

AMENDED AND RESTATED SUPPLEMENTAL DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
COLUMBIA VILLAGE NO. 14 SUBDIVISION

96074325

September 4, 1996

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID.

ALLIANCE TITLE

**ARTICLE I.
RECITALS**

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D. Hall

WHEREAS, there has been recorded by the undersigned Grantor a Master Declaration of Covenants, Conditions, Restrictions and Easements for Columbia Village Subdivision dated April 1, 1990, recorded May 17, 1990, as Instrument No. 9026057, and re-recorded July 26, 1990, as Instrument No. 9039552, records of Ada County, Idaho, which Master Declaration has been amended by that certain First Amendment to Master Declaration dated July 10, 1990, recorded July 26, 1990, as Instrument No. 9039553, records of Ada County, Idaho, and further amended by that certain Second Amendment to Master Declaration dated September 19, 1990, recorded September 20, 1990, as Instrument No. 9051139, records of Ada County, Idaho, and further amended by that certain Third Amendment to Master Declaration dated September 25, 1991, recorded September 25, 1991 as Instrument No. 9153554, records of Ada County, Idaho, (as amended hereafter "Master Declaration");

WHEREAS, the Master Declaration allowed for the recording of a Supplemental Declaration(s) relating to and covering certain specific tracts within Columbia Village Subdivision;

WHEREAS, the Master Declaration allowed for annexation of additional property to Columbia Village Subdivision, which additional property, when annexed will be brought within the provisions of the Master Declaration; and

WHEREAS, Grantor did execute and record a Supplemental Declaration dated February 7, 1994 and recorded February 10, 1994 as Instrument No. 94012965, records of Ada County, Idaho, the purpose of which was to provide for the annexation of the additional property therein described as a part of Columbia Village Subdivision, to be known as Columbia Village No. 14 Subdivision, and to set forth additional or amended covenants, conditions, restrictions and easements applicable only to said annexed property, it being the purpose and intent of the Grantor that the provisions of the Master Declaration shall be incorporated therein as if set forth in full and, further,

that the provisions of the Master Declaration as amended or modified therein shall apply only to the property within Columbia Village No. 14 Subdivision.

WHEREAS, it is therefore the purpose of this Amended and Restated Supplemental Declaration ("Amended Supplemental Declaration") to amend, restate and supplant said Supplemental Declaration as so amended in its entirety herein.

ARTICLE II.
PROPERTY COVERED

The property which is covered by this Amended Supplemental Declaration for Columbia Village No. 14 Subdivision is described as follows:

Lots 1 through 25, inclusive, of Block 8 of Columbia Village No. 14 Subdivision, According to the Plat thereof filed in Book 63 of Plats at pages 6418 and 6419, records of Ada County, State of Idaho.

hereafter called "Columbia Village No. 14 Subdivision."

ARTICLE III.
DECLARATION OF ANNEXATION

The Grantor hereby declares that Columbia Village No. 14 Subdivision is hereby annexed to and made a part of Columbia Village Subdivision and is hereby subject to all of the covenants, conditions, restrictions and easements and remaining provisions of the Master Declaration as modified as hereafter provided.

ARTICLE IV.
MODIFICATION OF MASTER DECLARATION

4.01 Use. Notwithstanding the provisions of Section 5.01 of the Master Declaration, or any other provision therein to the contrary, the Grantor, its successors and assigns, shall have the right to use a Lot, tract or parcel within Columbia Village No. 14 Subdivision for a sales office which shall be used for development, sales and marketing activities relating to Columbia Village Subdivisions, and such uses as are customarily incidental thereto.

4.02 Default by Association. If the Association fails to maintain the Common Areas in a manner consistent with the Project Objectives, as provided in Section 6.08 of the Master Declaration recorded May 17, 1990, as instrument number 90206057 records of Ada County, Idaho, and as thereafter amended prior to the date of this Amended Supplemental Declaration, Grantor and/or Ada County shall have the right, but not the obligation, to maintain the same and, in such event, the right to levy

and enforce against the Lots within Columbia Village a Regular or Special Assessment(s) pursuant to Article VII of the Master Declaration, or to require payment from the Association, for the reasonable costs incurred therefor.

ARTICLE V.
SOLAR ACCESS RESTRICTIONS

5.01 Background. The City of Boise Ordinance 9-20 requires that private restrictions be recorded with subdivision plats which provide the same level of solar access protection as required under the City's solar setback and new development solar access design ordinances. Therefore, in recognition of the City of Boise subdivision ordinance for energy use, these covenants, conditions, and restrictions run with the land and hereby provide a general scheme of solar access protection upon the ownership, use, and occupation of designated lots in Columbia Village No. 14 Subdivision which shall 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.

