

**DECLARATIONS ESTABLISHING
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
MUIR WOODS SUBDIVISION
PHASES 1, 2, 3 & 4
AMENDED APRIL 30, 2007**

ARTICLE I- RECITALS

WHEREAS, the undersigned officers of the Board of Directors (hereafter "Board") of Muir Woods Homeowners Association (hereafter MWHO) representing owners of certain land in Ada County, Idaho more particularly described as Muir Woods Subdivision, Phases 1, 2, 3, & 4 (hereafter "Muir Woods Subdivision");

WHEREAS, the Property shall be developed for Residential uses as defined in the ordinances of Ada County, Idaho,

WHEREAS, MWHO desires to subject Muir Woods Subdivision to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitude herein set forth to ensure the proper design, development, improvement and use of the Muir Woods Subdivision by MWHO and all other persons or entities who may subsequently acquire an interest in the Muir Woods Subdivision.

ARTICLE II – DECLARATIONS

MWHO hereby declares that the Muir Woods Subdivision described on Exhibit A, B, C and D each lot, tract or parcel thereof (hereafter called "Lot" unless specified to the contrary), is and has been held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements, reservations, limitations and equitable servitude (hereafter collectively called "covenants 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 Muir Woods Subdivision Property and each Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and conditions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in Muir Woods Subdivision or any lot therein; and shall inure to the benefit of and be binding upon MWHO and each Owner; and each successor in interest of each, and may be enforced by MWHO and by any Owner, as hereafter provided.

The recording of the Plat by the Developer/Owner shall be deemed and construed as a request for annexation of Muir Woods Subdivision to the corporate limits of Boise City. Such request and consent shall be binding on all subsequent Owners/Developers of Developer's property.

The Owner/s of a lot or lots within Muir Woods Subdivision, shall and hereby does vest in Boise City the right and power to bring all actions against the Owner/s of the premises, or any part thereof, for the collecting of any charges then required and to enforce the conditions herein

stated. This covenant shall run with the land.

ARTICLE III DEFINITIONS

As used in this Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

ACC: The Architectural Control Committee for Muir Woods Subdivision.

Board: The Board consists of 3–9 Directors, members of the MWHO A, who are duly elected by majority vote of the MWHO A.

Building: A structure constructed on a Lot, on a temporary or permanent basis, and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

Declaration: This instrument as it may be amended from time to time.

Muir Woods Homeowners Association: An organization formed to operate the irrigation system, landscaped areas and any common areas which lie within the boundaries of Muir Woods Subdivision and any other duties as provided for in the Articles of Incorporation.

Management Firm: A professional firm which has been retained by the Board to conduct the day to day business of the Association and acting at the direction of the Board.

Improvements: All structures and appurtenances thereto of all kinds and types, including, but not limited to: buildings, roads, driveways, sidewalks, walkways, walls, fences, screens landscaping, poles, signs, and lighting. Improvements shall not include those items which are located totally on the interior of a building and cannot be readily observed when outside thereof.

Lot: A portion of Muir Woods Subdivision which is a legally described tract or parcel of land within Muir Woods Subdivision or which is designated as a lot on any recorded subdivision plat relating to Muir Woods Subdivision.

Mortgage: Any mortgage or deed of trust or other hypothecation of land, located in Muir Woods Subdivision, to secure performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Declaration shall be limited to "first Mortgage", including a "First Deed of Trust".

Occupant: Any person, association, corporation, or other entity who or which is an Owner, or has leased, rented, been licensed or is otherwise legally entitled to occupy and use any building or improvement on a Lot, whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, holding fee simple title to a lot in Muir Woods Subdivision including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including an Mortgagee (of and priority) or other security holder, provided said Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through

such mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Plat: A final subdivision plat covering any real property in Muir Woods Subdivision, as recorded in the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Residential Lot: A Lot for the use of which shall be for a single-family residential purpose and uses incidental thereto as limited by this Declaration as described in the plat of Muir Woods Subdivision.

Subdivision: The whole of the land described on Exhibit A, which describes the Lots covered by these Declarations. A reference in this Declaration to Muir Woods Subdivision shall include all Lots shown on the Plat for Muir Woods Subdivision.

