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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ALDER POINT SUBDIVISION

FIRST AMERICAN TITLE CO.
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[Signature]

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THIS DECLARATION is made effective on the 6th day of December, 1994, by STUBBLEFIELD CONSTRUCTION CO., a California corporation hereinafter referred to as "Declarant."

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

ALDER POINT Subdivision, Phase 1, a portion of the NW 1/4 of the NE 1/4 of Section 24, Township 4 N, Range 1 E, of the Boise Meridian, City of Boise, Ada County, Idaho according to the official plat thereof recorded as Instrument No. 94106572, records of Ada County.

NOW, THEREFORE, Grantor hereby declares that the Property and each Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, reservations, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, reservations, easements and restrictions set forth herein shall run with the land constituting the Property and with each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot, parcel or portion thereof: shall inure to the benefit of every Lot, parcel or portion of the Property and interest therein, and shall inure to the benefit of and be binding upon Grantor, its successors in interest and each Grantee or Owner and his respective successors in interest, and may be enforced by Grantor, by any Owner or his successors in interest.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, nor Grantor's right to post signs incidental to construction, sales or leasing.

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ARTICLE I

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DEFINITIONS

- 1.1 "Articles" shall mean the Articles of Incorporation of the Association.
- 1.2 "Assessments" shall mean those payments required of Owners and Association Members including Regular, Special and Limited Assessments of the Association as further defined in this declaration.
- 1.3 "Association" shall mean and refer to ALDER POINT Homeowners' Association, Inc., an Idaho non-profit corporation, its successors and assigns.
- 1.4 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon the use of the Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and Regulations, and procedural matters for use in the conduct of business of the Association.
- 1.5 "Beneficiary" shall mean a mortgagee under a mortgage or beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgagee, beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property on the Property.
- 1.6 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.
- 1.7 "Building Lot" shall mean and refer to any plot of land showing upon any recorded plat of the Property with the exception of Common Area.
- 1.8 "Bylaws" shall mean the bylaws of the Association.
- 1.9 "Committee" shall mean the Architectural Committee described in Article VI hereof.
- 1.10 "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including easements of landscaped area along Gary Lane defined on record map. The traffic islands are also included.
- 1.11 "Declaration" or "Supplemental Declaration" shall refer to this declaration as hereafter amended and supplemented from time to time.
- 1.12 "Declarant" shall mean and refer to Stubblefield Construction Co., a California corporation, and its successors and assigns, if such successors and assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development and as part of such conveyance, the Declarant assigns and transfers to such

transferee the Declarant's rights with respect to such Lots.

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1.13 "Grantor" shall mean and refer to the Declarant.

1.14 "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including, but not limited to buildings, fences, streets, drives, driveways, sidewalks, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, waterways, swimming pools and other recreational facilities and fixtures of any kind whatsoever.

1.15 "Lot" shall mean and refer to a Building Lot.

1.16 "Member" shall mean each person or entity holding a membership in the Association.

1.17 "Mortgage" shall mean and refer to any mortgage or deed to trust and "Mortgagee" shall refer to the mortgagee, or beneficiary under a deed of trust, and "Mortgagor" shall refer to the mortgagor, or grantor of a deed of trust.

1.18 "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.

1.19 "Plat" shall mean the recorded Plat of ALDER POINT SUBDIVISION and the recorded Plat of any other Properties annexed hereto.

1.20 "Properties" or "Property" shall mean and refer to the real property hereinbefore described, and such additions thereto as may hereafter be annexed and brought within the coverage of this declaration as more particularly provided for herein.

1.21 "Set Back" means the minimum distance established by law between the dwelling unit or other structure referred to and a given street, road or Lot line.

1.22 "Unit" shall mean one residence which shall be situated upon a Lot.

ARTICLE II

GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS

2.1 Land Use and Building Type. No Lot shall be used except for residential purposes, and no Lot or the Common Area shall be used for the conduct of any trade or business or professional activity. Notwithstanding the foregoing, the Board may, in its discretion and upon request by an Owner, allow an Owner to conduct a "garage sale" upon such Owner's Lot.

No improvements shall be erected, altered, placed or permitted to remain on any Lot other than one designed to accommodate no more than one (1) single-family residential dwelling.

