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BONNEVILLE COUNTY RECORDER

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INSTRUMENT NO.	1029849
DATE	8-28-00
INST. CODE	927
IMAGED PGS	8700
FEE	81.00
STATE OF IDAHO) COUNTY OF BONNEVILLE) ss	
I hereby certify that the within instrument was recorded.	
Ronald Longmore, County Recorder	
By	<u>W.K. Bligg</u> Deputy
Request of	FATCO

DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS FOR

SOUTHPOINT DIVISION NO. 1

THIS DECLARATION is made effective on the 28th day of August, 2000, by PARK TAYLOR, L.L.C., an Idaho Limited Liability Company, hereinafter collectively referred to as "Declarant".

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

SOUTHPOINT DIVISION NO. 1 an addition to the City of Idaho Falls; being a portion of Government Lot 4, Section 6, T.1N., R.38E. B.M., and a parcel of deeded right-of-way located in the SW 1/4 of Section 31, T.2N., R.38E., B.M., Idaho Falls, Bonneville County, Idaho; according to the plat thereof recorded as Instrument No.: 1027482, in the records of Bonneville County, Idaho, on July 26, 2000.

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

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant's right to carry out and complete the

This instrument filed as an accommodation only. It has not been examined as to it's execution, insurability or affect on title.

FIRST AMERICAN TITLE CO.

P. O. Box 3432

Idaho Falls, Idaho 83403 misc

development of the Property and to construct improvements thereon, nor Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, nor Declarant's right to post signs incidental to construction, sales or leasing.

ARTICLE I

DEFINITIONS

1.1 "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended.

1.2 "Assessments" shall mean those payments required of Owners and Association Members including regular, special, limited and such Assessments of the Association as further defined in this Declaration.

1.3 "Association" shall mean and refer to SouthPoint Homeowners Association, Inc., a non-profit Idaho corporation, its successors and assigns. The Association shall include, when the context requires, its Board of Directors, officers and other authorized representatives and agents as the same, or any of them, may from time to time be constituted.

1.4 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and Regulations, and procedural matters for use in the conduct of business of the Association.

1.5 "Beneficiary" shall mean a mortgagee under a mortgage or beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgage, beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property on the Property.

1.6 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

1.7 "Building Lot". The term "building lot" shall mean and refer to any parcel of real property shown on a recorded Plat or map, any approved Preliminary Plat or



otherwise described in a recorded instrument, which is identified as an individual lot to be used as a single family residential building site within the entire SouthPoint addition including any phase or division thereof whether or not actually annexed by the Association. The term "building lot" shall also include any "Unit" when such is platted and capable of being sold as a single family residence. A "Building Lot" does not include any lot designated as a common area, landscape easement, open space or pedestrian access which is designated as such on the subdivision plat or specified as being owned by the Association.

1.8 "Bylaws" shall mean the bylaws of the Association.

1.9 "Common Area" shall mean all real property within the Property in which the Association owns an interest and which is held for the common use and enjoyment of the owners or for betterment of the Property and shall include any landscape, open space, pedestrian access or utility easement designated on any Plat related to the Property.

1.10 "Committee" shall mean the Architectural Control Committee described in Article V hereof.

1.11 "Declaration" or "Amended Declaration" shall refer to this declaration as hereafter amended and supplemented from time to time, and as recorded in the records of Bonneville County.

1.12 "Declarant" shall mean and refer to the PARK TAYLOR, L.L.C., an Idaho Limited Liability Company or its successors and assigns.

1.13 "Detached Structure" shall mean any roofed structure with permanent supporting walls or pillars on any Lot which is detached from the Unit on such Lot.

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

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

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

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

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

1.19 "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 Property, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

1.20 "Plat" shall mean the recorded Plat of SouthPoint Division No. 1, and any other recorded Plat pertaining to the real property described in Exhibit A and the recorded Plat of any other Properties annexed hereto. Any such plat and the specifications therein are incorporated and made a part of this Declaration by this reference.

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

1.22 "Set Back" shall mean the minimum distance between the dwelling unit or other structure referred to and a given street, road or Lot line.

1.23 "Unit" shall mean the one single family dwelling which may be situated upon a Lot.

