

Section 4. Review of Proposed Alteration. The Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties it from time to time shall be assigned to it by the Board of Directors, including the inspection of construction in progress. The Committee may condition its approval of proposals upon the agreement of the Owner to an additional assessment for the cost of maintenance. The Committee may require submission of additional plans or review by a professional architect. The Committee may issue guidelines setting forth procedures for the submission of plans for approval. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation floor plans, site plans, drainage plans, elevations, drawings and description of samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications the Committee may postpone review of plans. Decisions of the Committee and the reasons therefor shall be transmitted by the Committee, in writing, to the applicant at the address set forth in the application for approval within thirty (30) days after filing all materials required by the Committee.

Section 5. Inspection of Approved Alterations. Inspection of work and correction of defects therein shall proceed as follows:

A) Upon completion of any work for which approved plans are required under

this Article, the Owner shall give written notice of completion to the Committee.

B) Within sixty (60) days thereafter, the Committee or its duly authorized representative may inspect such improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner and the Board in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

C) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may exercise its right to enforce, by any proceeding at law or in equity on behalf of the Association including a special assessment against such owner for reimbursement pursuant to this Declaration.

Section 6. Review of Unauthorized Alterations. The Architectural Committee may identify for review alterations which were not submitted to the approval process as follows:

A) The Committee or its duly authorized representative may inspect such unauthorized alteration.

B) If the Committee finds that the work is in noncompliance it shall notify the Owner and the Board in writing of such noncompliance. Upon notice the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

C) If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may exercise its right to enforce, by a proceeding at law or in equity on behalf of the Association including a special assessment against such Owner for reimbursement pursuant to this Declaration.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding 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 judgment 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 and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than two-thirds (2/3) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of Members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration:

1. Annexation of additional properties;
2. Dedication of Common Area;
3. Amendment of this Declaration of Covenants, Conditions and Restrictions.

#### ARTICLE XI

##### SOLAR ACCESS DEFINITIONS

Section 1. Exempt Tree: Any preexisting vegetation as defined in Article XII, Section 2, or any vegetation included on the list of solar friendly vegetation kept by the City of Boise's Public Works and Community Planning and Development Departments.

Section 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.

Section 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.

Section 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 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.

Section 5: 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 21.

Section 6. Shade Point: That part of a structure, tree or other object, on a shade restricted lot, which causes the longest shadow (the most northerly shadow) when the sun is due south on January 21st 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.

Section 7: 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 of 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 feet or steeper, the shade point will be the peak of the roof.

Section 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 height.

Section 9. 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.

Section 10. Solar Lot: A lot which has the following characteristics:

1. The front lot line is oriented within thirty (30) degrees of a geodetic east/west bearing;
2. The lot to the immediate south has a north slope of ten (10) percent or less;
3. Is intended for the construction of an above ground inhabited structure.

Section 11: 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.

Section 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 on the shade restricted lot.

## ARTICLE XII

### SOLAR ACCESS

Section 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 11.5 feet above the solar lot line on solar noon of January 21st 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 is 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.

Section 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.

Section 3. 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 REQUIRED 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'

Section 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 summer but allows sun to penetrate during winter. A list of acceptable solar friendly trees is maintained by the Boise City Public Works and the Community Planning and Development Departments.

ARTICLE XIII  
SOLAR ACCESS RIGHTS, DUTIES  
AND RESPONSIBILITIES

Section 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.

Section 2. Solar Access Duties: 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 then permitted under these solar access covenants, restrictions and conditions.

ARTICLE XIV  
MISCELLANEOUS

Section 1. Enforcement and Non-Waiver: The Association or any lot owner, whether or not directly affected, shall have the right to enforce, by any proceedings at law or in equity, any violation or threatened violation of a solar access provision of this Declaration. The failure of any person to enforce any solar access covenant or restriction herein contained shall not be deemed a waiver of the rights granted herein. Waiver of one breach does not constitute waiver of any other breach. There can be no waiver of the right to solar access created by the Declaration.

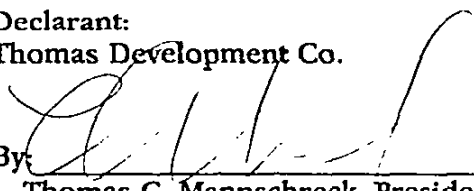
Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Duration and Applicability to Successors: The covenants, conditions, and restrictions set forth in this Declaration shall run with the land and shall inure to the benefit of and be binding upon the Declarant and all lot owners in the subdivision and their successors in interest.

Section 4. Amendment: No amendment of this Declaration shall reduce the amount of solar access protection provided to the subdivision. Any amendment of Articles XI through XIV, inclusive, of this Declaration must be approved by the City of Boise.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 5 day of <sup>April</sup> February, 1993.

Declarant:  
Thomas Development Co.

By:   
Thomas C. Mannschreck, President

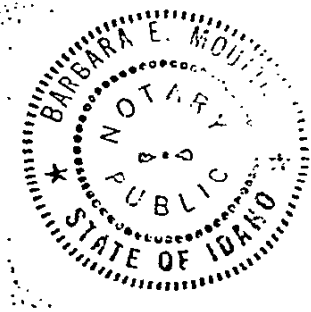
STATE OF IDAHO )

) ss.

County of Ada )

On this 5<sup>th</sup> day of ~~February~~ <sup>April</sup>, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas C. Mannschreck, known or identified to me to be the President of the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



*Barbara E. Neulsten*  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise ID  
My Commission Expires: 1/1/99