2.1.1 Size Limitations. Split level and two (2) story Units shall have not less than 1400 square feet or interior floor area, 800 square feet on the ground floor, exclusive of porches and garages. All other Units shall have not less than 1300 square feet of interior floor area, exclusive of porches and garages.

2.1.2 Garages. Each Unit constructed with the Property shall include at least a two (2) car, enclosed garage which is an integral part of the Unit structure.

2.1.3 Roofing Material. The roof of each Unit may be constructed of asphalt shingles. Colors or any other materials shall be approved by the Architectural Committee in writing.

2.1.4 Exteriors. All dwellings will be of brick or frame construction, and if frame construction is used, the exterior wall finish will include some brick, stone or stucco materials.

2.1.5 Sodded Front Yards. No later than 45 calendar days after occupancy of a dwelling, the front yard of the Building Lot shall be sodded, weather permitting.

2.2 Architectural Control. No improvements which will be visible above the ground or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered, including without limitation, change of exterior colors or materials, on the Property, unless and until the building plans, specifications, and plot plan have been reviewed in advance by the Architectural Committee and the same have been approved by the Committee. The review and approval or disapproval may be based upon the following factors: design and style elements, mass and form, topography, setbacks, exterior color and materials, physical or artistic conformity to the terrain and the other improvements on the Property which the Architectural Committee, in their reasonable discretion, deems relevant. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the improvements. This Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout of design of buildings except to the extent incidentally necessitated by use and size requirements.

2.3 Exterior Maintenance: Owner's Obligations. No improvements, including mail boxes and landscaping, shall be permitted to fall into disrepair, and each improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damage to Property or facilities on or adjoining their Lot which would otherwise be the Associations' responsibility to maintain, the Board, upon fifteen (15)

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days prior written notice to the Owner of said Lot, shall have the right to correct such condition, and to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth herein. The Owner of the offending Lot shall be personally liable, and his Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owners as Regular Assessments.

Each Owner shall have the remedial rights set forth herein if the Association fails to exercise its rights within a reasonable time following written notice.

In the event the improvements on any Lot shall suffer damage or destruction from any cause, the Owner thereof shall undertake the repair, restoration or reconstruction thereof within ninety (90) days of such damage or destruction. If after ninety (90) days of the repair, restoration or reconstruction of such damaged or destroyed improvements have not taken place, the Association, upon fifteen (15) days prior written notice to the Owner of such Property, shall have the right to correct such condition, and to enter upon Owners Lot for the purpose of doing so and such Owner shall bear all costs incurred by the Association, a lien shall be applied to the Lot.

2.4 Improvements Location. No improvements shall be constructed in violation of set-back requirements established by law, or by this Declaration as set forth on the recorded plat of the Subdivision.

2.5 Nuisances. No noxious or offensive activity, including without limitation, those creating an offensive odor, shall be carried on upon any Lot or the Common Area nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

2.6 Temporary Structures. No improvements of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time as a residence either temporarily or permanently.

2.7 Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet advertising the Property for sale or rent, or signs used by a builder or the Declarant to advertise the Property during the construction and sales period.

2.8 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.

2.9 Livestock and Poultry. No animals, livestock, or poultry of any kind shall be

raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose and provided that the keeper of such pets complies with all city, and county laws, rules and regulations. No dog runs or kennels shall be permitted to be kept or placed within five (5) feet of a set-back line where applicable. Dog runs or kennels shall only be permitted to be placed and maintained to the rear of dwellings and in no vehicles, or similar equipment, motorcycles, snowmobiles, trucks (working or non-working) greater than three-quarter (3/4) of a ton in size shall regularly or as a matter of practice be parked or stored on any portion of the Property (including streets and driveways) unless enclosed by a structure or screened from view in a manner approved, in writing, by the Architectural Committee.

Notwithstanding the foregoing, any boat, camper trailer or recreational vehicle which is in good repair and working order which does not exceed the following dimensions may be stored on the side yard of Lot between front and rear yard set-backs if screened by a six foot (6') fence: eight (8) feet wide, twenty-seven (27) feet long and ten (10) feet high. Provided, however, such storage may not be located adjacent to the street on a corner Lot.

2.16 Bathrooms. All bathrooms, sink and toilet facilities shall be inside residence buildings and shall be connected by underground pipes directly with the sewer system.