5.02 Protected Lots. Lots 8, 10 and 18, Block 8 are hereby designated as solar protected lots and Lots 9, 11 and 25, Block 8 are hereby designated as solar restricted lots in accordance with Boise City Ordinance 9-20 Solar Protection Provision.

5.03 Solar Access Definitions.

(a) "Exempt Tree". Any vegetation listed in 504(b) herein, as exempt; also, all solar friendly vegetation.

(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 shall be designated by the developer at the time of preliminary plat submittal.

(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 Planning 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 north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a geodetic east-west line with a pitch which is flatter than 6 feet (vertical) in 12 feet (horizontal), the shade point will be the eave of the roof. If such a roof has a pitch which is 6 feet in 12 feet or steeper, the shade point will be the peak of the roof.

(h) "Shade Restricted Lot". Any lot within a subdivision that is southerly of and adjacent to a solar lot. These lots will have some restriction on vegetation types and structure height.

(i) "Solar Friendly Vegetation". A tree or other vegetation which is considered "solar friendly" and is not restricted vegetation. Such vegetation is generally deciduous, providing shade to houses in the summer, but which generally lose their leaves early in the fall and gain them late in the spring. Trees may be added or deleted from this list based on reliable evidence that their foliage and growth characteristics either meet or exceed solar-friendly vegetation characteristics. Refer to the list of "solar friendly" trees on file with the Boise City Public Works and Planning Departments.

(j) "Solar Lot". A lot, platted under the provisions of the Solar Access New Development Standard 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 lot.

5.04 Solar Access Covenants, Conditions and Restrictions.

(a) Shade Restriction. Each lot within a subdivision which is classified as a Shade Restricted Lot shall have the following restriction. Any structure or restricted vegetation (solar friendly) cannot cast a shadow higher than an imaginary fence 11.5 feet above the solar lot line on solar noon on 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) Restricted Vegetation. Restricted vegetation (solar unfriendly), existing and to remain when the subdivision is platted and developed, 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'

(f) **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 shall be maintained by the Boise City Public Works and Planning Departments.

5.05 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 lot within Subdivision No. 14 shall not build, install, or otherwise allow a structure or non solar friendly tree on that lot to cast more shade at their solar lot line than permitted under the above solar access covenants, restrictions and conditions.

(c) **City of Boise Responsibilities.** Planning and building officials of the City of Boise will exercise reasonable care to verify that a structure for which a building or other permit is required will not violate the duties and rights created by this Declaration, based on an application for a building or other City-issued permit for a lot in the subdivision. The City may presume information in an application is correct. The City will not verify that structures for which it does not issue a building or other required permits or that vegetation complies with this declaration. The City is not required to enforce the terms of this Declaration but must approve of all changes to this Declaration before such changes become effective.

5.06 Miscellaneous.

(a) **Enforcement and Non-Waiver.** Any lot owner, or homeowner association, whether or not directly affected, shall have the right to enforce, by any proceeding at law or in equity, any violation or threatened violation of a provision of this Declaration. The failure of any person to enforce any covenant or restriction herein contained shall not be deemed a waiver of the rights of any other person. Waiver of one breach does not constitute waiver of any other breach. There can be no waiver of the right to solar access created by this Declaration.

(b) **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions, which shall remain in full force and effect.

(c) **Duration and Applicability to Successors.** The covenants, conditions and restrictions set forth in this Declaration shall be in effect perpetually, shall run with the land and shall inure to the benefit of and be binding upon the Declarant and all lot owners in the subdivision and their successors in interest.

(d) **Amendment.** This Declaration may be amended by the action of the owners of a majority of the lots in the subdivision affected by such amendment provided the amendment does not reduce the amount of solar access provision provided to the subdivision and the amendment is approved by the City of Boise.

ARTICLE VI. SPECIAL PROVISIONS

6.01 School Site. Neither Lot 26, Block 8 of Columbia Village No. 14 Subdivision, nor the owner thereof, shall ever be subject to or obligated under the conditions, covenants and restrictions of said subdivision as presently existing and as the same may be from time to time amended, and said Lot 26, Block 8 is expressly excluded from said conditions, covenants and restrictions.

In addition, the owner of said Lot 26, Block 8 of Columbia Village No. 14 Subdivision shall not for any purpose be considered as a member of the Columbia Village Homeowner's Association, the constituent individual homeowners of said subdivision or their successors-in-interest. The owner of Lot 26, Block 8 of said subdivision shall not under any circumstances be liable for the payment of any dues, assessments or charges of any kind levied by the Homeowners Association, the constituent individual homeowners of said subdivision, or their successors-in-interest; and Lot 26, Block 8 of Columbia Village No. 14 Subdivision is not now, nor shall ever be subject to liens or encumbrances of any kind for the payment of any dues.

assessments or charges of the Columbia Village Homeowner's Association, the constituent individual homeowners of said subdivision, or their successors-in-interest.

