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RECORDED-REQUEST OF
ADA COUNTY RECORDER *West Dalton* FEE 75.00 DEPUTY *Moran*
J. DAVID NAVARRO
BOISE, IDAHO
2000 DE -1 AM 9:57 100097182

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
KINGSGATE SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by West Dalton, LLC, an Idaho limited liability company, hereafter referred to as "Declarant".

WITNESSETH

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

KINGSGATE SUBDIVISION, according to the official plat thereof, recorded in Book 81 of Plats at Pages 8791 and 8792, as Instrument No. 100092855, recorded on the 17th day of November, 2000, records of Ada County, Idaho; and

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

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

ARTICLE I: DEFINITIONS

The following terms shall have the following meanings:

Section 1. "ASSOCIATION" shall mean and refer to Kingsgate Subdivision Homeowners Association, Inc. a non-profit corporation organized under the laws of the State of Idaho, its successors and assigns.

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

Section 3. "COMMON AREA" shall mean all real property and improvements thereon (including private streets, drives, parking areas and recreational facilities) owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Lot 8, Block 2, and Lot 1, Block 3 Kingsgate Subdivision,
according to the official plat thereof.

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

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

Section 6. "DECLARANT" shall mean and refer to West Dalton, LLC an Idaho limited liability company, its successors, and subject to the provisions of Article XIV, Section 4, below, its assigns.

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

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

Section 9. "MORTGAGE" shall mean any mortgage, deed of trust or other security instrument by which a Dwelling Unit or any part thereof is encumbered.

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

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

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

Section 13. "PLAT" shall mean a final subdivision plat covering any real property in Kingsgate Subdivision as recorded in the office of the county recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Section 14. "IRRIGATION WATER SUPPLY SYSTEM" shall mean all real property and improvements thereon and all wells, pumps, pipes and any other conveyancing apparatus and all easement rights for the installation and maintenance of the system by which irrigation water is delivered to each lot, owned by the Sagamore, Subdivision Homeowners Association, Inc., for the purpose of providing an irrigation water supply to the Owners.

ARTICLE II: PROPERTY RIGHTS

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

- A. The right of the Association to levy reasonable assessments for the maintenance of any landscaping improvement or other facilities situated upon the Common Area.
- B. The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- C. The right of the Association to limit the number of members permitted to use the Common Area.
- D. The rights of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities; and, in aid thereof, to place a mortgage or trust deed thereon, which shall be a first and prior lien thereagainst; provided that the Common Area may not be mortgaged or conveyed without the consent of at least 66-2/3% of the Owners (excluding Declarant), and that any conveyance or mortgage of Common Area shall be subject to and subordinate to rights of ingress and egress of an Owner to his/her Lot.

- E. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without the written approval of all First Mortgagees and two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly held for this purpose.
- F. The right of the Directors of the Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interest of securing maximum safe usage of the Common Area by the members of the Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said property, including without being limited thereto, rules restricting persons under or over designated ages from using certain portions of the Common Area during certain times and reasonable regulations and restrictions regarding vehicle parking.

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

ARTICLE III: HOMEOWNERS ASSOCIATION

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

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

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

Lot being sold under contract of purchase shall be exercised by the contract seller, unless the contract expressly provides otherwise.

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

- A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- B. On December 31, 2010.

Section 3. Assessments:

- A. Creation of Lien and Personal Obligation of Assessments: Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association:
 - 1. Regular annual or other regular periodic assessments or charges; and
 - 2. Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

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

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

- C. Maximum Annual Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$300.00.
1. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%), or the maximum percentage increase allowable by Federal National Mortgage Association (whichever is greater), above the maximum assessment as set forth above.
 2. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount set forth in the preceding paragraph by a vote of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.
 3. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum; and said assessments shall be payable to the Homeowners Association in regular monthly, quarterly, semi-annual or annual installments as may be determined by the Board of Directors.
- D. Special Assessments for Capital Improvements: In addition to the regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, the Irrigation Water Supply System, or for any of the Association's obligations set forth herein, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Any such special assessment shall be payable over such a period as the Homeowner Association shall determine.
- E. Notice and Quorum for Any Action Authorized Under Sections 3C and 3D: Written notice of any meeting called for the purpose of taking any action authorized under Section 3C or 3D, above, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be