2.17 Antennae. No television antennae, satellite receivers, or radio aerials shall be installed on the Property, other than within the interior of a Unit.

2.18 Hazardous Activities. No activity shall be conducted on or in any Unit, Lot or Common Area which is or might be unsafe or hazardous to any person or Property. Without limiting the generality of the foregoing, no firearms shall be discharged upon said Property; no open fires shall be lighted or permitted on any property except in a self-contained barbecue unit while attended and in use for cooking purposes, or with a safe and well-designed interior fireplace, (except such picnic fires in portions of said Common Areas designed for such use or) except such controlled and attended fires required for clearing or maintenance of land.

2.19 Unightly Articles. No unightly articles shall be permitted to remain on any Lot or Common Area as to be visible from any other portion of the Property. Without limiting the foregoing, no clothing or household fabrics shall be hung, dried or aired in such a way as to be visible from any other portion of the Property. No lumber, grass, shrub or tree clippings or plant waste, compost piles, metals, building or other materials or scrap or other similar material or articles shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view as approved, in writing, by the Architectural Committee. "Screened" is defined as being concealed or made non-visible from eye level, at grade, at all points with the Property.

2.20 Light Sound - General. No light shall be emitted from any Lot or from Common Area which light is unreasonably bright or causes unreasonable glare. No sound shall be emitted from any Lot or Common Area which is unreasonably loud or annoying, and no odors shall be emitted on any property which are noxious or offensive to others.

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ARTICLE IIIPROPERTY RIGHTS

3.1 Owner's 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.

3.1.1 The Association has the right to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid.

3.1.2 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 on by the members. Such dedication or transfer shall be effective upon the recording of an appropriate instrument executed by the President and Secretary of the Association and upon which said officers affirm that the transfer or dedication was approved by the Owners of a majority of the Lots.

3.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants or contract purchasers who reside on the property.

3.3 Damages. Each Owner shall be liable for any damage to such Common Areas or other property owned or maintained by the Association which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, tenants or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be charged as a limited assessment against the Owner and his Lot and may be collected as provided herein for the collection of other assessments.

ARTICLE IVALDER POINT HOMEOWNERS' ASSOCIATION

4.1 Organization of Association. The Alder Point 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.

4.2 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

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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.

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

4.3.1 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.

4.3.2 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.

4.4 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.

4.5 Powers and Duties of the Association.

4.5.1 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, and to do and perform any and all acts which may be necessary or proper for, or incidental to the proper management and operation of the Common Area and the performance of the other responsibilities herein assigned, including without limitation.

4.5.1.1 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.

4.5.1.2 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 hereto; 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.

4.5.1.3 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.

4.5.1.4 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). The Association rules shall govern the use of the Common Area by the Owners, families of the Owners, or by an invitee, licensee, lessee or contract purchaser of any Owner; provided, however, that the Association rules may not discriminate among Owners and shall not be inconsistent with this Declaration the Articles or Bylaws. A copy of the Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery and posting, said Association rules shall have the same force and effect as if they were set forth in and are a part of this Declaration. In the event of any conflict between such Association rules shall be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

4.5.1.5 Emergency Powers. The Association or any person authorized by the Association may enter upon any Lot in the event of an 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.

4.5.1.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Common Area and for the preservation of the health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

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4.5.1.6.1 Underground lines, cables, wires, conduits, and other devices for the transmission of electricity for lighting, heating, power, telephone, and other purposes;

4.5.1.6.2 Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and

4.5.1.6.3 Any similar public or quasi-public improvements or facilities.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to twenty-one (21) years after the death of the individuals executing this declaration, on behalf of the Declarant, and their issue who are in being as of the date hereof.

4.5.2 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:

4.5.2.1 Operation and Maintenance of Common Area. Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area including the repair and replacement of property damaged or destroyed by casualty loss and other property acquired by the Association.

4.5.2.2 Maintenance and Management of Site Retention Swales. Provide the management for proper operation and maintenance of the storm drain retention swales along drainage district #2 recorded easement including weed control and maintenance of any pipe outside the jurisdiction of the Ada County Highway District's maintenance practices. This includes drainage pipes on Lots 1 and 20, Block 3 and Lot 18, Block 7, also Lot 9, Block 8 and other drain pipes as they may be needed in the expansion of the subdivision's future phases.

