

Capitol Development

INDEXED

ADA COUNTY, ID. FOR

J. DAVID NAVARRO

RECORDER

BY *K. Larson*
45.22

COVENTRY MANOR SUBDIVISION No. 4

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
AND NEIGHBORHOOD ASSOCIATION

61/64 20-21

THIS DECLARATION, made on the date hereinafter set forth by J. RAMON YORGASON and MARILYN YORGASON and WILLOWBROOK DEVELOPMENT, INC., herinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Boise City, County of Ada, State of Idaho, which is more particularly described as:

Lots 12 through 28, inclusive, Block 1, and Lots 18 through 34, inclusive, Block 2, of Coventry Manor Subdivision #4 - a portion of the SW 1/4 of Section 19, T.4 N., R.2 E., Boise Meridian, Boise City, Ada County, Idaho, according to the official plat thereof on file and of record in the Office of Recorder of said County.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to COVENTRY NEIGHBORHOOD ASSOCIATION, INC., its successors and assigns. Section 1.1 Incorporation by Reference. Any and all provisions contained in the Articles of Incorporation and Bylaws of Coventry Neighborhood Association, Inc, as amended from time to time are incorporated herein and made a part hereof.

To the extent any provision of the Covenants, Conditions and Restrictions for Coventry Subdivision conflicts, modifies or amends any provisions of the above referenced Articles of Incorporation or Bylaws incorporated herein, the provisions of this instrument shall control.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or

entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Lot 9, Block 5; Lot 1 Block 6; and Lot 1, Block 7 of Coventry Manor Subdivision, Ada County, Idaho, and Lot 19 Block 1 of Coventry Manor Subdivision No. 4 which is an eight-foot walkway for Boise School District.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to J. RAMON YORGASON and MARILYN YORGASON, husband and wife, and WILLOWBROOK DEVELOPMENT, INC., their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for their purpose of development.

ARTICLE II

COVENANTS, CONDITIONS, AND RESTRICTIONS

Section 1. Approval of Plans. No building, fence, wall, structure, improvement or obstruction shall be placed or permitted to remain upon any part of said property unless a written request for approval thereof containing the plans and specifications thereof, including exterior color scheme, has been approved in writing by the Architectural Committee. The approval of the Committee shall not be unreasonably withheld if the said plans and specifications are for improvements which are similar in general design and quality, and generally in harmony with the dwellings then located on said property. Variances in building setback requirements shown on plat may be given by the Architectural Committee upon proper showings and so long as the city ordinances on setbacks are met.

The floor area of a one-story house in this subdivision shall not be less than 1350 square feet on the ground floor. However, where continuous roof lines cover entrance or porch areas, breezeways or patios, 25% of the floor area of such covered areas may be included at the discretion of the Architectural Committee in determining the ground floor area of the home. Two-story and tri-level homes shall have not less than 1500 square feet, exclusive of covered porches, entrances, or patios. No split entry homes will be allowed. Any lot with less than 65' frontage may contain 25 square feet less than the 1350 square foot minimum requirement.

The value of any residence shall exceed \$88,000.00 based on October 1992 values.

Each house in this subdivision shall include some brick or stone on the front exposure and roofs of at

least 4 in 12 pitch. Bay windows, broken roof lines, gables, hip roofs, etc., are strongly encouraged. Exterior colors of earth tones or light blues or greys shall be encouraged. Bright or bold colors, or very dark colors, shall be discouraged.

No gravel roofs or split-entry homes or moving of pre-built homes into the subdivision will be allowed without Architectural Committee approval.

All lots shall be provided with a driveway and a minimum of two off-street automobile parking spaces within the boundaries of each lot.

Section 2. Footing Grades. The grade for the bottom of the footings on all foundations shall be no deeper than six inches below the back of the curb for that lot.

Section 3. Garages. All area requirements shall be exclusive of the required two-car garage area and shall be well-constructed of good quality material and workmanship. For the purpose of the covenants, eaves, steps, and open porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. No residence shall be in excess of two stories above ground.

All houses shall have an enclosed garage which hold no less than two cars and no more than three.

