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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS**

**FOR**

**GLENBROOK TOWNHOMES**

ADA CO. RECORDER  
J. DAVID NAVARRO

BOISE ID

FIRST AMERICAN TITLE CO.

'97 JUL 29 PM 4 05

FEE 84.00 DEP J. Navarro  
RECORDED AT THE REQUEST OF

THIS DECLARATION, made on the date hereinafter set forth by GARY LANE TOWNHOUSES L.L.C., a limited liability company organized and existing under the laws of the State of Idaho, hereinafter referred to as "Declarant," joined by the undersigned record owners of real property affected by this Declaration, hereinafter referred to as "Owners,"

**WITNESSETH:**

WHEREAS, Declarant and the undersigned Owners are the owners of certain property in Boise City, County of Ada, Idaho which is more particularly described as:

A parcel of land situated in the Northwest one-quarter of the Southeast one-quarter of Section 24, Township 4 North, Range 1 East, Boise Meridian, Ada County Idaho. Being a portion of Lots 4 and 5, Garys Subdivision:

Commencing at a found 5/8 inch iron pin and cap marking the CE 1/16 corner of said Section 24,

thence N 00°03'40"W a distance of 308.44 feet to a point;

thence S 89°56'20"W a distance of 34.06 feet to the Point of Beginning, a found 5/8 inch iron pin and cap;

thence S 00°03'40"E a distance of 405.41 feet to a found 5/8 inch iron pin and cap marked PT 108+57.08;

thence along a curve to the right having a radius of 397.59 feet, a central angle of 15°15' a chord bearing of S 07°41'10"W, a

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chord distance of 105.51 feet, an arc length of 105.82 feet to a point;  
thence S 00°03'40"E a distance of 17.55 feet to a point;  
thence N 52°28'40"W a distance of 260.63 feet to a point;  
thence S 00°03'40"E a distance of 18.84 feet to a point;  
thence S 00°06'10"E a distance of 179.82 feet to a point;  
thence N 49°07'36"W a distance of 91.83 feet to a point;  
thence N 55°05'40"W a distance of 37.43 feet to a point;  
thence N 10°12'48"E a distance of 38.96 feet to a point;  
thence N 49°07'36"W a distance of 239.31 feet to a point;  
thence N 00°03'30"W a distance of 226.89 feet to a point;  
thence N 89°56'20"E a distance of 273.75 feet to a point;  
thence N 00°03'40"W a distance of 63.60 feet to a point;  
thence N 89°56'20"E a distance of 192.54 feet to the Point of Beginning.

NOW, THEREFORE, Declarant and the undersigned Owners hereby declare 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

### DEFINITIONS

**Section 1. "Association"** shall mean and refer to Glenbrook Townhomes Owners Association, Inc., its successors and assigns.

**Section 1.1 Incorporation by Reference.** Any and all provisions contained in the Articles of Incorporation and Bylaws of the Glenbrook Townhomes Owners Association, Inc., as amended from time to time, are incorporated herein and made a part hereof.

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To the extent any provision of these Covenants, Conditions, Restrictions and Easements for Glenbrook Townhomes conflicts, modifies or amends any provisions of the above referenced Articles of Incorporation or Bylaws, the provisions of which are incorporated herein, the provisions of this instrument shall control.

**Section 2. "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 3. "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.

**Section 4. "Lot"** shall mean and refer to any plat of land shown upon any record subdivision map of the Properties.

**Section 5. "Declarant"** shall mean and refer to GARY LANE TOWNHOUSES L.L.C., its successors or assigns.

**Section 6. "Grantor"** shall mean and refer to the Declarant.

**Section 7. "Landscape and Maintenance Easement"** shall refer to any grant of easement for landscaping and/or maintenance purposes which is filed of record.

## ARTICLE II

### PROPERTY RIGHTS

**Section 1. Owners' Property Rights.** Every Owner shall have a right of enjoyment in and to the Owner's Lot, subject to the following provisions:

- (a) The right of the Association to charge assessments relative to the Association's obligation to maintain the grounds, yard and other landscape areas as to all individual Lots, which obligation of maintenance is restricted to the grounds, yard and other landscape areas outside of the individual units, to include the garage structures and the fenced areas.



- (b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its public rules and regulations.

**Section 2. Association Obligation to Maintain Landscaping.** The Association shall have the obligation to maintain the grounds, yards and other landscape areas as designated herein as same is situated on each and every Lot. In addition, the Association shall be responsible for approving any and all modifications to any and all landscape areas situated on those individual Lots to the extent that the Association shall be responsible for maintaining those areas within which the Owner decides to make a landscaping change, modification, alteration, addition or deletion.