4.5.2.2 a Maintenance of Side Yard Fencing Crossing Drainage District #2. Easements and drainage swales are the responsibility of each individual lot owner. Fencing should be constructed in such a manner so panels could be removed easily without damaging the fence in case of access required by equipment to work on drainage facility. Lots 18-28 of Block 7 will be affected on Phase #1. Future phases will have some lots affected as well.

4.5.2.2 b Notwithstanding that the Association is obligated to maintain the drainage easements outlined as 4.5.2.2 above

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and facilities contained therein as defined herein and within the Articles of Incorporation of the Association, it is hereby provided that Ada County Highway District, ACHD, may elect to maintain any part or facility of the area defined herein should the Association fail to maintain same. In the event that ACHD determines, in its sole discretion, that the Association is not adequately maintaining the defined area or facility, ACHD shall, before undertaking maintenance of said area, provide written notice of its intention to begin maintenance of the defined area or facility within a thirty (30) day period, within which time frame the Association may undertake to initiate and conclude all maintenance defects as identified by ACHD. In the event that the Association shall fail to commence and conclude maintenance of the defined area or facility to the extent said items of specific maintenance are identified by ACHD with the prescribed thirty (30) day, then in that event, ACHD may begin to undertake maintenance of the defined area or facility. ACHD is hereby granted an irrevocable license and easement to enter upon any portion of the defined area to perform inspection and maintenance. Should ACHD engage in maintenance of the defined area or facility after having provided notice to the Association and having provided the Association an opportunity to undertake said maintenance, ACHD shall be entitled to and empowered to file a ratable lien against all lots within Alder Point Subdivision with power of sale as to and every lot to secure payment of any and all assessments levied against any and all lots in Alder Point Subdivision pursuant to this Master Declaration, together with interest at the rate which accrues on judgements thereon and all costs of collection which may be paid or incurred by ACHD in connection therein. ACHD may exercise their rights under Idaho Code by assessing the lot owners and certifying those assessments in the manner as real property tax. This section shall not be amended without prior written approval from ACHD. The Association shall not be dissolved or relieved of its responsibility to maintain the defined area and facilities contained therein without the prior written approval from ACHD. The Association and all lot owners by accepting title to a lot agree that all lot owners within Alder Point Subdivision are benefitted property owners for purposes of this section.

4.5.2.3 Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Area owned and managed by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the

4.2 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

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payment of such taxes. In addition, the Association shall pay all other taxes, federal, state to local, including income to corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.

4.5.2.4 Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area and the property owned or managed by it.

4.5.2.5 Insurance. Obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance.

4.5.2.5.1 Comprehensive public liability insurance insuring the Board, the Association, the Declarant and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area or their property owned or managed by it. Limits of liability of such coverage shall be as follows: not less than Five Hundred Thousand Dollars (\$500,000) per occurrence with respect to personal injury or death, and property damage.

4.5.2.5.2 Full coverage directors and officers liability insurance with a limit of Two Hundred Fifty Thousand Dollars (\$250,000), if the Board so elects.

4.5.2.5.3 Such other insurance including Workmen's Compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or their person charged with the management or possession of any Association funds or other property.

4.5.2.5.4 The Association shall be deemed trustee of the interests of all Members of the Association in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.

4.5.2.5.5 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the annual assessments levied by the Association.

4.5.2.5.6 Notwithstanding any other provision herein, the

such assessments, all in accordance with the provisions of this Declaration.

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Association shall continuously maintain in effect such other additional casualty, flood and liability insurance as the Board deems necessary or appropriate.

4.5.2.6 Rule Making. Make, establish, promulgate, amend and repeal the Association rules.

4.5.2.7 Architectural Committee. Appoint and remove members of the Committee, all subject to the provisions of this Declaration.

4.5.2.8 Drainage Systems. Operate, maintain, repair and replace, all drainage systems located within the Property and shown on the Plat which are not maintained by public authorities.

4.5.2.9 Right-of-Way Maintenance. Maintain, repair and replace the landscaped berm, including the sprinkler system installed thereon, and the fence located on Gary Lane or any other public right-of-way adjacent to the Property and such other landscaping located within public right-of-way as the Board deems necessary to appropriate.