ARTICLE IV PURPOSE

Muir Woods Subdivision is hereby made subject to the covenants and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to ensure proper design, development, improvement, use and maintenance of Muir Woods Subdivision for the purpose of:

- (a) Assuring Owners and Occupants of building of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and improvements.
- (b) Prevention of the erection in Muir Woods Subdivision of improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- (c) Encouraging and assuring the erection of high quality and attractive improvements appropriately located within Muir Woods Subdivision.
- (d) Securing and maintaining proper set-backs from streets and adequate free spaces between improvements.
- (e) Designating and maintaining open space areas to maintain and enhance the environment.

ARTICLE V PERMITTED USES

Section 5.01 Use: The Lots within Muir Woods Subdivision shall be used for residential purposes only.

Section 5.02 Approval of Use and Plans: No improvements shall be built, constructed, erected,

placed or materially altered within Muir Woods Subdivision after the date of this Declaration, unless and until the plans, specification, and site plan therefore have been reviewed in advance and approved by the ACC in accordance with the provisions of Article VI, below.

Section 5.03 Prohibited Buildings: No trailer or other vehicle, tent, shack, garage, accessory building or out building on a Lot shall be used as a temporary or permanent residence.

Section 5.04 Setbacks-Residential Lots: Notwithstanding the provisions herein regarding setbacks, if the applicable ordinances of the governmental entity having jurisdiction over Muir Woods Subdivision require setbacks different than those provided herein, the more restrictive shall control.

Any building constructed on a residential Lot shall comply with the minimum setbacks as defined in the ACC Guidelines which shall be published and made available by the Management Firm.

PROVIDED, HOWEVER, that the following special terms and conditions regarding front line setbacks shall apply:

(a) For Block 1, Lots 3-19, inclusive, the front lot line set backs shall be twenty-five (25) feet for curved or radius driveways, or thirty (30) feet for straight approach driveways;

(b) For all lots, the maximum width of concrete driveways at the end contiguous to the edge of the sidewalk bordering the front lot line shall not exceed thirty (30) feet.

Any variance to setbacks must have ACC written approval.

As used herein and elsewhere in this Declaration, "front yard" shall mean that area on a residential Lot from the right-of-way line, as shown on the Plat, to a line created by the front of the residential dwelling on the Lot extended to each side lot line.

Section 5.05 Easements: There is hereby reserved for the use and benefit of MWHOA and granted for the use and benefit of each Lot, and benefit of each Owner and Occupant and their successors and assigns, for the purposes incident to such use, development, and maintenance of Muir Woods Subdivision an easement(s) for the installation and maintenance of public utility facilities of all kinds, including radio, television and transmission cables, the easements designated on the recorded Plat.

Section 5.06 Commercial Use: No Lot shall be used at any time for commercial or business purposes except for uses which shall be conducted and maintained solely within a residential dwelling unit located on a Lot. No signs relating to said business activity shall be displayed where visible from any public or private road within Muir Woods Subdivision and, provided further, that the principal use of each Lot shall be as provided for in Section 5.01 above.

Section 5.07 Street and Other Lighting: Exterior lighting and interior lights reflecting outside shall be placed in such a manner which will minimize glare and excessive light spillage onto neighboring Lots. Until annexation occurs, all exterior public street lights shall be maintained and operated by the Association.

Section 5.08 Animals/Pets. No animals, birds, insects, pigeons, poultry or livestock shall be

kept on the Property. No swine or goats will be permitted. Up to two (2) domesticated animals such as dogs or cats, or other household pets which do not unreasonably bother or constitute a nuisance to others shall be allowed. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs shall be considered a nuisance. In the event an Owner constructs or maintains a kennel or other restraining area upon a Lot, such shall: (1) be located on a Lot in a manner to avoid an endangerment of or nuisance to adjacent Lot owners and , (2) at all times be kept in a clean and odor-free condition.

Section 5.09 Drilling and Exploration: No oil exploration or development of any kind or nature of mining exploration, or any structures in connection therewith shall be permitted to be erected, maintained or used on any Lot and no minerals shall be permitted to be mined or extracted on any lot.

Section 5.10 Signs: No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for sale by displaying a single, neat and reasonably sized sign on a Lot. Other temporary signs advertising the name of the builder or the name of the institution providing financing may be displayed on a Lot during the construction of improvements. All lighted, moving or flashing signs for any purpose are prohibited.