ARTICLE II

GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS

2.1 Land Use and Building Type. No Lot shall be used except for residential purposes, and no Lot shall be used for the conduct of any trade or business or professional activity. Notwithstanding the foregoing, the Board may, in its discretion

after request by an Owner, allow an Owner to conduct a garage sale upon such Owner's Lot.

Except as specifically provided otherwise in this Declaration or any Supplemental Declaration, no improvements shall be erected, altered, placed or permitted to remain on any Lot other than one designed to accommodate no more than one (1) single-family residential dwelling. Notwithstanding the foregoing, the Committee may, in its discretion after request by an Owner, allow an Owner to place a Detached Structure which the Committee determines to be architecturally and aesthetically compatible with any Unit on the Lot.

2.1.(a) Size Limitations. Split level and two (2) story Units shall have not less than 2,500 square feet of interior floor area, exclusive of porches and garages of which at least 1250 square feet shall be ground level floor area. Single-level Units shall have not less than 1,800 square feet of interior floor area on the ground floor of the main structure, exclusive of porches and garages. No Unit higher than split level or two (2) story shall be permitted.

2.1.(b) Garages. Each Unit constructed on the Property shall include at least a two (2) car, enclosed garage as an attached, integral part of the Unit structure. No garage door on any attached or detached structure shall exceed ten (10) feet in height measured from the ground level.

2.1.(c) Roofing. The roof of each Unit shall, at a minimum, be 25-year (or better) architectural grade shingle, tile or shake with at least a 5/12 pitch. Roof color shall be subject to approval by the Committee.

2.1.(d) Chimneys. All chimneys on a Unit shall have chimney enhancer caps.

2.1.(e) Mailboxes. All mailboxes shall be subject to U.S. Postal Services Rules and Regulations and will be clustered.

2.2 Architectural Control. No Improvements which will be visible above the ground or which will ultimately affect the visibility of any above ground Improvement shall be built, erected, placed or materially altered on the Property, including without limitation, change of exterior colors or materials, unless and until the building or other plans, specifications, and a plot plan thereof have been reviewed in



advance by the Architectural Control Committee and the same have been approved by the Committee. The Committee may, in its reasonable discretion, approve or disapprove such Improvements based upon all relevant factors, including without limitation: design and style, mass and form, value, topography, setback requirements, exterior color and materials, and such Improvements, physical or aesthetic conformity to surrounding terrain and the other Improvements on the Property. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the Improvements. This Declaration is not intended to serve as authority for the Architectural Control Committee to control the interior layout or design of buildings except to the extent incidentally necessitated by use and size requirements.

2.3 Maintenance: Owners Obligations. No Improvements, including, but not limited to mail boxes and landscaping, shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair by the Owner thereof. In the event that any Owner shall permit any such improvement, including trees and landscaping, to fall into a state of disrepair or to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of said Lot, shall have the right to correct such condition, and to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth herein. The Owner of the offending Lot shall be personally liable, and his Lot may be subject to a lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as regular Assessments.

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

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

costs incurred by the Association and the Association shall have the lien rights set forth above to enforce payment of the same.

2.4 Set Back Requirement for Buildings. All Units and Detached Structures shall be subject to a front, back and side yard set back requirement; which set back hereby restricts the location of any such building or structure any closer to a Lot line than the minimum set back restriction stated herein, or the Plat or as otherwise required by applicable law or ordinance including the zoning ordinance of the City of Idaho Falls.

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

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

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

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

2.9 Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose and provided that the keeper of such pets complies with all state, city and county laws, rules and regulations related thereto. No dog runs or kennels shall be permitted to be kept or placed within five (5) feet of a setback line where applicable. Dog runs or kennels shall only be permitted to be placed and maintained at the rear of dwellings and in no event



shall such structure be visible from a street. All such kennels or facilities shall comply with all applicable laws and rules.

2.10 Refuse Storage and Disposal. No rubbish, trash, garbage, refuse or debris shall be placed or allowed to remain on the Property except trash kept and maintained within the interior of a Unit in sanitary containers. All such material shall only be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean, neat and sanitary condition.