4.5.2.9A Lot 17 Block 7 has an access road to a manhole at its north boundary. This access road is shown on the Plat of Alder Point Subdivision and must be maintained for purposes of access by the City of Boise Sewer Department to maintain the manhole and connecting sewer lines. No shrubs or trees will be permitted in this area, only grass. In the event a fence is placed across this access road, a 12' gate must be provided for maintenance equipment access. The owner of this lot is required to maintain this grassed road.

4.5.2.10 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.

4.5.2.11 Street Lights. Maintain, repair and replace street lights within the Property to the extent such street lights are not operated, maintained, repaired and replaced by the Highway District or other governmental entity, which has jurisdiction of such matters.

4.5.2.12 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.

4.6 Personal Liability. No member of the Board or any committee of the

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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 V

COVENANT FOR MAINTENANCE AND ASSESSMENTS

5.1 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:

5.1.1 Annual regular assessments or charges.

5.1.2 Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and

5.1.3 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 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.

5.2 Purpose of Assessments.

5.2.1 Regular Assessments. The regular assessments levied by the Association shall be used exclusively and to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, to pay property taxes and other assessments, to pay the annual assessments of any irrigation district 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.

5.2.2 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 for the

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Association which exceed the regular assessments or the costs and expenses or 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 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 Thirty and No/100 Dollars (\$30.00) 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.

5.2.3 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 the Common Area or other property owned or 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.

5.3 Maximum Annual Regular Assessment. The initial maximum annual regular assessment to be assessed by the Association, shall be Seventy-five and No/100 Dollars (\$75.00) per Lot per year plus a one-time set up fee of \$75.00.

5.3.1 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 for the membership of the Association as provided below.

5.3.2 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.

5.3.3 The Board of Directors of the Association may fix the amount of the annual assessment at an amount not in excess of the maximum amount established from time to time.

5.3.4 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 5.2.1 for the fiscal year.

5.4 Notice and Quorum for any Action Authorized Under Sections 5.2.2 and 5.3 Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.3 and 5.4 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.

5.5 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.

5.6 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.

5.7 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.

5.8 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 shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

ARCHITECTURAL COMMITTEE

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6.1 Members of the Committee. The Architectural Committee for the Property, sometimes referred to as the "Committee", shall consist of three (3) members. The following persons are hereby designed by Declarant as the initial members of the Committee for the Property:

| <u>Name</u> | <u>Address</u> |
|--------------------|---|
| A. H. Stubblefield | 641 W. Franklin Road Meridian, Idaho 83642 |
| J. E. Stubblefield | 641 W. Franklin Road Meridian, Idaho 83642 |
| John W. Holland | 4720 W. Emerald Street Boise, Idaho 83706 |

Each of said persons shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause.

6.2 Right of Appointment and Removal. At any time, Grantor is the Owner of at least one (1) of the Lots, Grantor shall have the right to appoint and remove all members of the Committee. Thereafter, the Board of Directors of the Association shall have the power to appoint and remove all members of the Committee. Members of the Committee may be removed at any time, without cause.

6.3 Review of Proposed Construction. The Committee shall consider and act upon any and all proposals of plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board of the Association, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. The Board shall have the power to determine, by rule or their written designation consistent with this Declaration, which types of improvements shall be submitted to the Committee to review and approval. The Committee shall approve proposals, plans and specifications submitted for its approval only as it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association.

6.3.1 Conditions on Approval. The Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements to an Association for the maintenance thereof, upon the agreement of the Applicant to reimburse the Association for the cost of maintenance, or upon all three, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.

6.3.2 Committee Rules and Fees. The Committee also may establish, from time to time, rules and/or guidelines setting forth procedures for the required content of the applications and plans submitted for approval. Such rules may require a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee shall determine the amount of such fee in a reasonable manner, provided that in no event shall such fee exceed One Hundred Dollars (\$100.00). Such fees shall be used to defray the costs and expenses of the Committee or for such other purposes as established by the Board.

Such rules and guidelines may establish, without limitation, procedures, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures as well as special architectural guidelines applicable to Building Lots located adjacent to public and/or private open space.

6.3.3 Detailed Plans. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, landscape plans, drainage plans, elevation drawings and descriptions or samples of exterior material colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval.