Section 5.11 Subdividing: Except as specifically provided in this Declaration to the contrary, no Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling a Lot to more than one person to be held by them as tenants in common; joint tenants, tenants by the entirety or as community property or require the approval of the ACC.

Section 5.12 Fences: No fence of any kind shall be constructed on any Lot unless the plans and specifications thereof, including the location, material and color thereof, have been approved in writing by the ACC prior to construction or installation. No fence or hedge located on a Lot shall have a height greater than six (6) feet above the surface of the ground upon which it is located. The construction or maintenance of spite fences or spite trees or shrubs shall be prohibited on all Lots. All fences shall be constructed in a substantial manner and shall be maintained at all times in good repair. All new fences constructed as boundary fences shall be wood as determined by the ACC, it being the intent of the ACC to require uniformity in new boundary fencing to the extent reasonably possible. No fences shall be allowed in the front yard of a Residential Lot. It is the intent of the Grantor that the ACC shall have the authority to regulate all new fences within Muir Woods Subdivision, Phases 2, 3, & 4 to the end that the locations, type and size of each fence and the material used therein shall, to the extent possible, present a reasonably coordinated appearance. All rear fences on lots bordering the common park area will be provided by the Developer. No additional fencing will be allowed in this area. Screening devices may be installed so long as they are of a screen material so that sight lines are not impaired. Privacy screening fences may be installed; however, such fences must have ACC approval. All fencing adjacent to pathways and through residential Lots shall be fenced in accordance with Boise City micro-path fencing standards.

Section 5.13 Irrigation Water: MWHOA shall provide facilities to deliver irrigation water to the lot line of each Lot via a pump from the pump station. Said facilities are owned and operated by Nampa Meridian Irrigation. To the extent that such is required by the rules of said Nampa Meridian Irrigation, maintenance and operation of the pump and pumping system shall

be the responsibility and cost of MWHO, along with maintenance and care of the common and landscaped areas. Water use shall be on a rotation basis worked out among the users. Distribution system within each Lot shall be the responsibility of each homeowner; provided however, that an Owner of a Lot shall not be individually responsible for the maintenance or operation of any main or service line through said Lot. Irrigation water to the landscaped lots shall be included in the water rotation agreed to by the owners, provided however, that no guarantee is made as to when such irrigation water will be available and the amounts so available. Such availability and volume are dependent on when, and in what quantities, irrigation water becomes available through the servicing canal. The costs and expenses incurred for the operation and maintenance of the irrigation system serving the Lots shall be paid as provided in Article VII, below. Irrigation water is non-potable.

Section 5.14 Sewer Disposal: Public sewers service within Muir Woods Subdivision and each Lot shall be connected to this public system.

- (a) Monthly sewer charge must be paid after connecting to the Boise City public sewer system.
- (b) Owner shall submit to inspection by either the Public Works Department or the Building Department whenever a subdivided lot is to be connected to the City sewage system and a building is constructed or installed on or over the owner's property.

Section 5.15 Maintenance: The following provisions shall govern the maintenance of Lots and all improvements thereon:

- (a) Each Owner of a Lot shall maintain all improvements located thereon in good and sufficient repair and shall keep the improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition. Pending the construction of improvements, each Owner shall keep the Lot in a neat condition and shall not permit an unreasonable accumulation of rubbish and debris and shall keep all weeds and other growths cut.
- (b) In the event all or any portion of the improvements on a Lot are damaged or destroyed by fire or other casualty, including any damage occurring as a result of the exercise of the power of eminent domain, or any transfer in lieu thereof, to an architectural whole in accordance with the requirements of this Declaration.
- (c) A building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals.
- (d) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, reasonably exercised to be offensive or which creates a visual blight within Muir Woods Subdivision, shall be removed or enclosed within a structure approved by the ACC or appropriately screened from public view.

Section 5.16 Nuisances: No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot within Muir Woods Subdivision and no odor shall be permitted to arise there from so as to render any Lot unsanitary, unsightly, offensive or detrimental to any other Lot therein or in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon or from any Lot so as to be offensive or detrimental to

any other lot within Muir Woods Subdivision, or in the vicinity thereof, or to its occupants. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any Lot within Muir Woods Subdivision except for speakers in an outside living area (i.e. patio or gazebo).