Section 4. Fences. Fences shall not extend closer than twenty (20) feet to any street right-of-way, nor higher than six (6) feet, nor closer than five (5) feet to the nearest front corner of the house without express approval of the Architectural Committee, and shall be of good quality and workmanship and shall be properly finished and maintained. The location of fences, hedges, high plantings, obstructions, or barriers, shall be so situated as not to unreasonably interfere with the enjoyment and use of neighboring properties and streets and shall not be allowed to constitute an undesirable, nuisance, or noxious use. The determination of the Architectural Committee shall be binding on all parties as to whether an undesirable, nuisance, or noxious use exists.

Section 5. Public Works. All recorded lots within this subdivision shall be subject to and restricted by the following recorded subdivision covenants:

- (a) A monthly sewer charge must be paid after connecting to the Boise City public sewer system, according to the ordinances and laws of Boise.
- (b) Owner shall submit to inspection by either the Department of Public Works or the Department of Building whenever a subdivided lot is to be connected to the sewage system constructed and installed on and within its property.
- (c) The applicant/owner of this subdivision or lot or lots therein shall and hereby does vest in Boise City the right and power to bring all actions against the owner of the premises hereby conveyed or any party thereof for the collection of any charges herein required and to enforce the conditions herein stated.
- (d) The recording of this plat by Declarant shall be deemed and construed as a request for the annexation of its property to the corporate limits of Boise City. Such requests and consents shall be binding on all subsequent purchasers or owners of Declarant's property.

Section 6. Setbacks. No building shall be located on any lot nearer than twenty (20) feet from the front line and fifteen (15) feet from the rear line nor nearer than five (5) feet per story to any side line.

Section 7. Construction Time. Construction of any residences on the subdivision shall be diligently pursued after commencement thereof, to be completed within eight (8) months.

Section 8. Landscaping. Landscaping of front yard must be completed within thirty (30) days of substantial completion of home and is to include sod in the front yard, one flowering tree of at least 1.5" caliper or pine tree of at least six (6) feet in height, five (5) five gallon plants and five (5) two gallon shrubs. Berms and sculptured planting areas are encouraged. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Committee. Grass will be planted in the back yard within one year of occupancy. Rock or gravel may not be used as landscaping to provide parking adjacent to driveways.

Section 9. Light Pole. Each home is required to have a photo-sensitive pole light installed in the front yard within ten (10) feet of the property line, designed to switch on automatically at sunset and off at sunrise with a minimum bulb power of 40 watts. Completion is the specific responsibility of the Builder.

Section 10. No building shall be moved onto the premises.

Section 11. Type of Residence. No shack, tent, trailer house, or basement only, shall be used within the subdivision for living quarters, permanent or temporary.

Section 12. Offensive Items. Nothing of an offensive, dangerous, odorous, or noisy endeavor shall be conducted or carried on nor shall anything be done or permitted in said subdivision which may be or become an annoyance or nuisance to the other property owners in said subdivision. Weeds shall be cut to less than four (4) inches.

Section 13. Animals. Keeping or raising of farm animals or poultry is prohibited. All dogs and cats or household pets kept on these premises shall be fed and cared for and shall be adequately fenced so as not to annoy or trespass upon the use of the property of others.

Dogs shall not be allowed to run at large. Not more than two (2) animals may be kept at one time, except that a litter of young may be kept until eight (8) weeks old.

Section 14. Conducting Business on Property. No business shall be conducted on the above property that cannot be conducted within the residence of the owner as permitted by law. No signs shall be installed to advertise said business. No oil exploration or development of any nature or kind or mining exploration, development or structure shall be permitted upon the lots in this subdivision.

Section 15. Outbuildings. Only one outbuilding per lot will be allowed. All outbuildings shall be constructed of quality building material, completely finished and painted on the outside and shall be of quality and character that will be in harmony with the other buildings on said property and must be approved by the Architectural Committee.

Section 16. No building or structure shall be placed on said property so as to obstruct the windows or light of any adjoining property owner in said subdivision.

Section 17. Additional easements. In addition to the easements shown on the recorded plat, an easement is further reserved five (5) feet on each side of all other lot lines for installation and maintenance of utilities, irrigation, and drainage.

Within these easements no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the utilities, or which may change the direction of the flow of the water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those

improvements for which a public authority or utility is responsible.