6.3.4 Committee Decisions. Decisions of the Committee and the reasons therefor shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within seven (7) days after filing all materials required by the Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Committee shall have been mailed to the Applicant within seven (7) days after the date of the filing of said materials with the Committee. The said seven (7) day period shall only commence to run when an authorized representative of the Committee has executed an application form acknowledging acceptance of such application and acknowledging that such application is complete.

6.4 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing, designate a Committee Representative (who may, but not need be, one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to section 6.9. In the absence of such designation, the vote of any two (2) members of the Committee, or the written consent of any two (2) members of the Committee taken without a meeting, shall constitute an act of the committee.

6.5 No Waiver of Future Approvals. The approval of the committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as

to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

~~6.6 Compensation of Members.~~ The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder and except as otherwise agreed by the Board.

6.7 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

6.7.1 Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Committee.

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

6.7.3 If for any reason the Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of the written notice of compliance from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

6.8 Non Liability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee Representative, shall be liable to the Association, or to any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, provided such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result in the immediate vicinity and to the Property generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

6.9 Variances. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Committee, and shall become

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J. Solar Lot: A lot which has the following characteristics:

effective upon recordation in the Office of the County Recorder of Ada County. If such variances are granted, no violation of the Restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof, covered by the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by any governmental or municipal authority.

ARTICLE VII

ANNEXATION OF ADDITIONAL PROPERTIES

7.1 Annexation. Declarant presently intends to develop other neighboring properties and may, in Declarant's discretion, deem it desirable to annex some or all of such other properties to the property covered by this Declaration. The annexed property may, at Declarant's sole discretion, be used and developed for any purpose allowed under appropriate zoning regulations. Such other properties may be annexed to the Property and brought within the provisions of this Declaration by Declarant, its successors or assign, at any time, and from time to time, without the approval of an Owner, the Association or its Board of Directors. As such properties are developed, Declarant shall, with respect thereto, record a Supplemental Declaration which shall annex such properties to the Property and which may supplement this Declaration with such additional or different covenants, conditions, restrictions, reservations and easements as Declarant may deem appropriate for the other properties or portions thereof and may delete or eliminate as to such other properties such covenants, conditions, restrictions, reservations and easements as are continues herein which Declarant deems not appropriate for the other properties.

7.2 Additional Properties. Subject to the provisions of Section 7.1 above, upon the recording of a Supplemental Declaration as to other properties containing the provisions as set forth in this Section, all provisions contained in this Declaration shall apply to the added properties in the same manner as if it were originally covered by this Declaration, subject to such modification, changes and deletions as specifically provided in such Supplemental Declaration. The Grantees of Lots located in the other properties shall share in the payment of assessments to the Association as provided herein from and after the recordation of the first deed of a Lot within the added properties from Declarant to an individual purchaser thereof.

7.3 Procedure for Annexation. The additions authorized under Section 7.1 above, shall be made by filing of record a Supplemental Declaration or other similar instrument with respect to the other properties or portion thereof, which shall be executed by Declarant of the Owner thereof and shall extend the general plan and scheme of this

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Declaration. The filing of record of said Supplemental Declaration shall constitute and effectuate the annexation of the other properties or portion thereof described therein, and thereupon said other properties or portion thereof shall become and constitute a part of the properties, become subject to this Declaration and encompassed within the general plans and scheme of covenants, conditions, restrictions, reservations and easements and equitable servitudes contained herein as modified by such Supplemental Declaration for such other properties or portion thereof, and become subject to the functions, powers and jurisdiction of the Association. Such Supplemental Declaration may contain such additions, modifications or declarations of the covenants, conditions, restrictions, reservations or easements and equitable servitudes contained in this Declaration as may be deemed by Declarant desirable to reflect the different character, if any, of the other properties or portions thereof or as Declarant may deem appropriate in the development of the properties or portion thereof.

7.4 When other properties are developed, there will be a certain amount of dust and/or dirt, construction traffic and noise associated with the development until development is completed.

ARTICLE VIII

EASEMENTS

8.1 Maintenance and Use Easement Between Walls and Property Lines. The Association or owner of any lot shall hereby be granted an easement of 5' width on the adjoining properties for the purpose of maintenance of fence and/or landscaping so long as such use does not cause damage to any structure or fence.