one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- F. Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for non-exempt Lots.
- G. Date of Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall commence as to a Lot sold on the first day following the initial conveyance of the said Lot. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on 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.
- H. Effect of Nonpayment of Assessments; Remedies of Association: In the event any assessment is not paid within thirty (30) days after the due date, the Owner shall be subject to a late fee in the amount of \$25.00 for each month or part thereof that the assessment shall be delinquent, which said late fee shall be added to and become a part of the assessment provided for in this section. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.
- I. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.
- J. Exempt Property: The following property, subject to this Declaration, shall be exempt from the assessments created herein:

1. All property expressly dedicated to and accepted by a Local public authority;
2. The Common Area;
3. All other Properties owned by Declarant or the Association;
4. All Lots owned by Declarant, until title is transferred to another, or until occupancy, whichever occurs first; and

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

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

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

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

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

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

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

ARTICLE V. IRRIGATION WATER SUPPLY SYSTEM

Section 1. Irrigation Water Supply: Each Lot shall have access to an Irrigation Water Supply System to be constructed by Declarant and owned, operated and maintained by the Sagamore Subdivision Homeowners Association, Inc. (the "Sagamore Association"). The water supplied by this system is non-potable and cross-connection with the separate domestic water supply system presents a health risk and is prohibited. All Owners to which the system has been extended shall be required to pay the assessment therefore as provided for hereinabove, regardless of actual use or non-use of water from the irrigation system. The Idaho Rules for Public Drinking Water Systems require that the potable water be tested for the presence of coliform bacteria; therefore each homeowner is required to have their potable water tested for coliform bacteria prior to occupancy.

Section 2. Operation of the Irrigation Water Supply System: The Irrigation Water Supply System shall be operated in accordance with the laws of the State of Idaho and all rules and regulations as may be promulgated from time to time by the Sagamore Association and any governmental entity having jurisdiction thereof. The right to receive water from the Irrigation Water Supply System is, in any event, subject to availability of water. The Sagamore Association shall regulate the use of water to conserve its availability for Lots. The Sagamore Association shall have no liability for any temporary interruptions in water supply service so long as necessary repairs are made in a reasonably prompt manner. The Sagamore Association shall be permitted to enter into a contract with a qualified water system management and maintenance entity for the management and maintenance of the Irrigation Water Supply System.

Section 3. Easement For Irrigation Water Supply System: The Declarant and the Sagamore Association shall have a permanent easement for the construction, maintenance and repair of the Irrigation Water Supply System and related buildings, pumps, pipes, and any other conveyancing apparatus in the public utilities, drainage and irrigation easements as described on the Plat, together with the right of ingress to and egress from the easement premises over and across the privately owned property of Owners to perform maintenance upon the well, pump, pipes and other conveyancing apparatus comprising the Irrigation Water Supply System together with all rights necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement.

Section 4. Cost of Maintenance and Operation of Irrigation Water Supply System: The Irrigation Water Supply System is a part of a larger Irrigation Water Supply System which serves both the Sagamore Subdivision and the Kingsgate Subdivision. It being recognized by Declarant that the lots subject to this Declaration will be benefited by the operation and maintenance of the said Irrigation Water Supply System by the Sagamore Association, Declarant desires that the Association share in the cost of the

upkeep, maintenance and repair of the Irrigation Water Supply System. The Association shall, therefore, be responsible to reimburse to the Sagamore Association 54% of the total cost of the operation, maintenance and repair of the combined Irrigation Water Supply System, provided, however, that (a) prior to making any expenditure in excess of \$300 in any fiscal year, the Sagamore Association shall first obtain consent therefore from the Association, and (b) the Sagamore Association shall deliver to the Association, within a reasonable time after the end of each fiscal year, a statement setting forth the dollar amount of the Association's share of the costs for the operation, maintenance and repair of the Irrigation Water Supply System with documents supporting the same, if requested. The Association shall pay the said amount within thirty (30) days after receipt of the statement and any requested supporting documentation. Any amounts which remain unpaid after the due date thereof shall bear interest in the amount of 12% per annum.