2.11 Sidewalks, Curb Cuts and Parking Strips. The Developer and/or Declarant shall install curb and gutter for the Lots. Each Owner of a Lot (including any subsequent Owner, whether acquired from the Declarant or not) shall be responsible to install and maintain the curb cut to his private driveway.

Each Owner shall be responsible to install and maintain a landscaped parking strip which shall extend six (6) feet wide from the curbing line and extending the entirety of the Lot line bounded by curbing; excepting any curb cut which conforms to the requirements and ordinances of the City of Idaho Falls. Each Owner shall plant and maintain a minimum of two (2) trees within such parking strip of a type and size designated by the Architectural Control Committee.

Each Owner shall be responsible to install and maintain a hard surface sidewalk five (5) feet wide, running parallel to the parking strip and extending across the entirety of the lot adjacent to any public street. Such sidewalks are designated for pedestrian access and right-of-way and each Lot is subject to an easement therefore as described in the recorded Plat.

Curb cuts, parking strips and sidewalks shall be constructed and installed contemporaneously with other Improvements to a Lot and shall be completed within the same time requirements as any other permanent Improvements.

2.12 Sewer and Water. Domestic water and sewage disposal are provided by the City of Idaho Falls. All dwellings, Units or Improvements must be connected to and use, City of Idaho Falls water and sewage disposal service and pay all fees, costs and expense related to such service. No individual sewage disposal systems, private wells or water systems are allowed.

2.13 Construction by Declarant. Declarant reserves the right to construct Units and make other Improvements upon any Lot and to offer the same with completed structures thereon for sale to individual Owners.

2.14 Boats, Campers and Other Vehicles. No boats, trailers, tractors, recreational vehicles (including but not necessarily limited to campers, motorhomes, or similar vehicles or equipment) dilapidated, unrepaired or unsightly vehicles or similar equipment, or trucks (working or non-working) with a gross vehicle weight rating (GVWR) greater than 11,500 pounds shall regularly be parked or stored on any portion of the Property (including streets and driveways) unless enclosed by a structure or screened from view in a manner approved, in writing, by the Architectural Control Committee.

Notwithstanding the foregoing, any boat, camper, trailer or recreational vehicle which is in good repair and working order may be stored on the side yard of a Lot between the front and rear yard setbacks if screened by a six foot (6') fence. Provided, however, such storage may not be located adjacent to the street on a corner Lot. Any storage pad must be surfaced with concrete or asphalt.

2.15 Latrine and Bath Facilities. All bathrooms, sink and toilet facilities shall be inside residential buildings and shall be connected by underground pipes directly to the City of Idaho Falls sewer and water system.

2.16 Antennae and Satellite Receivers. No television antennae, satellite receiver, radio tower, or radio aerial shall be installed on the Property, other than within the interior of a Unit, unless prior written approval has been secured from the Architectural Control Committee as to both location and size.

Satellite receivers are permitted but must be located in the back yard of a single-family residence. Receiver dishes may be mounted on a dwelling unit only on the rear portion thereof so as to be out-of-sight to the degree reasonably possible and must be mounted no higher than the eave-line of the roof. If a receiver is pole-mounted, then the pole height shall not exceed six (6) feet.

2.17 Hazardous Activities. No activity shall be conducted on or in any Unit or Lot which is or might be unsafe or hazardous to any person, the Property or any other tangible item of value. Without limiting the generality of the foregoing, no firearms shall be discharged upon said Property and no open fires shall be lighted or permitted on any property except in a self-contained barbecue unit while attended and in use for



cooking purposes, or with a safe and well-designed interior fireplace, except such controlled and attended fires required for clearing or maintenance of land.

2.18 Unsightly Articles. No unsightly articles shall be permitted to remain on any Lot as to be visible from any other portion of the Property. Without limiting the foregoing, no clothing or household fabrics shall be hung, dried or aired in such a way as to be visible from any other Lot or any Common Area. No lumber, grass, shrub or tree clippings, plant waste, compost piles, metals, building materials or scrap or other similar material or articles shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view as approved, in writing, by the Architectural Control Committee.

"Screened" is defined as being concealed, at eye level, from any Common Area or Lot other than that containing the screened material.