**Section 3. Association Obligation to Maintain Exterior Structures.** The Association shall have the further obligation to maintain individual structures; but only to the extent that the Association shall be responsible for replacement of exterior roofing and siding, as same becomes necessary and to otherwise be responsible for the painting of structures. The Association shall be responsible for selecting and approving paint colors and shall be responsible for approving any and all modifications to the paint color as initially selected by the developer.

**Section 4. Easements.** It is hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and occupant, and for the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the property, an easement the purpose of permitting the Grantor or the Association, their contractors or agents, to enter onto Lots for the purpose of undertaking grounds, yard and landscape maintenance and to otherwise repair and maintain the structure of the buildings, to include painting of structures, which obligation the Association has assumed.

It is also hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and occupant, and for the Association, and their successors and assigns, mutual easements of access, ingress and egress over and across the Lots for the purpose of performing landscaping, maintenance and repairs, for the

installation and repair of utilities, for the drainage of water over, across and upon adjacent Lots, and for the operation and maintenance of drainage areas. This Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required for the development of the Properties.

The Owners of Lots within the subdivision are restricted from constructing any improvements upon any drainage or utility easements as shown on the plat of the subdivision or otherwise designated in any recorded instrument which would interfere with or prevent the easement from being used for such purpose.

**Section 5. Maintenance.** The following provisions shall govern the maintenance of Lots and all improvements thereon.

- (a) Each Owner of a Lot shall maintain all improvements located thereon in good and sufficient repair and shall keep the improvements thereon painted or stained, shrubbery trimmed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.
- (b) The Association shall assume the obligation to maintain the grounds, yards and other landscape areas of each individual Lot, which obligation to maintain said grounds, yards and landscape areas shall be limited to those portions of each individual Lot which are outside of the individual units, courtyards and garbage structures.
- (c) The Association shall assume the obligation to operate, maintain, and otherwise manage, or provide for the operation, maintenance and management of all drainage easements, as shown on the plat of the subdivision or otherwise designated in any recorded instrument; provided, that the Owner of any Lot or the Association shall be entitled to install and maintain landscaping on drainage easement areas so long as the same does not interfere with or prevent the easement areas from being used for their intended purposes; and further provided, that the Association shall have no liability for any damage done to landscaping or other improvements located on the drainage easement areas as the result of the use of such areas for collection, drainage and disposal of waters



flowing over, across and upon Lots within the subdivision.

- (d) The Association shall assume the obligation to maintain the piped portion of the Boise Valley Irrigation Ditch Canal that runs through the Glenbrook Townhomes Development on its south side and along its west boundary before re-emerging on the west boundary, including irrigation structures and squash pipe.
- (e) The Association shall assume the obligation to maintain the ground water interceptor system designed for the introduction of storm water and ground water into the open portion of the Boise Valley Irrigation Ditch Canal, including the system piping, pumps, pump house and drainage easements (lots 1, 6, 7, 12, 19, 24, 27, 33 of Block 1 and lots 1 & 4 of Block 2 and lot 1 of Block 3).
- (f) All structures, facilities, equipment, objects and conditions determined by the Association, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept, at all times, in covered containers and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (g) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on any portion of a Lot within the Glenbrook Townhomes Development along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (h) Any event or condition on a Lot which, in the sole discretion of the Association, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.
- (i) The landscape irrigation system uses non-potable water from the Boise Valley Irrigation Ditch Canal. The Owner of any Lot shall assume the obligation to avoid introduction or commingling of non-potable water from the

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Glenbrook Townhomes landscape irrigation system into potable water sources or uses.

- (j) Notwithstanding that the Association is obligated to maintain the common area and facilities contained therein as defined herein and with in 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 common 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 common area or facility, ACHD shall, before undertaking maintenance of said common area, provide written notice of its intention to begin maintenance of the defined common 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 common 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 common area of facility. ACHD is hereby granted an irrevocable license and easement to enter upon any portion of the common area to perform inspection and maintenance. Should ACHD engage in maintenance of the defined common 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 Glenbrook Townhomes 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 Glenbrook Townhomes Subdivision pursuant to this Declaration, together with interest at the rate which accrues on judgments thereon and all costs of collection which may be paid or incurred by ACHD in connection therewith. ACHD may exercise its rights under Idaho Code by assessing the Lot Owners and certifying those assessments in the manner as real property tax. The Association shall not be dissolved or relieved of its responsibility to maintain the common area and facilities contained therein without prior approval from ACHD. The

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Association and all Lot Owners by accepting title to a Lot agree that all Lot Owners within Glenbrook Townhomes Subdivision are benefited property owners for purposes of this section.