Section 5.17 Boats, Campers and Other Vehicles: Any trailer, mobile home, truck larger than a standard pickup, motor home, boat, tractor, vehicle (other than automobiles), campers and garden or maintenance equipment, when not in actual use, shall be kept at all times in an enclosed structure or screened from public view and at no time shall any said vehicles or equipment be parked or stored on a public or private right-of-way within Muir Woods Subdivision, Phases 2, 3, & 4.

Section 5.19 Minimum Area: No building intended for use as a single-family residence shall be erected, altered, placed or permitted to remain on any residential lot, which building contains less than One Thousand Eight Hundred (1,800) square-feet of living area. In the event the building intended for use as a single-family residence contains more than one story, the minimum square footage of the living areas shall be not less than Two Thousand Two Hundred (2,200) square feet and the minimum square footage of living areas of the first floor shall be not less than One Thousand Four Hundred (1,400) square feet. The square footage of living area shall be based on the interior living space at or above the grade of the Lot, exclusive of basements, porches, patios, and garage.

Section 5.20 Construction Standards: The following standards and requirements shall be applicable to the construction and/or installation of any improvements on a residential Lot within Muir Woods Subdivision:

(a) Excavation: Any excavation shall be performed in a workmanlike manner and the lot kept free from debris. Each Owner shall be responsible for the repairing of any damage which may occur during the construction period to any road, mailbox, utility facility or other on-site or of-site improvement caused by the Owner or contractors employed by the Owner. Unless an Owner otherwise notifies the ACC in writing prior to the Owner's commencing of construction on a Lot, all on-site improvements shall be conclusively deemed to be in good working order and condition and any damages occurring thereto during the construction, shall be the responsibility of the Owner. All such repairs required hereunder shall be made immediately following the occurrence of the damage.

(b) Utilities: The connection to all utility facilities shall be underground and shall be inspected and approved by the appropriate governmental entity having jurisdiction thereof and the company providing the utility service, if required. Utility meters shall be placed in an unobtrusive location and concealed behind fences or landscaping where possible.

(c) Landscaping: as a general guideline for the landscaping of each Lot and as shall be shown on the landscape plan to be submitted to the ACC under Section 6.07(c), below, the front yard area of each Lot shall be landscaped with trees, shrubs, and ground cover, or utilized as entryways. Front yard landscaping must be maintained and watered.

(d) Driveways: All driveways must be concrete in construction. Construction of the portions of driveways which are behind the front line of the residential improvements on the property and which are screened from public view may be gravel or asphalt.

(e) Maintenance During Construction: The following requirements shall apply during the construction or improvements on a Lot:

1. All debris shall be removed from the Lot prior to each weekend.
2. No materials shall be placed or kept on any adjoining Lot.
3. Vehicles belonging to workmen or used in the construction of improvements shall not interfere with traffic on public streets:
4. Utilities, including water, shall not be taken from any other Lot without the approval of the Owner thereof;

(f) Time of Work: Any work or other activity in connection with the construction or installation of the improvements on a Lot shall be conducted on such days and at such times during the days as shall not constitute or result in an unreasonable nuisance or annoyance of neighboring Lots.

(g) Roofs: The roof of each building on a Lot shall be covered with a minimum of twenty-five (25) year composition shingles, shakes, or tile and shall be approved by the ACC under Article VI, below.

(h) Qualified Contractor: The construction of each Building on a Lot shall be performed by a qualified general contractor and reasonably experienced in the construction of residential dwelling units and related improvements. No Owner of a Lot shall construct a Building on a Lot, unless such Owner is a qualified general contractor approved by the ACC and possessing the experience provided above.

5.21 Detached Garage/Outbuildings: No more than one detached structure per lot shall be permitted (includes, but not limited to, a garage, outbuilding, or storage shed). The design, location, color, and decor of such building must be of a construction similar to the primary building, and must be approved, in writing, by the ACC, before construction begins. The ACC Subcommittee shall review plans submitted and respond within thirty (30) days.

5.22 Storm Drainage Waters and Areas: All storm drainage facilities within common lots and easements of Muir Woods Subdivision shall be operated and maintained in accordance with the operation manual dated September 13, 2000. The detention pond and surrounding areas are for the storage of storm drainage waters, and any person or entity using said area, including Owners and their guest, invitees, and so forth, do so at their own risk.

ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

Section 6.01 Members of the Committee: The Architectural Control Committee (ACC) shall be comprised of not less than three (3) and not more than nine (9) members, all of whom will be elected equally as members of the Board. The Board of Directors and the Architectural Control Committee shall be one and the same and each shall retain the powers of both in one body.

Section 6.02 Appointment-Removal: The Board/ACC is authorized to appoint an ACC Subcommittee consisting of no less than two (2) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of a

majority of the ACC/Board quorum shall constitute an act of the ACC. Any decision by the ACC Subcommittee may be appealed to the Board/ACC; such appeal is to be submitted in writing to the President of the Board within fifteen (15) days of receiving the ACC Subcommittee's written decision.

Section 6.03 Non-Liability: Neither the ACC, nor any member thereof, shall be liable to any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such application, and every Owner or Occupant of an Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the ACC, or any member thereof, or MWHOA to recover such damages.

Section 6.04 Approval Required: No construction, alteration, modification, removal or destruction of any improvements of any nature whatsoever which materially alters the exterior appearance of the improvements on a Lot, shall be initiated or be permitted to continue or exist within Muir Woods Subdivision without prior express written approval of the ACC.

Section 6.05 Basis or Approval: approval by the ACC shall be based, among other things, on the adequacy of the Lot dimensions; conformity and use of external design with neighboring improvements; the effect of location and use of improvements on neighboring lots; the relationship of the improvements to topography, grade, finished ground elevation and landscaping of the Lot to that of neighboring lots; the proper facing of the main elevation with respect to nearby streets; and the relation of floor elevations to flood elevations as defined by government entities.

Section 6.06 Variances: ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstruction, aesthetics or environmental consideration or hardship may so require. Such a variance must be evidenced in writing, signed by at least two (2) members of the ACC Subcommittee or by the President of the Board, subject to majority vote of a quorum of the Board/ACC. If a variance is granted as provided herein, no violation of this Declaration or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted.

Section 6.07 Application: To request ACC approval for the construction, alteration, modification, removal or demolition of any improvements within Muir Woods Subdivision, the Owner shall submit a written application in a form required by the ACC, which must be signed by the Owner and contain all information requested and be accompanied by other material hereafter provided. This completed application is to be submitted to the Management Firm or to the President of the Board. The ACC shall have the right to require an Owner to pay a fee, not to exceed Two Hundred Fifty Dollars and No Cents (\$250.00) to reimburse the MWHOA for any actual out-of-pocket expenses incurred by the ACC with respect to the review of an application, plans and specifications and/or its decision thereon. Normal applications for plan approval are on a no charge basis. All applications must contain, or have submitted therewith, the following material (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards:

(a) Site Plan: A site plan showing the location of the buildings(s) and all other structures and improvements, including fences and walls on the Lot, Lot drainage and all set backs and other pertinent information relating 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, and detailed exterior specifications which shall be indicated, by sample, if required by the ACC, all exterior colors, materials and finishes, including roofing to be used.

(c) Landscape Plan: A landscape plan for portions of the Lot to be landscaped which shall show location, type and size of trees, plants, ground cover, shrubs, berming, and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways.

(d) Contractor: Such information concerning the qualifications of the general contractor selected by the Owner to construct the building and related improvements on the Lot as shall be reasonably requested by the ACC to permit it to determine whether contractor is qualified and possesses the experience required by Section 5.20(h) above.

Section 6.08 Decision: Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within thirty (30) days after receipt of a properly submitted application. The decision of the ACC can be in the form of an approval, a conditional approval or denial. A conditional approval shall set forth with particularity the conditions upon which the application is approved and denial shall state with particularity the reasons for such denial.

ARTICLE VII MUIR WOODS HOMEOWNERS ASSOCIATION

Section 7.01 Members of the Association: Membership in this Association shall be each owner of a lot within the Muir Woods Subdivision as specified in the MWHOA By-Laws .

Section 7.02 Board of Directors: The governance of this Association shall be vested as specified in the MWHOA By-Laws.

Section 7.03 Duties of the Board: The Board shall supervise, control and manage the accounts, property and directions of the MWHOA including the responsibilities necessary to carry out and enforce the provisions of their Declaration, including the right to bring suit in its name or the name of one or all of its members. The MWHOA shall have the right to purchase, with funds provided from assessments levied under Article VII, below, and keep in force a public liability insurance policy in an amount deemed reasonable by the MWHOA, insuring the Owners and the MWHOA from liability for bodily injury and/or property damage occurring on common area, provided that the failure of the MWHOA to purchase and/or keep in force such insurance shall not be grounds for the imposition of liability upon the members of the MWHOA.