2.19 Construction. During the course of actual construction of any permanent Improvements, the restrictions contained in this Declaration and any supplemental declarations shall be deemed waived to the extent necessary to permit such construction, provided that during the course of such construction nothing shall be done which will result in a violation of these restrictions upon completion of construction. All construction shall be diligently prosecuted to completion, continuously and without delays. Construction shall commence within one (1) year of the purchase of any Building Lot and shall be substantially completed within one (1) year from commencement of construction unless an extension is approved by the Architectural Control Committee. Extensions of time shall be at the sole discretion of the Architectural Control Committee which may require the Owner to at least complete landscaped parking strips and sidewalks within 120 days of the date any extension of time is granted by the Committee.

2.20 Fences. All fences must be of a material, type and color approved in advance by the Committee. No fences are allowed within any front yard set back area.

2.21 Plat Conditions. All covenants and conditions for SouthPoint Division No. 1, and all Plats for subsequent annexations thereto, restrictions, easements and other matters set forth on such Plats are hereby incorporated by this reference and notice is hereby given as to the same.

2.22 Landscaping and Landscaping Plan. Each Lot shall be landscaped by the Owner thereof within ninety (90) day of the occupancy of the Unit thereon weather



permitting. Landscaping plans shall be submitted to and approved by the Architectural Control Committee. The failure of the Owner to timely comply with this landscaping requirement shall constitute a failure to perform maintenance and the Association or Declarant may thereupon invoke those rights and remedies provided in this Declaration.

2.23 Light, Sound and Odor. No light which is unreasonably bright or causes unreasonable glare shall be emitted from any Lot. No sound shall be emitted from any Lot which is unreasonable loud or annoying, and no odors shall be emitted from any Lot which are noxious or offensive to others.

2.24 Detached Structures. No Detached Structure shall be constructed or located on any Lot, unless the Committee, upon request by the Owner allows such construction or location after determining the Detached Structure is architecturally and aesthetically compatible with the Unit on the Lot and will otherwise be compatible with other improvements within the property.

2.25 Dumping. No excavation material, grass or yard clippings, rubbish, trash, garbage, refuse or debris shall be placed or allowed to remain on any vacant or unimproved Lot. No discharge shall be made into any common drainage structure or any portion thereof. The Owner of any Lot who dumps such material or makes a discharge into a common drainage or such canal shall be liable for all cleanup and/or removal costs and any damage to the Property caused thereby.

2.26 Quality of Improvements. All Improvements within the Properties shall be designed, built and constructed in accordance with any and all applicable building codes, rules, regulations, zoning ordinances, use restrictions and any applicable annexation agreements.

ARTICLE III

SOUTHPOINT HOMEOWNERS ASSOCIATION

3.1 Organization of Association. SouthPoint Homeowners Association, Inc. ("Association") is an Idaho corporation formed under the provisions of the Idaho Nonprofit Corporation act and shall be charged with the duties and invested with the powers prescribed by law and set forth in its Articles and Bylaws and in this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.2 Membership. Each Owner within the meaning of the Declaration (including the Declarant), by virtue of being such an Owner and for so long as such ownership is maintained, shall be a Member of the Association. Where title to a Lot is held by more than one person or entity, membership relating to the Lot shall be shared by all such persons in the same proportion and in the same manner as title to the Lot.

3.3 Assignability of Membership Interest. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and all memberships in the Association shall be appurtenant to the Lot owned by such Owner. The memberships in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to a Lot and then only to the transferee of title to said Lot.

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

3.4.(a) Class A. Class A members shall be the Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

3.4.(b) Class B. The Class B member shall be Park Taylor, L.L.C., an Idaho Limited Liability Company. Upon the recording hereof, Park Taylor 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 January 1, 2025, or upon the sale of all Lots owned by Park Taylor in any phase or division of the SouthPoint addition as may appear on any Plat or approved Preliminary Plat, whichever event shall first occur.

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



3.6 Powers and Duties of the Association.

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

- (i) Assessments. The power to levy assessments (initial, annual, special and limited) on the Owners of Lots and to enforce payment of such assessments, all in accordance with the provisions of this Declaration.

- (ii) Common Areas. The power to acquire, own or control all landscape easements, and Common Areas in the Properties, to maintain the same for the benefit of the Properties, to levy assessments and pay and provide for the maintenance of said Common Areas, and to take all necessary and proper action to provide for the management and use of the same.