Section 18. Boise Valley Ditch Co. This Subdivision has been withdrawn from the Boise Valley Ditch Co. No provisions have been made to provide water to the Subdivision and Boise Valley Ditch Co. will not assess any costs to the lot owners.

Section 19. Sewer Locations. All bathroom, sink and toilet facilities shall be located inside the dwelling house or other suitable appurtenant building, and shall be connected by underground pipe to wet line sewer connection lines which have been provided to each lot.

Section 20. Signs. No sign of any kind shall be displayed to public view on any building or building site on said property except a professional sign of not more than (5) square feet advertising the property for sale or rent by an owner to advertise the property during the construction sales period. If a property is sold or rented, any sign relating thereto shall be removed immediately, except that the Declarant and its agent may post a "Sold" sign for a reasonable period following the sale. Notwithstanding any provision to the contrary, signs of any and all sizes and dimension may be displayed by the Declarant, without limitation thereto, on lots owned by said Declarant. The Association may display a sign of any size and dimension, without limitation thereto, for subdivision identification.

Section 21. Waste Disposal. No lot or building site included within this subdivision shall be used or maintained as a dumping ground for waste material. Incinerators are not permitted. Receptacles for storage of trash, garbage, etc., shall be maintained in a sanitary and clean condition.

Section 22. Vehicle Storage. Parking of boats, trailers, motorcycles, trucks, truck-campers, and like equipment, or junk cars or other unsightly vehicles, and like items, shall not be allowed on any part of said property nor on public ways adjacent thereto excepting only within the confines of an enclosed garage or other approved enclosure, and no portion of same may project beyond the enclosed area. Parking of automobiles or other vehicles on any part of the property or on public ways adjacent thereto shall be prohibited except within garages, carports, or other approved areas. Garage driveways shall not be extended on either side for additional parking without first securing Architectural Committee approval. For the purpose of this section, an approved area may be beside the house but not on a street side, and consist of a six (6) foot solid board fenced enclosure. If the height of the stored item is greater than the height of the front fence, the item must be stored two feet farther from the front fence for each part of a foot the item extends above the fence and the item must be stored two (2) feet away from any side yard fence for each part of a foot it extends above said fence, but in no case will the item be allowed to be stored if its height is greater than nine (9) feet or length greater than twenty-five (25) feet. The Architectural Committee shall be the sole and exclusive judges of approved parking areas.

Section 23. Construction Equipment. No machinery, building equipment, or material shall be stored upon site until Grantee is ready and able to commence the construction with respect to such building materials which then shall be placed within the property line of such building site upon which the structure is to be erected.

Section 24. Antennae and Satellite Dishes. Installation of radio and/or television antennae or satellite dishes is prohibited outside of a building without written consent from the Architectural Committee which would require them to be screened from the street view.

Section 25. The Architectural Committee's decision is final and binding on all issues.

Section 26. Damage to Improvements. It shall be the responsibility of the builder of any residence in this subdivision to leave street, curbs, sidewalks, fences, and tiled irrigation lines, if any, and utility facilities free of damage and in good and sound condition at the conclusion of the construction period. It shall be conclusively presumed that all such improvements are in good sound condition at the time building is begun on each lot unless the contrary is shown in writing at the date of conveyance or by date of possession, whichever date shall first occur, which notice is addressed to a member of the Architectural Committee.

Section 27. Time Extension for Covenants. The covenants set forth in this instrument shall run with the land and shall be binding on all persons owning a lot(s) under them for a period of thirty (30) years from the date of this recording thereof, after which time such covenants shall be automatically extended for successive periods of ten (10) years, unless at any time after the initial recording of this instrument an instrument signed by sixty-seven percent (67%) of the lot owners of this subdivision has been recorded agreeing to terminate said covenants, in whole or in part.

Section 28. Enforcement. Enforcement against any person or persons violating or attempting to violate any covenant herein after ten (10) days notice thereof in writing served on the offending party shall be had by the Association and/or any property owners either at law or equity. In the event of judgement against any person for such, the Court may award injunction against any person for such violation, require such compliance as the Court deems Necessary, award such damages, reasonable counsel fees, and Court costs as may be suffered or incurred, and such other or further relief as may be deemed just and equitable.