ARTICLE VIII ASSESSMENTS

Section 8.01 Lots Subject to Assessment: The lots which are subject to assessment under the

Article are all lots in Muir Woods Subdivision, excluding common area lots.

Section 8.02 Covenant to Pay Assessments: Each Owner, by acceptance of a deed to a lot, covenants and agrees to pay, when due, the assessments provided for in this Article.

Section 8.03 Assessment Lien: All assessments levied and assessed hereunder, together with interest, costs and reasonable attorney's fees, which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon each lot within Muir Woods Subdivision and shall also be the personal obligation of the Owner or such lot at the date the assessment becomes due and payable. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. The assessment lien created hereunder may be enforced in the same manner as provided in the statutes of the State of Idaho for the enforcement of liens and mortgages. The lien herein created shall at all time be junior and subordinate to the lien of the first Mortgage or Deed of Trust encumbering the lot.

Section 8.04 Annual Assessments: Each lot within Muir Woods Subdivision exclusive of common property shall be assessed an amount determined by the Board as the annual fee. Each assessment shall be payable by an Owner to the MWHOA, in such installments as the Board shall determine.

The Board shall have the right to increase or decrease the amount of the annual assessment levied against the Lots within Muir Woods Subdivision, based on the actual and anticipated expenses of the homeowners association performing its obligations described in Section 8.07, including reasonable reserves for repairs and replacements.

Sections 8.06 Interest and Costs: Any assessment against a Lot, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time-to-time, or if none is so set, at an annual rate of fifteen percent (15%). Such interest shall commence on the date the assessment becomes due and payable. In addition to the interest charge, if an assessment is collected by the Board with the assistance of an attorney, whether or not suit or action is filed, the Owner shall pay to the MWHOA, reasonable attorney's fees incurred by the MWHOA and such may be awarded in a judgment against the Owner. The homeowner, in addition to any interest owed, shall be responsible for all costs incurred in the collection of delinquent fees or assessment.

Section 8.07 Purpose of Assessments - Duty of Board: The MWHOA shall use all funds from the assessments paid by the Owners for the purpose of:

- (a) Maintaining, repairing, replacing, and otherwise in all respects caring for the landscaping and related improvements, including, but not limited to: the sprinkler system(s), located on the landscaping easement as shown on the subdivision plat for the Muir Woods Subdivision.
- (b) Maintaining, repairing, replacing, operating and otherwise in all respects caring for the irrigation water delivery system, any fencing, and the waste water courses within Muir Woods Subdivision including, but not limited to: the pump and lines except where the obligation to maintain the line is imposed upon an Owner(s) by this Declaration.
- (c) Maintaining, repairing, replacing, insuring and otherwise in all respects operating and caring for the common and landscaped areas, if any, including the payments of taxes and other costs with respect thereto.

The MWHOA shall have the obligation to maintain, repair, replace and otherwise in all respects care for said landscaping and irrigation systems.

Section 8.09 Limited Assessments/Penalties: The MWHOA shall have the right and the authority to incur costs and expenses for the maintenance and repair of any Lot, including the improvements on a Lot. If such maintenance, repair, cleaning, and/or upkeep is necessary, in the sole discretion of the homeowners association, to bring such Owner and/or Lot into compliance with the requirements of this Declaration, and if the Owner of said Lot has failed to perform the same within a reasonable time after written notice of the necessity thereof has been delivered by the homeowners association to said owner, the MWHOA shall have the right to perform or cause performance of the same and to levy an assessment against the lot owner, for the amount of the costs and expenses incurred by the homeowners association in connection therewith, including attorneys fees. The right of the MWHOA to incur costs and expenses with respect to a lot, and to secure repayment thereof by the levying of a limited assessment and/or penalty, shall also relate to the correction of violation of this Declaration which an Owner fails or refuses to correct within a reasonable time after written notice delivered to such Owner by the MWHOA.