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

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



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

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

(vii) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through or under the Common Areas or any landscape easement as may be necessary or appropriate for the orderly maintenance, preservation, and enjoyment of such Common Areas and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, servicing, operating or maintaining underground lines, cable, wires, pipes, conduits, and other devices for the transmission of any utility service or other public or quasi-public service.

(viii) Landscape Easements. The power to control, administer and maintain vegetation on, aesthetic quality of and the means and manner of water distribution to all landscape easements running in favor of the Association and the power to take all measures necessary to control, administer and maintain the same.

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

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



A. Directors and officers liability insurance if the Board so elects.

B. Such other insurance, including but not necessarily limited to workers compensation insurance to the extent necessary to comply with all applicable laws.

C. Any liability, casualty or other insurance the Board may deem necessary to carry out the Association functions or to insure the Association against any loss.

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

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

(ii) Rule Making. Make, establish, promulgate, amend and repeal the Association Rules.

(iii) Architectural Control Committee. Appoint and remove members of the Committee, upon the conditions specified in this Declaration.

(iv) Rights-of-Way and Pedestrian Accesses. Maintain, repair and replace any landscaping, fencing, or other Improvements located on or within the Properties and designated as pedestrian accesses, walkways, paths or open spaces.

(v) Common Areas. Maintain, operate, repair, and provide for the use and management of all Common Areas, storage facilities, screening fences, subdivision entrances, and recreational facilities within the Properties.

(vi) Landscape Easements. Provide, maintain and protect the vegetation on, and aesthetic quality of landscape easements, and to provide, maintain and repair water delivery systems necessary to nurture such vegetation and create and maintain such aesthetic quality.

3.7 Personal Liability. No member of the Board or any committee of the Association (including but not limited to the Architectural Control Committee) or any officer of the Association, or the Declarant, or the manager, if any, shall be personally liable to any Owner, or any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Declarant or the Architectural Control Committee, any other committee or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

ARTICLE IV

COVENANT FOR MAINTENANCE AND ASSESSMENTS

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

4.1.(a) Annual regular Assessments or charges;

4.1.(b) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided; and

4.1.(c) Limited Assessments as hereinafter provided.

The regular, special and limited 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 person who was the Owner of such property at the time when the



Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successor in title unless expressly assumed by such successor.

4.2 Purpose of Assessments.

4.2.(a) Regular Assessments. The regular Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of landscaped areas maintained by the Association, including but not limited to landscape easements, to pay property taxes and other assessments, to maintain, operate and improve any Common Areas, and to pay other reasonable costs and expenses which are incurred by the Association in carrying out the duties and business of the Association.

4.2.(b) Special Assessments for Capital Improvements. In addition to the annual regular Assessments authorized above, the Association may levy, in any assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, costs and expenses of the Association which exceed the regular Assessments, provided that any such Assessment shall be approved by a majority vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

4.2.(c) Limited Assessments. Limited Assessments may be levied against any Owner in an amount equal to the costs and expenses incurred by the Association, including legal fees, for corrective action necessitated by such Owner, and, further including without limitation, costs and expenses incurred for the repair and replacement of any property maintained by the Association damaged by negligent or willful acts of any Owner or occupant of a Lot who is occupying the Lot with the consent of such Owner, or for maintenance of landscaping performed by the Association which has not been performed by Owner as provided herein.

4.3 Initial Assessment. Each owner shall pay an initial regular Assessment in the amount of Two Hundred Fifty and No/100ths Dollars (\$250.00) to join the Association; together with an additional amount equal to the first regular annual

assessment prorated to the date of conveyance. Payments shall be due upon conveyance of a Lot to an Owner by the Declarant and shall be collected at closing.

4.4 Maximum Annual Regular Assessment. The amount of the regular annual Assessment to be assessed by the Association, shall be Two Hundred Forty and No/100ths Dollars (\$240.00) per Lot per year.

4.4.(a) The maximum annual Assessment may be increased by the Board each year by not more than ten percent (10%) above the maximum Assessment for the previous year without a vote of the membership of the Association as provided below.