**Section 6. Leasing.** An Owner of any Lot may elect to lease/rent said Lot. Such lease, however, must not be entered into on a day to day or week to week basis.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** 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. Every person or entity who is a record Owner (including contract sellers) of a fee or undivided fee interest in any Lot located within said property shall by virtue of such ownership be a member of the Association. When more than one person holds such interest in any occupied Lot, all such persons shall be members. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. The Association shall maintain a membership list and may require written proof of any member's Lot ownership interest. The financial reports, books and records of the Association may be examined, at a reasonable time, by any member of record.

**Section 2. Voting Rights.** Each member shall be entitled to cast one vote or fractional vote as set forth herein for each Lot in which he holds the interest required for membership. Only one vote shall be cast with respect to each Lot. The vote applicable to any Lot being sold under a contract of sale shall be exercised by the contract vendor unless the contract expressly provides otherwise and the Association has been notified, in writing, of such a provision. Voting by proxy shall be permitted.

**Section 3. Officers and Directors.** At an annual meeting called pursuant to notice as herein provided for establishment of annual assessments, a Board of Directors of the Association shall be elected by ballot of those attending said meeting or voting by proxy.



## ARTICLE IV

### 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 or monthly 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 land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the Owner. Each Owner's obligation for delinquent assessments shall pass to his successors in title.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties, as well as maintenance of structures, grounds, yards, landscape and drainage areas which the Association is otherwise obligated to maintain.

**Section 3. Annual Assessment.** The initial annual assessment to be paid by the Owner of each individual Lot, which obligation shall commence as to each Lot upon the initial transfer of the Lot from Gary Lane Townhouses L.L.C., to the original Owner shall be the sum of \$480.00 per year. The Board of Directors of the Association may fix the payment dates for assessments on a monthly, quarterly, annual or other periodic basis. So long as assessments are to be paid annually, assessments shall be paid in January of each year. The first year in which assessments shall be due shall be 1996.

**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 to replacement of a capital improvement, 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 this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Section 3 or 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 ten (10) days or more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of the members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum.

**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, quarterly or annual basis at the discretion of the board.

**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 conveyance of the Lot. 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 the 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.

**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 due date at the rate of 18% annum. The Association, or any Owner, 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 abandonment of his Lot.



**Section 9. Subordination of the Lien to Mortgage.** 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 lien 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.

**Section 10. Property Exempt from Assessments.** The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All properties expressly dedicated to and accepted by a local public authority; and
- (b) Any other properties owned by the Association.

**Section 11. Association Budget.** The Association is authorized to prepare annual budgets which shall indicate anticipated management, operating, maintenance, repair and other common expenses for the Association's next fiscal year and which shall be sufficient to pay all estimated expenses and outlays of the Association for the next calendar year or growing out of or in connection with the activities of the Association from a previous period. The Association annual budget may include any reasonable contingency or other reserve fund.

## ARTICLE V

### ARCHITECTURAL CONTROL

**Section 1. Architectural and Easement Committee.** A committee, consisting initially of the person named below and after the sale of all the Lots by the Declarant consisting of the Board of Directors of the Association, shall act as an Architectural Committee and shall, prior to any new construction in said subdivision, be furnished with one set of detailed plans and specifications of any proposed building to be located in said subdivision and shall be allowed specifications. If said Committee shall approve the proposed building, or any modification or alteration thereof, they shall so indicate by the dating and signing of the set of plans by one or more members of the Committee, and their approval shall be

construed as full compliance with the provisions of the original covenants. Said Committee shall have sole discretion to determine what shall be substantial compliance with said covenants. No building shall occupy any portion of said subdivision without prior consent of said Committee.

The Committee shall initially consist of the following person:

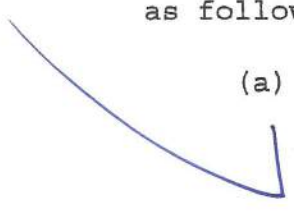
William C. Middleton

P.O. Box 1285, Boise, ID 83701

Notwithstanding any other provision to the contrary in this Declaration of Covenants, Conditions, Restrictions and Easements for Glenbrook Townhomes, after the Declarant has sold all the Lots, the Architectural Committee shall be turned over to the Glenbrook Townhomes Owners Association, Inc., and not before. Amending this instrument shall not affect this provision.

