

9384394

1616000116

Columbia Village Grant
ADA CO. RECORDER

SUPPLEMENTAL DECLARATION

J. DAVID HAYES PRO *Venture*
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
BOISE ID

COLUMBIA VILLAGE NO. 13 SUBDIVISION

'93 OCT 12 PM 1 27

MARCH 31, 1993

*63
6360*

FEE 27.20 DEP *Clarkson*
RECORDED AT THE REQUEST OF

ARTICLE I.

RECITALS

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, the purpose of this Supplemental Declaration is to provide for the annexation of the additional property hereafter described as a part of Columbia Village Subdivision, to be known as Columbia Village No. 13 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 herein as if set forth in full and, further, that the provisions of the Master Declaration as amended or modified herein shall apply only to the property within Columbia Village No. 13 Subdivision.

ARTICLE II.

PROPERTY COVERED

The property which is covered by this Supplemental Declaration for Columbia Village No. 13 Subdivision is described as follows:

Lots 66 through 91, inclusive, of Block 7 of Columbia Village No. 13 Subdivision, According to the Plat thereof filed in Book 63 of Plats at pages 6360-6361, records of Ada County, State of Idaho.

hereafter called "Columbia Village No. 13 Subdivision."

ARTICLE III.

DECLARATION OF ANNEXATION

The Grantor hereby declares that Columbia Village No. 13 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. 13 Subdivision for a sales office which shall be used for development, sales and marketing activities relating to Columbia Village Subdivision, and such uses as are customarily incidental thereto.

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. 13 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 76, 84, 83, 52, Block 7 are hereby designed as solar protected lots, and Lots 77, 80, Block 7 are hereby designated shade 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 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. 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. 13 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 protection provided to the subdivision and the amendment is approved by the City of Boise.

ARTICLE VI.

MISCELLANEOUS

6.01 Amendment. This Supplemental Declaration may be amended as follows:

(a) By Grantor. Until title to a Lot within Columbia Village No. 13 Subdivision is conveyed by the Grantor to an Owner, this 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 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. 13 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 Supplemental Declaration, unless such amendment to the Master Declaration is contrary to the express terms and provisions of this Supplemental Declaration, or render the same invalid or unenforceable, in which event said amendment shall not be deemed to amend this Supplemental Declaration unless said amendment is expressly approved and adopted in the manner provided in this Section as an amendment to this Supplemental Declaration.

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

6.03 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 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.

6.04 Severability. Each of the provisions contained in this 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 Supplemental Declaration as of the day and year first above written.

THE J. R. SIMPLOT SELF
DECLARATION OF REVOCABLE TRUST

By *J. R. Simplot*
Its Trustee

STATE OF IDAHO)
) ss.
County of Ada)

On this 31st day of March, 1993, 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.



Albin Frenz
Notary Public for Idaho
Residing at: *Boise, ID*
My Commission Expires: 9/16/94