4.4.(b) The maximum annual Assessment may be increased above ten percent (10%) by a majority vote of each class of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

4.4.(c) The Board of Directors of the Association may fix the amount of the annual Assessment at an amount not in excess of the maximum as established from time to time.

4.4.(d) The total annual regular Assessment levied against the Lots owned by the Declarant, shall be the lesser of (a) the amount of the regular assessment per Lot multiplied by the number of lots owned by the Declarant or (b) the difference between the total annual Assessment levied against Lots owned by parties other than the Declarant, and the reasonable expenditure of the Association for the purposes described in Section 4.2.(a) for the fiscal year. In the event the annual reasonable expenditures of the Association do not exceed the amount of the annual regular assessment per Lot multiplied by the number of Lots owned by parties other than the Declarant, then the Declarant shall owe no regular assessment for the Lots then owned by the Declarant.

4.5 Notice and Quorum for any Action Authorized Under Section 4.2.(b) and 4.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.2.(b) and 4.4 shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) 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 forty percent (40%) of all the votes of each class of membership. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

4.6 Uniform Rate of Assessment. Except as otherwise specifically provided herein, both annual and special Assessments must be fixed at a uniform rate for all Lots and may be collected on an annual or other basis as determined by the Association from time to time.

4.7 Date of Commencement of Annual Assessments - Due Dates. The annual regular Assessments or any special Assessments then in effect, as provided for herein, shall commence as to a Lot or Lots on the first day of the first year following the conveyance of the Lot or Lots from Declarant to an Owner or Owners. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

4.8 Effect of Non-payment of Assessments - Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of eighteen percent (18%) per annum. 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.

4.9 Association Lien for Unpaid Assessments. A lien shall attach to each Owner's Lot and all real property situated thereon for unpaid Assessments and interest accruing thereon as set forth herein.

4.10 Association Lien Subordinate to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. (Mortgage as used in this context includes conventional mortgages and Deed of Trust



arrangements). However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payment which became due prior to such sale or transfer but shall not extinguish personal liability of the seller or any lien for assessments due after transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

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

<u>Name</u>	<u>Address</u>
Gary L. Voigt	1908 Jennie Lee Drive Idaho Falls, Idaho 83404
Eric C. Guanell	1908 Jennie Lee Drive Idaho Falls, Idaho 83404
Gary Patrick	1908 Jennie Lee Drive Idaho Falls, Idaho 83404

Each of said persons shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein.

5.2 Right of Appointment and Removal. At any time Declarant is the Owner of at least one (1) of the Lots, Declarant shall have the right to appoint and remove two (2) members of the Committee. Thereafter, the Board of Directors of the Association shall have the power to appoint and remove all members of the Committee. Members of the Committee may be removed at any time, without cause.

5.3 Review of Proposed Construction. The Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval



pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. The Board shall have the power to determine, by rule or by written designation consistent with this Declaration, which types of improvements shall be submitted to the Committee for review and approval. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of any structure affected thereby and will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The maintenance of property values is a primary objective hereof. The Committee may make provision in its rules and guidelines for implementation and maintenance of value standards that will carry out such intent.

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

5.3.(b) Committee Rules and Fees. The Committee also may establish, from time to time, rules and/or guidelines setting forth procedures for the required content of the applications and plans submitted for approval. Such rules may require a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee shall determine the amount of such fee in a reasonable manner, provided that in no event shall such fee exceed One Hundred Fifty Dollars (\$150.00). Such fees shall be used to defray the costs and expenses of the Committee or for other purposes established by the Board.

Such rules and guidelines may establish, without limitation, procedures, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal

enclosures, as well as special architectural guidelines applicable to Lots located adjacent to public and/or private open space.

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

5.3.(d) Committee Decisions. Decisions of the Committee and the reasons therefor shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within thirty (30) business days after filing all materials required by the Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Committee shall have been mailed to the Applicant within thirty (30) business days after the date of the filing of said materials with the Committee. The said thirty (30) day period shall only commence to run when an authorized representative of the Committee has executed an applicable form acknowledging acceptance of such application and acknowledging that such application is complete.

5.4 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing, designate a Committee Representative (who may, but not need be, one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 5.9. In the absence of such designation, the vote of any two (2) members of the Committee, or the written consent of any two (2) members of the Committee taken without a meeting, shall constitute an act of the Committee.