A majority of said Committee is empowered to act for the Committee. In the event any member of the Committee is unable to act or fails or desires not to act, the remaining Committee members shall appoint an Owner of a Lot in said subdivision to serve on said Committee, all of whom serve without compensation.

**Section 2. Covenants, Restrictions, Easements and Conditions.** The following covenants shall run with the land and be in force and effect for thirty (30) years hereafter unless sooner terminated by agreement of the Owners of seventy-five percent (75%) of the Lots in the subdivision and after all Lots herein have been sold by Gary Lane Townhouses L.L.C. Modification or termination of these covenants can only be made with the consent of Gary Lane Townhouses L.L.C., while any Lots in this subdivision remain in its ownership, and are as follows, to wit:

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- (a) No building, fence, wall, structure, improvement or obstruction shall be placed or permitted to remain upon any part of the Properties unless a written request for approval thereof containing the plans and specifications therefor, including exterior color scheme, has been approved in writing by the Architectural Committee. The approval of the Committee shall not be unreasonably withheld if the said plans and specifications are for improvements which are similar in general design and quality, and generally in harmony with the dwellings then located on the Properties.



- (b) All record Lots within this subdivision shall be subject to and restricted by the following recorded subdivision covenants:
- (1) A monthly sewer charge must be paid after connecting to the Boise City public sewer system, according to the ordinances and laws of Boise City.
  - (2) The applicant/owner of the subdivision shall and hereby does vest in Boise City the right and power to bring all actions against the owner of the premises hereby conveyed or any part thereof for the collection of any charges herein required and to enforce the conditions herein stated.
- (c) Playground equipment, storage sheds and storage buildings shall be permitted only in the backyards of the units. No storage shed or building having a height in excess of ten feet shall be placed or constructed in the backyard of any unit, nor shall playground equipment exceed ten feet in height.
- (d) No shack, tent, trailer house, or basement only, shall be used within the subdivision for living quarters, or any other purpose, permanent or temporary.
- (e) Nothing of an offensive, dangerous, odorous or noisy endeavor shall be conducted or carried on nor shall anything be done or permitted in said subdivision which may be or become an annoyance or nuisance to the other property Owners in said subdivision. Weeds shall be cut to less than four (4) inches.
- (f) Keeping or raising of farm animals or poultry is prohibited. All dogs and cats or household pets kept on the premises shall be properly fed and cared for and shall be adequately fenced so as not to annoy or trespass upon the use of property of others. Dogs shall not be allowed to run at large.
- (g) No business shall be conducted on the Properties that cannot be conducted within the residence of the Owner as permitted by law. No signs shall be installed to advertise said business. No oil exploration or development of any nature or kind or mining exploration,

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development or structure shall be permitted upon the Lots in this subdivision.

- (h) No Lot or building site included within this subdivision shall be used or maintained as dumping ground for waste material. Incinerators are not permitted. Receptacles for storage of trash, garbage, et cetera., shall be maintained in a sanitary and clean condition.
- (i) Parking of boats, trailers, motorcycles, trucks, motor homes, campers, recreational vehicles and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any part of the Properties nor on public ways adjacent thereto excepting only within the confines of an enclosed garage, or other approved enclosure, and no portion of same may project beyond the enclosed area. The Architectural Committee shall be the sole and exclusive judges of approved parking areas. This restriction shall not be construed to preclude temporary parking of motor homes, campers and recreational vehicles while the same are being loaded by the owners.
- (j) Installation of radio and/or television antennae or satellite dishes is prohibited outside any building without written consent from the Architectural Committee, which would require them to be screened from the street view.
- (k) The construction of any separate principal building on any Lot or building site located within this subdivision is prohibited.
- (l) The Architectural Committee's decision is final and binding on all issues.

## ARTICLE VI

### GENERAL PROVISIONS

**Section 1. Time Extension for Covenants.** The covenants set forth in this instrument shall run with the land and shall be binding on all persons owning Lot(s) under them for a period of thirty (30) years from the date of recording thereof, after which time such covenants shall be automatically extended for successive periods of ten (10) years, unless at any time after the initial recording of this



instrument, an instrument signed by the Owners of seventy-five percent (75%) of the land of this subdivision has been recorded agreeing to change or terminate said covenants in whole or part and after all Lots therein have been sold by Gary Lane Townhouses L.L.C.. Modification or termination of these covenants can only be made with the consent of Gary Lane Townhouses L.L.C., while any Lots in this subdivision remain in its ownership.