ARTICLE VI. EASEMENTS AND ROAD EXTENSIONS

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

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

Section 3. Easement for Maintenance: Declarant and the Association shall have a permanent easement to go upon the privately owned property of Owners in this subdivision to perform maintenance upon the Properties and the Common Area, including, but not limited to, snow removal, lawn maintenance, utility service maintenance, subterranean irrigation water system maintenance and perimeter fence maintenance, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easements and the operation, maintenance and repair of utility service connections.

Section 4. Nampa and Meridian Irrigation District License Agreement. Lots 1, 7, 8, 9 and 10, Block 2, are subject to the provisions of a License Agreement entered into between Nampa and Meridian Irrigation District and Declarant, dated October 6, 2000, and recorded as Instrument No. 100080179, records of Ada County, Idaho. The said License Agreement contains restrictions on the use of those portions of the stated Lots which are within the Nampa and Meridian Irrigation District's easement for the irrigation ditch or canal known as Eggers' Lateral. Among the applicable use restrictions are that the Owners of the affected Lots may not, without the prior written consent of the Irrigation District excavate, discharge, place any structures, nor plant any trees within the District's easement, nor perform any construction activity within the District's easement except for residential structures, patios, fences, grass, and underground sprinkler systems as described and depicted in the License Agreement. The License Agreement also provides that the Owner of a Lot affected by the Irrigation District's easement must suspend its use of the easement area, except that portion thereof on which residential structures have been placed as provided therein, when the use of the easement area is required by the Irrigation District for maintenance or repair. The Owner of each Lot described in this Section shall be obligated to fully comply with each and every provision of the said License Agreement.

Section 5. Extension of West Kingsgate Court. Each Owner of any Lot, by acceptance of a deed therefore (whether or not it shall be so expressed in such deed), is deemed to acknowledge that the roadway designated as West Kingsgate Court on the plat of the subdivision is intended to be extended in the future in order to provide public road access to lands adjacent to the subdivision.

ARTICLE VII: MAINTENANCE RESPONSIBILITY

The Association shall provide all reasonably required maintenance and repairs to the Common Areas and improvements thereon, and the landscaping improvements located in the front yard of each Lot. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject. Each Owner shall maintain and keep in good order and repair the exterior of his Unit, including but not limited to the roof thereof, any private decks, fences, courtyards and landscaping improvements located in the rear yard of each Lot. In the event any Owner fails to comply with its duties as set forth herein, the Association shall have the right to take such legal action as may be necessary in order to compel such compliance. The Association reserves an easement for ingress, egress and maintenance as may be reasonably necessary to perform the maintenance duties of the Association. In the event of damage or destruction of a Dwelling Unit by fire or other casualty, the owner must complete repair and/or replacement of the Dwelling Unit within ninety (90) days of the damage or destruction.

ARTICLE VIII: PROPERTY USE RESTRICTIONS

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

- A. Lot Use: No Lot, with the exception of the Common Area shall be used except for single-family residential purposes in accordance with applicable condition use permits and zoning ordinances in effect from time to time. No Lot or the Common Area shall be used for the conduct of any trade, business or professional activity, except as may be approved in writing by, and in the sole discretion of the Board of Directors of the Homeowners Association, which discretion may not be challenged for having been exercised unreasonably. All Lots and improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes and regulations.
- B. Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said Properties, except that two dogs, cats or other household pets may be kept within a Dwelling Unit or within a fenced area as may be approved by the Architectural Control Committee. Any animals outside a Dwelling Unit or fenced area must be on leashes, and the Owner or custodian of the animal shall be responsible for the immediate cleanup of the animal's droppings. The term "fenced area" as used in this paragraph shall be interpreted to include any electronic pet containment system; provided, however, that the boundary of any such system shall be approved by the Architectural Control Committee and that in no event shall the said boundary extend beyond the front plane of the Dwelling Unit constructed on said Lot.
- C. Garbage and Refuse Disposal: No part of said Properties shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said Properties except in a sanitary container. Any equipment for the storage or disposal of such material must be kept in the Owner's garage except on regular trash pickup day.
- D. Nuisance: No noxious or offensive or unsightly conditions shall be permitted upon any part of said Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No exposed antennae or satellite dishes shall be erected on the Properties without the prior approval of the Architectural Control Committee, which approval may be withheld in its sole discretion. Garage doors shall, to the extent possible, remain closed at all times that the garage is not in active use by the Owner or occupant.