The Association, or an owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association and/or any owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of the right to do so thereafter.

The Directors shall become the Architectural Committee as provided above, upon the sale of the last lot in Coventry Subdivision.

Section 29. Inclusion. This additional Phase of Coventry Manor Subdivision is annexed or included within the jurisdiction of the original Covenants of the Coventry Manor Subdivision, Recorded August 23, 1991, pursuant to Article VII, Section 4 of said document.

ARTICLE III

ARCHITECTURAL CONTROL

Section 1. Architectural Committee. A committee of three persons shall act as an Architectural Committee and shall, prior to any new construction in said subdivision, be furnished with one set of detailed plans and specifications of any proposed building to be located in said subdivision and shall be allowed fifteen (15) days to review said plans, drawings, and specifications. If said committee shall approve the proposed building, or any modification or alteration thereof, they shall so indicate by the dating and signing of the set of plans by a member of the committee, and their approval shall be construed as full compliance with the provisions of these covenants. Said committee shall have sole discretion to determine what shall be substantial compliance with said covenants. No building shall occupy any portion of said subdivision without prior consent of said committee.

The committee shall consist of the following:

J. Ramon Yorgason	2304 N. Cole, Suite A, Boise, ID 83704
Marilyn Yorgason	2304 N. Cole, Suite A, Boise, ID 83704
James L. Titmus	2304 N. Cole, Suite A, Boise, ID 83704

Notwithstanding any other provision to the contrary in the Covenants, Conditions and Restrictions for Coventry Manor Subdivision, after the Declarant has sold all the lots in property, and not before, the then seated Directors of the Coventry Neighborhood Association, Inc. shall automatically become the Architectural Committee. Amending this instrument shall not affect this provision.

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

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every owner shall have the right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge assessments for the maintenance of the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the Common Area

by an owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its public rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Maintenance of common areas. The Association shall have the power and duty to operate and maintain the common areas as herein set forth.

ARTICLE V

SOLAR ACCESS

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

Section 1. "Solar Access Definitions."

A. **Exempt Tree:** Any pre-existing vegetation as defined in Section 2, Paragraph B, or any vegetation included on the list of solar friendly vegetation kept by the City of Boise's Public Works and Community Planning and Development Departments.

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

C. **North Slope:** The gradient, in percent slope, from the average finished grade of the front lot line of the shade restricted lot to the average finished grade of the solar lot line of a solar lot. The slope must be downward or decreasing in elevation from South to North.

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

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

F. **Shade Point:** That part of a structure, tree or other object, on a shade restricted lot, which casts the longest shadow (the most Northerly shadow) when the sun is due South on January 21st at an altitude of twenty-six (26) degrees above the horizon, except a shadow caused by a narrow object such as a

chimney, antenna, utility pole, wire, etc.

G. Shade Point Height: The vertical distance or height measured from the average elevation at the solar lot line to the shade point. If the shade point is located at the North end of a ridge line of a structure oriented within 45 degrees of a geodetic East-West line with a pitch which is flatter than 6 feet (vertical) in 12 feet (horizontal), the shade point will be the cave of the roof. If such a roof has a pitch which is 6 feet in 12 feet or steeper, the shade point will be the peak of the roof.

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

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

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

1. The front lot line is oriented within thirty (30) degrees of a geodetic East/West bearing;
2. The lot to the immediate South has a North slope of ten (10) percent or less;
3. Is intended for the construction of an above-ground inhabited structure.

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

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

Section 2. "Solar Access Covenants, Conditions and Restrictions."

A. Shade Restriction: Each lot within the subdivision which is classified as a Shade Restricted Lot shall have the following restriction: Any structure or restricted vegetation (solar unfriendly) cannot cast a shadow higher than an imaginary fence 11.5 feet above the solar lot line on solar noon of January 21st when the sun is at an angle of 26 degrees above the horizon. This sun angle at noon on January 21 causes structures, vegetation, and other objects to cast a shadow twice as long as their height. The height of the shade point of a structure on the shade restricted lot is limited to 19 feet at the 15 foot rear yard zoning setback in order that the 11.5 foot high "solar fence" at the North property line of the Shade Restricted Lot is not exceeded. These standards assure that a structure built to the 15 foot rear yard zoning setback, on the Solar Lot located to the North, will not be shaded more than 4 feet above grade on its South wall on January 21 at solar noon.