**Section 2 Enforcement.** Enforcement against any person or persons violating or attempting to violate any covenant herein after then (10) days notice thereof in writing served on the offending party, shall be had by the Association and/or any property owners either at law or equity. In the event of judgment against any person for such, the Court may award injunction against any person for violation, require such compliance as the Court deems necessary, award such damages, reasonable counsel fees and Court costs as may be suffered or incurred, and such other or further relief as may be deemed just and equitable. The Association, or the Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association and/or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of the right to do so thereafter.

**Section 3. Architectural Committee:** The Directors shall become the Architectural Committee upon the sale of all Lots by Gary Lane Townhouses L.L.C.

**Section 4. Severability.** Invalidation of any one of these covenants or restriction by judgment or Court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 5. Annexation.** Additional residential property and Common Area may be annexed to the properties with the consent of two-thirds (2/3) of the members.

## ARTICLE VII

### SOLAR ACCESS DEFINITIONS

**Section 1. Exempt Tree:** Any preexisting vegetation as defined in Article VIII, 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 VIII**

### **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

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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**

| Shade Point Height | Solar Setback |
|--------------------|---------------|
| 10'                | 0'            |
| 15'                | 7'            |
| 20'                | 17'           |
| 25'                | 27'           |
| 30'                | 37'           |

**Section 4. 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.

**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 IX**

### **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 than permitted under these solar access covenants, restrictions and conditions.

## **ARTICLE X**

### **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.

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS - 20**  
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GARY LANE TOWNHOUSES, LLC., BY:

William C. Middleton  
William C. Middleton, Member

STATE OF IDAHO )

: ss.

County of Ada )

On this 28th day of July, 1997, before me, a Notary Public in and for said State, personally appeared William C. Middleton, known or identified to me to be one of the members of GARY LANE TOWNHOUSES L.L.C., and the member who subscribed the name of said limited liability company to the foregoing instrument, and acknowledged to me that he executed the same in the name of said limited liability company.

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



[Signature]  
NOTARY PUBLIC FOR IDAHO

Residing at: Boise

My Commission Expires: 6/15/00

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS - 20

lci <0088.001> glenbrk.ccr 062796

DATED this 28 day of July, 1997.

Joanie Stephen

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 28th day of July, 1997, before me personally appeared Joanie Stephen, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 28th day and year first above written.



Amy Gunning  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My Commission Expires: 6/15/00

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



DATED this 28th day of July, 1997.

*\* Suzanne L Creager*

DATED this 28th day of July, 1997.

*\* Walter R Creager*

STATE OF IDAHO           )  
                                  ) ss.  
County of Ada            )

On this 28th day of July, 1997, before me personally appeared Walter R. Creager & \*, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same.

\*Suzanne L. Creager

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



*[Signature]*  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My Commission Expires: 6/15/00

STATE OF IDAHO           )  
                                  ) ss.  
County of Ada            )

On this      day of     , 1997, before me personally appeared     , known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

DATED this 24 day of July, 1997.

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 24th day of July, 1997, before me personally appeared Michael H. Luque, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



[Signature]  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My Commission Expires: 6/15/00

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

[Signature]  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

DATED this 26th day of July, 1997.

Julie W. Frazier

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 26th day of July, 1997, before me personally appeared Julie W. Frazier, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Amy Gunning  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My Commission Expires: 6/15/00

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

DATED this 28 day of July, 1997.

Rosemary L. Kauphusman

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 28th day of July, 1997, before me personally appeared Rosemary L. Kauphusman known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the 28th day of July, 1997.



[Signature]  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My Commission Expires: 6/15/00

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



DATED this 28 day of July, 1997.

Larry B. Gates

DATED this 28 day of July, 1997.

Nettie C. Gates

STATE OF IDAHO )  
 ) SS.  
County of Ada )

On this 28th day of July, 1997, before me personally appeared Larry B. Gates & \*\*, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. \*\* Nettie C. Gates

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



[Signature]  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My Commission Expires: 6/15/00

STATE OF IDAHO )  
 ) SS.  
County of Ada )

On this \_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

DATED this 25 day of July, 1997.

Greg C. Giles

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 25<sup>th</sup> day of July, 1997, before me personally appeared LARRY A. GILES, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he 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 Ford  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires: 1-3-2003

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS - 27**

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