- E. Outbuildings: No trailer, truck camper, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said Properties.
- F. Parking and Storage of Vehicles and Equipment: Parking and storage of boats, trailers, motorcycles, trucks, truck campers, motorhomes, recreational vehicles, and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any Lot nor on the Common Area, except in fully enclosed buildings or under such circumstances, if any, as may be prescribed in writing by, and in the sole discretion of the Board of Directors of the Homeowners Association, which discretion may not be challenged for having been exercised unreasonably. All other parking or storage of any other equipment shall be prohibited, except as approved in writing by the Board of Directors of the Homeowners Association. Any vehicle awaiting repair or being repaired shall be removed from the subdivision within 48 hours.
- G. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and eight feet (8') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 30 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- H. Leasing Restrictions: Any lease (as defined below) between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, the Association's Articles of Incorporation and its Bylaws, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease. For the purposes of this Declaration, a "lease" shall mean any agreement for the leasing or rental of a Dwelling Unit (including a month-to-month rental agreement); and all such Leases shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Dwelling Unit.

- I. Sewer Restrictions: All bathroom, sink and toilet facilities shall be located inside the Dwelling Unit or other suitable appurtenant building, and shall be connected by underground pipe to wet line sewer connection lines which have been provided to each Lot. All recorded Lots within this subdivision shall be subject to and restricted by the following recorded subdivision covenants:
- 1) A monthly sewer charge must be paid after connecting to the Boise City Public Sewer System, according to the ordinances and laws of Boise City.
 - 2) Each Owner shall submit to inspection by either the Department of Public Works or the Department of Building whenever a Lot is to be connected to the sewer system constructed and installed on and within its property.
 - 3) The Owner of this subdivision or the Lot or Lots therein 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. This covenant shall run with the land.
- J. Fences: All fences, including fences around swimming pools, dog runs or other uses, must be approved, in advance, by the Architectural Control Committee as to design, materials and location. No such fence shall extend beyond the front plane of the Dwelling Unit constructed or to be constructed on the Lot.
- K. Parking Rights: Subject to the provisions of paragraph F. above, any automobile or other vehicle used by any Owner shall be parked in the driveway or garage which is a part of his Dwelling Unit.

ARTICLE IX. SOLAR ACCESS

All lots in this Subdivision are subject to the Boise City Solar Access Code requirements as represented by these special restrictions:

Section 1. Solar Access Definitions.

- A. Exempt Tree. Any pre-existing vegetation as defined in Section 2, paragraph 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 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.
- 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 aboveground-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 it.

Section 2. 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.

Section 3. Solar Access Rights, Duties and Responsibilities.

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

- B. Solar Access Duties. The owner(s) of any Shade Restricted Lot shall not build, install, or otherwise allow a structure or non-solar friendly tree on that lot to cast more shade at a solar lot line than permitted under these Solar Access Covenants, Conditions and Restrictions.

ARTICLE X. ARCHITECTURAL CONTROL

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

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

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

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

- A. Site Plan. A site plan showing the location of buildings and all other structures and improvements, including fences and walls on the Lot, Lot drainage and all setbacks and other pertinent information related to the improvements.
- B. Building Plan. A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east, and west sides, detailed exterior specifications for each building which shall indicate, by sample, if required by the Architectural Control Committee, all exterior colors, material and finishes, including roof, to be used. Garage, accessory and outbuildings to be located on a Lot shall be architecturally and visually compatible and harmonious with the principal building on the Lot as to style and exterior colors and shall not be higher than ten feet above the roof line of the principal building on the Lot.
- C. Landscape Plan. A landscape plan for that portion of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berms and mounding, grading, drainage, sprinkler system, fences, free standing exterior lights, driveways, parking areas and walk ways.