6.02 Commercial Lot. Lot 1, Block 8 is reserved for commercial development and/or apartments and/or townhouses. Special provisions for additional homeowners association dues or additional contributions for common area maintenance may be unilaterally imposed by Grantor upon filing an amendment to this Amended Supplemental Declaration so long as such amendment is filed by Grantor within five years of the date of this Amended Supplemental Declaration.

Columbia Village Owner's Association is vested with a 45 foot wide perimeter easement on Lot 1, Block 8, which Association shall maintain the berm and landscaping thereon.

6.03 Sight Restriction. A sight distance easement shall be established over Lots 13 and 25, Block 8. Within this sight distance easement obstructions such as: berms, landscaping, fences, walls or other encroachments shall be no higher than thirty six (36) inches above the top back of curb elevation adjacent to the encroachment.

6.04 Common Area. Lots 2, 12, 25, Block 8 are designated as common area lots and shall be maintained by Columbia Village Owner's Association.

6.05 Drainage Easement. Lots 25, Block 8, except the north easterly 445.04 feet thereof is specifically designated as a storm drain easement for storm drain facilities located outside of the right of way. This easement is for the benefit of the Columbia Village Owner's Association and the Ada County Highway District. The Columbia Village Owner's Association shall have the inspection and maintenance duties for said drainage area as set forth in Section 6.08(i) of the Master Declaration, as amended. Further, said Owner's Association shall have reasonable access over and across subdivision lots herein for the purpose of inspection and maintenance of said drainage area.

6.06 Power Poles. There shall be a clearance of twenty feet around each power pole existing on the Idaho Power Company Easement.

6.07 Model Homes. Grantor reserves the right to Grantor and Grantor's assigns to construct model homes on subdivision lots herein and to otherwise conduct sales operations therefrom.

ARTICLE VII.
MISCELLANEOUS

7.01 Amendment. This Amended Supplemental Declaration may be amended as follows:

(a) By Grantor. Until title to a Lot within Columbia Village No. 14 Subdivision is conveyed by the Grantor to an Owner, this Amended Supplemental Declaration may be amended or terminated by the Grantor by recordation of a written instrument signed by the Grantor and acknowledged, setting forth such amendment or termination.

(b) By Owners. Unless a greater percentage is required by an express provision in the Master Declaration, the provisions of this Amended Supplemental Declaration may be amended by an instrument in writing signed and acknowledged by the President and Secretary of Columbia Village Owners Association, Inc. certifying that such amendment has been approved by a vote or written consent of the Owners, including the Grantor, owning at least two-thirds (66 2/3%) of the Lots within Columbia Village No. 14 Subdivision, and such amendment shall be effective upon its recordation with the Ada County Recorder.

(c) By Amendment of Master Declaration. An amendment of the Master Declaration duly adopted as permitted therein shall, without further action, amend this Amended Supplemental Declaration, unless such amendment to the Master Declaration is contrary to the express terms and provisions of this Amended Supplemental Declaration, or render the same invalid or unenforceable, in which event said amendment shall not be deemed to amend this Amended Supplemental Declaration unless said amendment is expressly approved and adopted in the manner provided in this Section as an amendment to this Amended Supplemental Declaration.

7.02 Intent of Incorporation of Master Declaration. It is the intent of the Grantor that incorporating the Master Declaration as a part of this Amended Supplemental Declaration, by the applicable definitions, terms and provisions thereof shall be part of this Amended Supplemental Declaration.

7.03 Interpretation. Unless the context requires a contrary construction, 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 used in the Amended Supplemental Declaration are intended solely for the convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

7.04 Severability. Each of the provisions contained in this Amended Supplemental Declaration, including the Master Declaration incorporated herein by reference, 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.

IN WITNESS WHEREOF the Grantor has hereunto executed this Amended Supplemental Declaration as of the day and year first above written.

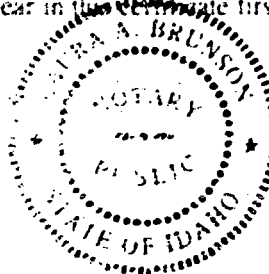
THE J. R. SIMPLOT SELF-
DECLARATION OF REVOCABLE TRUST,
a trust registered in the Fourth Judicial
District, State of Idaho, County of Ada,
Instrument No. 3F-788

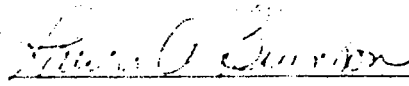
By: 
J. R. Simplot, Trustee

STATE OF IDAHO)
) SS
County of Ada) J

On this 22 day of September, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared J. R. Simplot, known or identified to me to be the Trustee of the J. R. Simplot Self Declaration of Revocable Trust, the person whose name is subscribed within and acknowledged to me that he executed this instrument on behalf of said revocable trust.

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: Emmett
My Commission Expires: 12/31/97