8.2 Other Maintenance Easements. Easements for installations and maintenance of utilities and drainage facilities are reserved as shown on the record plat. 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 change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for these improvements for which a public authority or utility company is responsible. A further easements is hereby reserved in favor of the Association for access to and maintenance of any irrigation facilities serving the Common Area.

ARTICLE IX

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GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner, shall have the right to enforce, by the 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 an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.2 Severity. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

9.3 Interpretation. The terms, covenants and conditions hereof are to be read and interpreted consistently and in a manner to protect and promote Property values.

9.4 Term and 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 unless an instrument signed by seventy-five percent (75%) of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. This Declaration may be amended, restated, replaced, terminated or superseded during the first twenty (20) year period by an instrument signed by the President and Secretary of the Association affirming that such amendment was approved by two-thirds (2/3) of the Owners of the Lots covered by this Declaration or by an instrument signed by two-thirds (2/3) of the Lot Owners; provided, however, that if Grantor is still the Owner of any Lots the provisions of Article VI may not be amended without the written consent and vote of the Grantor.

ARTICLE X

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 inure to the benefit of each owner thereof.

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SOLAR ACCESS DEFINITIONS

A. Exempt Tree: Any pre-existing vegetation as defined in Article II, Section B 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.

B. Front Lot Line: The line represented by the connection of the most distant corners of a lot, including flag lots, where said corners are in common with the boundary of a public or private road. For corner lots, the front lot line is designated on the plat.

C. 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.

D. Restricted Vegetation: A tree or other vegetation which is either evergreen, or if deciduous, tends to retain its leaves late in the fall and/or drop them late in the spring, or has a dense branching pattern which generally tends to block a high level of the sun's rays during the heating season. Refer to the list of "solar friendly" trees on file with the Boise City Public Works and the Community Planning and Development Departments.

E. Shade: That portion of the shadow cast by the shade point of a structure or vegetation which exceeds the 11.5 foot fence at the solar lot line at solar noon, January 21.

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

G. Shade Point Height: The vertical distance or height measured from the average elevation at the solar lot line to the shade point. If the shade point is located at the north end of a ridge line 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.

H. Shade Restricted Lot: Any lot within the subdivision that is southerly of and adjacent to a solar lot. These lots have some restriction on vegetation types and structure height.

I. Solar Friendly Vegetation: A tree or other vegetation which is included on the solar friendly vegetation list kept by the City of Boise's Public Works and Community Planning and Development Departments.

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any other breach. There can be no waiver of the right to solar access created by this Declaration.

J. 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.

K. Solar Lot Line: The most southerly boundary of a solar lot: the line created by connecting the most distant southerly corners of the solar lot.

L. Solar Setbacks: The minimum distance, measured perpendicular in a southerly direction, from the center of the solar lot line to the shade point of a structure or to restricted vegetation based upon its height at maturity on the shade restricted lot.

ARTICLE XII

SOLAR ACCESS COVENANTS, CONDITIONS AND RESTRICTIONS

A. 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.

B. 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.

C. Slope Exemption: Any lot with an average finished grade slope along the north-south lot dimension greater than ten (10) percent shall be exempt from the terms and conditions of these covenants, conditions and restrictions.

D. Solar Setbacks: Each separate structure and item of restricted vegetation shall have a solar setback dependent on and calculated by its shade point height. All shade restricted lots shall have the following solar setback: Solar Setback (in feet) = [Shade Point Height (in feet) - 11.5'] x 2.

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

TABLE 1
SOLAR SETBACKS 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' |

E. 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

A. Solar Access Rights: The owner(s) of solar lots shall have a right to unobstructed solar access in accordance with these covenants, conditions and restrictions.

B. Solar Access 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 than permitted under these solar access covenants, restrictions and conditions.

ARTICLE XIV

MISCELLANEOUS

A. Enforcement and Non-Waiver: Any lot owner, or homeowner association, whether or not directly affected, shall have the right to enforce, by an proceeding at law or in equity, any violation or threatened violation of a provision of this Declaration. The failure of any person to enforce any 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

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

C. Duration and Applicability to Successors: The covenants, conditions, and restrictions set forth in this Declaration shall be in effect perpetually, 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.