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

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

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

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

Section 8. Certification by Secretary: The records of the Secretary of the Homeowners Association shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Secretary or Assistant Secretary of the Homeowners Association showing that the plans and specifications for the improvement or other matters therein provided for have been approved and that said improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Homeowners Association by the Secretary thereof, shall be conclusive evidence that shall fully justify and protect any title company certifying, guaranteeing or insuring title to said property, or any portion thereof or any lien thereon and/or any interest therein as to any matters referred to in said certificate, and shall fully protect any purchaser or encumbrancer from any action or suit under this Declaration. After the expiration of one (1) year following the issuance of a building permit therefor by municipal or other governmental authority, any structure, work, improvement or alteration shall, as to any purchaser or encumbrancer in good faith and for value and as to any title company which shall have insured the title thereof, be deemed to be in compliance with all the provisions hereof unless a notice of noncompliance executed by the Homeowners Association shall have appeared of record in the office of the County Recorder of Ada County, State of Idaho, or unless legal proceedings shall have been instituted to enforce completion or compliance.

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

ARTICLE XI: INSURANCE AND BOND

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

Handwritten signature:
Cheryl [unclear]
[unclear]
[unclear]

- A. A multi-peril-type policy covering any Common Area improvements, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).
- B. A comprehensive policy of public liability insurance covering all of the common areas, commercial spaces and public ways in the properties. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of a Dwelling Unit Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. If the properties contain more than one hundred (100) Units, coverage shall be for at least \$1,000,000 per occurrence, for personal injury and/or property damage.
- C. Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

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

- A. Liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control Committee and other committees as may be appointed from time to time by the Board of Directors of such association in such amount as may be reasonable in the premises.
- B. The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the properties, including any personal property of the Association located thereon, its directors, officers, agents, employees and association funds.

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

- A. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgages.

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

ARTICLE XII: CONDEMNATION

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

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

Section 3. Apportionment: The condemnation award shall be apportioned among the Owners having an interest in the condemned Common Area equally on a per-Lot basis. The Association shall, as soon as practicable, determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts, one account for each Lot. Each such account shall remain in the name of the appropriate Association and shall be further identified by Lot number and the name of the Owner thereof. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens and the balance remaining to each respective Owner.

ARTICLE XIII: MORTGAGEE PROTECTION

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

- A. The Association shall maintain an adequate reserve fund for the performance of its obligations, including the maintenance, repairs and replacement of those common elements and improvements thereon, and such reserve shall be funded by at least quarterly assessments.
- B. The holders of First Mortgages shall have the right to examine the books and records of any Association and to require annual reports or other appropriate financial data.
- C. Any management agreement for the Properties or Common Area, or any other contract providing for services of the developer, sponsor or builder, shall be terminable (i) by the contracting Association for cause upon thirty (30) days' written notice thereof, and (ii) by either party without cause and without payment of a termination fee on ninety (90) days' or less written notice thereof, and the term of any such agreement shall not exceed one (1) year.
- D. Any lien which the Association may have on any Dwelling Unit for the payment of assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any Mortgage on the Unit recorded prior to the date notice of such assessment lien is duly recorded.
- E. Unless all institutional holders of First Mortgages have given their prior written approval, no Association shall:
 - 1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area property owned, directly or indirectly, by such Association for the benefit of the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area property shall not be deemed a transfer within the meaning of this clause.)
 - 2. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.
 - 3. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the maintenance of the Common Area property, party walls, or common fences and driveways, or the upkeep of lawns and plantings in the subdivision.
 - 4. Fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

5. Use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.
6. Amend materially this Declaration, the Association's Articles of Incorporation, or its Bylaws.

ARTICLE XIV: GENERAL PROVISIONS

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

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

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

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

IN WITNESS WHEREOF, Declarant has caused its name to be hereunto subscribed this 1 day of Dec., 2000.

DECLARANT:
West Dalton, LLC, an Idaho limited liability Company

By Ronald D. Sargent
Ronald D. Sargent, Manager

STATE OF IDAHO)
 : ss.
County of Ada)

On this 1 day of Dec., 2000, before me, the undersigned Notary Public in and for said State, personally appeared Ronald D. Sargent, known or identified to me to be the Manager of West Dalton, LLC, an Idaho limited liability company that executed the within instrument, or the person who executed the instrument in behalf of said limited liability company, and acknowledged to me that such limited liability company 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.

Jason G Smith
Notary Public for Idaho
Residing at ADA
My Commission Expires 9-26-05