B. Pre-Existing Vegetation: Restricted vegetation (solar unfriendly), which existed when the subdivision was platted is exempt from the provisions of these covenants, conditions and restrictions. Any lot which would be shaded beyond the allowed shade limit by such vegetation shall not be classified as a Solar Lot.

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

D. Solar Setbacks: Each separate structure and item of restricted vegetation shall have a solar setback dependent on and calculated by its shade point height. All shade restricted lots shall have the following solar setback: Solar Setback (in feet) = [Shade Point Height (in feet) - 11.5] x 2. Table 1 below shows a few examples of solar setbacks for given shade point heights:

TABLE 1

SOLAR SETBACKS REQUIRED FOR A GIVEN SHADE POINT HEIGHT

<u>Shade Point Height</u>	<u>Solar Setback</u>
10'	0'
15'	7'
20'	17'
25'	27'
30'	37'

E. Solar Friendly Vegetation: Certain vegetation is considered "solar friendly" and is not restricted in regards to location on individual lots. Such vegetation is deciduous, dropping its leaves during early fall and regaining them during late spring. Such vegetation also has sparse branching which allows a high level of sunlight to penetrate through. This growth cycle produces shading during summer but allows sun to penetrate during winter. A list of acceptable solar friendly trees is maintained by the Boise City Public Works and the Community Planning and Development Departments.

Section 3. "Solar Access Rights, Duties and Responsibilities."

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

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

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Every person or entity who is a record owner (including contract sellers) of

a fee or undivided fee interest in any lot located within said property shall, by virtue of such ownership, be a member of the Association. When more than one person holds such interest in any occupied lot, all such persons shall be members. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. The Association shall maintain a member list and may require written proof of any member's lot ownership interest.

The financial reports, books, and records of the Association may be examined, at a reasonable time, by any member of record.

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

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

There shall be three directors elected to serve for a period of one year.

Section 4. Common Area Matters. The Association shall have the right to dedicate or transfer all or any part of the common areas to any public agency authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such condition or transfer shall be effective unless authorized by members entitled to cast two-thirds (2/3) of the majority of the votes at a special or general member's meeting and an instrument signed by the Chairman and Secretary has been recorded in the appropriate county deed records, agreeing to such dedication or transfer, and unless written notice of proposed action is sent to every member not less than ten (10) days nor more than fifty (50) days prior to such dedication or transfer; and the Association shall have the right to suspend any voting rights for any period during which any assessment against said member's property remains unpaid; and for a period not exceeding sixty (60) days for each infraction of its published rules and regulations.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) an initial assessment of sixty dollars (\$60.00) for each lot payable at closing, and (2) annual assessments or charges, and (3) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. However, the personal obligation for delinquent assessments shall pass to his successors in title.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Sixty and No/100 dollars (\$60.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each

class of membership shall constitute a quorum.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis at the discretion of the board.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate by an officer of the association setting forth whether the assessments on the specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 18% per annum. The Association, or any owner, may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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

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

Section 11. Association Duties. The Association is authorized, but not limited, to performance of the following: prepare an annual budget which shall indicate anticipated management, operating, maintenance, repair, and other common expenses for the Association's next fiscal year and which shall be sufficient to pay all estimated expenses and outlays of the Association for the next calendar year growing out of or in connection with the maintenance and operation of common areas and improvements and may include, among other things, the cost of maintenance, management, special assessments, fire, casualty and public liability insurance, common lighting, landscaping, and care of grounds, repairs, renovations and paintings to common areas, snow removal, wages, water charges, legal and accounting fees, management, fees, expenses and liabilities incurred by the Association from a previous period, and the creation of any

reasonable contingency or other reserve fund, as well as all costs and expenses relating to the common area and improvements.

The Association shall be responsible for the repairs, upkeep and maintenance, normal servicing, gardening, rules and regulations for use, care, and safety, annual planting of flowers (if any), payment of bills and related expenses for any Common Area.

ARTICLE VIII

GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with 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. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners. Any amendment must be recorded.