Section 8.10 Non-Exclusive Remedy: The right of MWHOA to levy a limited assessment as described in Section 8.09, above, shall not be deemed the exclusive remedy of the MWHOA, and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of the limited assessment and/or penalty, collect the amount due directly from the Owner responsible therefore, and/or pursue any other remedy available at law or equity. Nothing in this Declaration shall prohibit or limit the MWHOA or an Owner from pursuing any legal or equitable remedy for violation of this Declaration.

ARTICLE IX – SOLAR ACCESS

9.1 Solar Access Definitions:

- a. **Exempt Tree:** Any pre-existing vegetation as defined in hereafter, or any vegetation included on the list of solar friendly vegetation kept by the City of Boise City'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 of 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. The Boise City Public Works and the Community Planning and Development Departments have a list of "solar friendly" trees.
- e. **Shade:** That portion of the shadow cast by the shade point of a structure or vegetation which

exceeds 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 degrees (26o) above the horizon, except a shadow caused by a narrow object such as a chimney, antenna, utility pole, wire, or the like.
- 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 forty five degrees (45o) of a geodetic east-west line with a pitch which is flatter than six (6) feet (vertical) in twelve (12) feet (horizontal), the shade point will be the cave of the roof. If such a roof has a pitch which is six (5) feet in twelve (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 City'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 degrees (30o) of a geodetic east-west bearing;
 - 2. The Lot to the immediate south has a north slope of ten percent (10%) or less;
 - 3. The Lot is intended for the construction of an above ground inhabited structure.
- k. Solar Lot Line: The most southerly boundary of a solar Lot: the line created by connecting the most southerly corners of the solar Lot.
- l. Solar Setbacks: The minimum distance, measured perpendicularly in a southerly direction, from the center of the solar Lot line to the shade point of a structure or to restricted vegetation based upon its height at maturity on the shade restricted Lot.

9.2 Solar Access Covenants, Conditions, and Restrictions

- a. Shade Restriction: Each Lot 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 twenty six degrees (26o) 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 nineteen (19) feet at the fifteen (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 fifteen (15) foot rear yard zoning setback, on the solar Lot located to the north, will not be shaded more than four (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 limits 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 or east-west Lot dimension (depending on which is the relevant frontage direction of the Lot) greater than ten percent (10%) 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 feet) times two (2)).
- 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 a sparse branching which allows a high level of sunlight to penetrate through. This growth cycle produces shading during summer by the City of Boise City Public Works and the Community Planning and Development Departments.

9.3 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 owners of any Lot shall not build, install, or otherwise allow, a structure of non-solar friendly tree on that Lot to cast more shade at their solar Lot line than permitted under these solar access covenants, restrictions, and conditions.

ARTICLE X - MISCELLANEOUS

Section 10.01 Term: This Declaration and all covenants, conditions, restrictions, and easements contained herein shall run until December 31, 2020, unless amended hereafter provided. After December 31, 2020, said covenants, conditions, restrictions and easements shall automatically extend for successive periods of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least fifty one percent (51 %) of the lots in Muir Woods Subdivision and then only if such written instrument is recorded with the Ada County Recorder.

Section 10.02 Amendment: This Declaration may be amended as follows:

By Owners: Except where a greater percentage is required herein, the provisions of this Declaration, other than this Section, may be amended by an instrument in writing, signed and acknowledged by the Owners, owning at least fifty-one percent (51 %) of the Lots within Muir Woods Subdivision Property, and such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Section 9.02 shall require the vote or written consent of all Owners.

Section 10.03 Non-Waiver: The failure of the Grantor or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements, or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

Section 10.04 Enforcement - Costs: This Declaration may be enforced by the MWHOA or by any Owner of a Lot. If suit or other action is filed to interpret or enforce this Declaration, or any provision thereof, the prevailing party shall be awarded reasonable attorney's fees, in addition to the costs and disbursements allowed by law, including the same with respect to an appeal.

Section 10.05 Acceptance: Each Owner of a Lot, each purchase of a Lot under a contract of agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sales, or option, accepts the same subject to all the covenants, conditions, restrictions, easements and other provisions set forth in this Declarations and agrees to be bound by the same.

Section 10.06 Severability: Each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof, shall not affect the validity or enforceability of any other provision.

Section 10.07 Interpretation: The provisions of this Declaration shall be liberally construed to affect the purposes hereof and shall be construed and governed in accordance with the laws of the State of Idaho. The singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and titles are intended solely for convenience of reference and shall not affect that which is set forth in any of the provision hereof.