5.5 No Waiver of Future Approvals. The approval by the Committee of any proposals or plans, specifications or drawings for any work done or proposed, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever, subsequently or additionally submitted for approval or consent.



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

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

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

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

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

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



5.9 Variances. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when it deems such action appropriate because of the existence of circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Committee, and shall become effective upon recordation in the Office of the County Recorder of Bonneville County. If such a variance is granted, no violation of the Restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration, for any purpose, except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to, zoning ordinances and Lot setbacks lines or requirements imposed by any governmental or municipal authority.

ARTICLE VI

ANNEXATION OF ADDITIONAL PROPERTIES

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



6.2 Method of Annexation. Annexation of real property authorized under Section 1 hereof shall be accomplished by filing of record in the Office of the County Recorder of Bonneville County, Idaho, a Supplemental Declaration describing the real property to be annexed and extending the plan of this Declaration to such real property.

6.3 Supplemental Declarations. Each Supplemental Declaration contemplated by Section 6.2 hereof may contain such additional or different provisions, covenants, conditions and restrictions not found in the Covenants of this Declaration, provided that such shall not be inconsistent with the general plan of this Declaration. Said additional provisions may include, but need not be limited to, provisions for special maintenance, use restrictions, limited common areas, party walls, parking regulations and any other matters of common concern to owners of any lots in the annexed property. No provisions, covenants, conditions or restrictions contained in a Supplemental Declaration shall be considered applicable to any real property except real property described in a Supplemental Declaration unless otherwise expressly provided.

6.4 Effect of Annexation. Upon the recording of a Supplemental Declaration, all the real property described or covered by the Supplemental Declaration shall be deemed subject to all of the Covenants contained in this Declaration as if, and to the same effect as, the annexed real property was part of the Subject Property (the real property originally specified in and subject to this Declaration) except as specifically stated in the Supplemental Declaration, and to the additional or different provisions, covenants, conditions and restrictions, which may be stated in the Supplemental Declaration; and the Association shall have and shall accept and exercise jurisdiction over such property as a part of the Subject Property. In the event of conflict or inconsistency between a Supplemental Declaration and this Declaration, the terms of the Supplemental Declaration shall prevail as to the particular real property described or covered by that Supplemental Declaration.

ARTICLE VII

EASEMENTS

7.1 Landscape Easements. The Association shall hereby be granted common areas or landscape, open space, pedestrian access and utility easements described on the plat for SouthPoint Division No. 1 and recorded in the records of Bonneville County, Idaho. Said common area or easements shall be for the purpose of promoting the aesthetic quality and value of the Property and shall be maintained by the Association.



7.2 Utility Easements. Easements for installation, use and maintenance of utilities, roads, the irrigation and other support systems are reserved as shown on the recorded plat. Within these easements, no Improvement shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, roads and other support systems. The easement area of each Lot and all Improvements shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible or such easements and/or Common Areas maintained by the Homeowner's Association.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Enforcement. The Association or any Owner, shall have the right to enforce, by 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.

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

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

8.4 Term and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument signed by seventy-five percent (75%) of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. This Declaration may be amended, restated, replaced, terminated or superseded during the first thirty (30) year period by an instrument signed by the President and Secretary of the Association affirming that such amendment was approved by a two-thirds (2/3) vote of each class of members. Provided, however, that if Declarant is still the Owner of any Lots the provisions of Article V may not be amended without the written consent and vote of the Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 28th day of August, 2000.

PARK TAYLOR, L.L.C.

By: 
GARY L. VOIGT
Managing Member

STATE OF IDAHO)
) ss.
County of Bonneville)

On this 28th day of August, 2000, before me, PATRICIA A. DAVIS, a Notary Public in and for said State, personally appeared GARY L. VOIGT, known or identified to me to be a managing member of PARK TAYLOR, L.L.C., an Idaho limited liability company, the limited liability company that executed the foregoing instrument or the person who executed the within and foregoing instrument on behalf of the limited liability company, and acknowledged to me that such limited liability company executed the same in said limited liability company's name.

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


Notary Public for Idaho
Residing at: Idaho Falls
My Commission Expires: 11-18-04