D. Amendment: This Declaration may be amended by the action of the owners of a majority of the lots in the subdivision affected by such amendment provided the amendment does not reduce the amount of solar access protection provided to the subdivision and the amendment is approved by the City of Boise City.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 6th day of December, 1994

Stubblefield Construction Co.,
a California Corporation

By J. E. Stubblefield
J. E. Stubblefield, Vice President

STATE OF IDAHO)
) ss.
County of Ada)

On this 6th day of December, 1994, before me the undersigned, a Notary Public in and for said State, personally appeared J. E. STUBBLEFIELD known or identified to me to be the Vice President of Stubblefield Construction Co., 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 in this certificate first above written.



Shannon Carrell
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 11-30-95

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SUPPLEMENTAL DECLARATION
 OF
 COVENANTS, CONDITIONS AND RESTRICTIONS FOR
 ALDER POINT SUBDIVISION
 (Annexation of Alder Point Subdivision #2)

ADA COUNTY RECORDER
 J. DAVID NAVARRO
 BOISE ID

FIRST AMERICAN TITLE CO.
 '96 MAR 7 11 04
 FEE 900
 RECORDED AT THE REQUEST OF

This Supplemental Declaration ("Supplement") is made effective as of the day of March, 1996, by Stubblefield Construction Co. Inc., a California corporation, or "Declarant," and shall be incorporated into and supplement that certain Declaration of Covenants, Conditions and Restrictions for Alder Point Subdivision - Phase 1, recorded as Instrument No. 94106590, records of Ada County, as to the Phase 2 Property hereby covered as described below.

ARTICLE I.

GENERAL

1.1 Property Covered. Grantor/Declarant is the owner for the real property in the County of Ada, State of Idaho, described as:

ALDER POINT Subdivision, Phase 2 a portion of the NW 1/4 of Section 24, Township 4 N, Range 1 E. of the Boise Meridian, City of Boise, Ada County, Idaho according to the official plat thereof recorded as Instrument No. 96018027, records of Ada County, Idaho. ("Phase 2 Property" and Phase 2 Lots" as to the lots therein).

1.2 Purpose. The purpose of the Supplemental Declaration is to annex the Phase 2 Property to the Property covered by the Declaration, and to include the Owners of Phase 2 Lots in the Association.

1.3 Annexation. Grantor, pursuant to the provisions of Article VII of the Declaration, does hereby annex the Phase 4 Property to the Property covered by the Declaration and said Phase 2 Property hereby becomes subject to the Declaration and encompassed within the general plans and scheme of covenants, conditions, restrictions, and reservations of easements and equitable servitude and other terms and conditions therein, except otherwise specified herein. Unless otherwise provided, all defined terms as contained in the Declaration shall have the same meaning in this Supplement as are applicable to the Declaration.

1.5 Association Membership. Article IV general and Section 4.2 specifically, is hereby supplemented to provide that each Owner of a Phase 2 lot shall be a member of the Alder Point HOMEOWNERS ASSOCIATION.

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ARTICLE II

DECLARATION

Grantor hereby declares that the Phase 2 Property, and each Lot, parcel, or portion hereof, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, supplemented hereunder, and the restrictions, covenants, limitations, conditions and equitable servitude contained therein, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Phase 2 Property, or any lot, parcel or portion thereof; and to enhance the value, desirability and attractiveness of the Property. The covenant, conditions and restrictions set forth in the Declaration, as supplemented hereunder, shall run with the land (described as the Property including the Phase 2 Property), and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the property, including the Phase 2 Property, or any Lot, parcel or portion, hereof shall insure to the benefit of and be binding upon Grantor, its successors in interest and each Grantee, and his respective successors in interest, and may be enforced by Grantors, by any Grantee or Owner or his successors in interest, or by the Association as described in the Declaration.

ARTICLE III

SUPPLEMENTS AND MODIFICATIONS

3.1 Plat Conditions. Article 1, Section 1.19 is hereby supplemented to provide that "Plat" as the Phase 2 property shall refer to the recorded plat of Alder Point No. 2. All conditions of the Plat are hereby incorporated herein by reference and notice is hereby given of the same.

IN WITNESS WHEREOF, the Grantor has executed and acknowledge this Supplemental Declaration effective as of the day and year first written above.

Stubblefield Construction Co. A California Corp.

By 