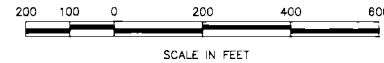


# PLAT OF BANBURY NO. 4 SUBDIVISION

A SUBDIVISION IN THE SW 1/4, SECTION 20, TOWNSHIP 4 NORTH, RANGE 1 EAST, B.M.  
EAGLE CITY, ADA COUNTY, IDAHO

1991



## NOTES

1. BEARINGS ARE BASED ON STATE PLANE COORDINATES PROVIDED BY THE IDAHO TRANSPORTATION DEPARTMENT, FROM PROJECT F-FR-3271(44) WITH A COMBINED ADJUSTMENT FACTOR OF 1.000162499.
2. BUILDING SET BACK DIMENSIONS IN THIS SUBDIVISION SHALL CONFORM TO THE APPLICABLE ZONING REGULATIONS OF THE CITY OF EAGLE.
3. THIS PLAT IS SUBJECT TO THE REQUIREMENTS OF IDAHO CODE, SECTION 31-3805.
4. ANY RESUBDIVISION OF THIS PLAT SHALL COMPLY WITH THE APPLICABLE ZONING REGULATIONS IN EFFECT AT THE TIME OF THE RESUBDIVISION.
5. THERE IS A 10 FOOT IRRIGATION, UTILITY, AND DRAINAGE EASEMENT ON THE SIDE, FRONT AND BACK LOT LINES OF ALL LOTS. EXCEPT AS OTHERWISE NOTED, THE EASEMENTS SHOWN AND LABELED ON THE FACE OF THIS PLAT ARE INTENDED FOR USE AS IRRIGATION, UTILITY AND DRAINAGE EASEMENTS AS WELL AS THE PURPOSE SHOWN.
6. ALL WATER WAYS AND DRAINAGE OUTSIDE OF PUBLIC RIGHTS-OF-WAY, SHALL BE MAINTAINED BY THE HOMEOWNERS WITHIN ALL PHASES OF BANBURY SUBDIVISION.
7. THE BANBURY HOMEOWNERS ASSOCIATION CANNOT BE DISSOLVED WITHOUT THE EXPRESSED APPROVAL AND CONSENT OF THE ADA COUNTY HIGHWAY DISTRICT.
8. THE TEMPORARY CUL-DE-SACS ON THE WEST ENDS OF W. HEMPSTEAD AND W. STAFFORD DRIVES WILL HAVE 50' RADII AND WILL REVERT TO THE ORIGINAL PROPERTY OWNER UPON EXTENSION OF W. HEMPSTEAD AND W. STAFFORD DRIVES.
9. NO SEPTIC TANKS OR DRAIN FIELD SHALL BE INSTALLED WITHIN 75 FEET OF THE EDGE OF THE BENCH ON LOTS 25, 26, 27 AND 28 OF BLOCK 1.

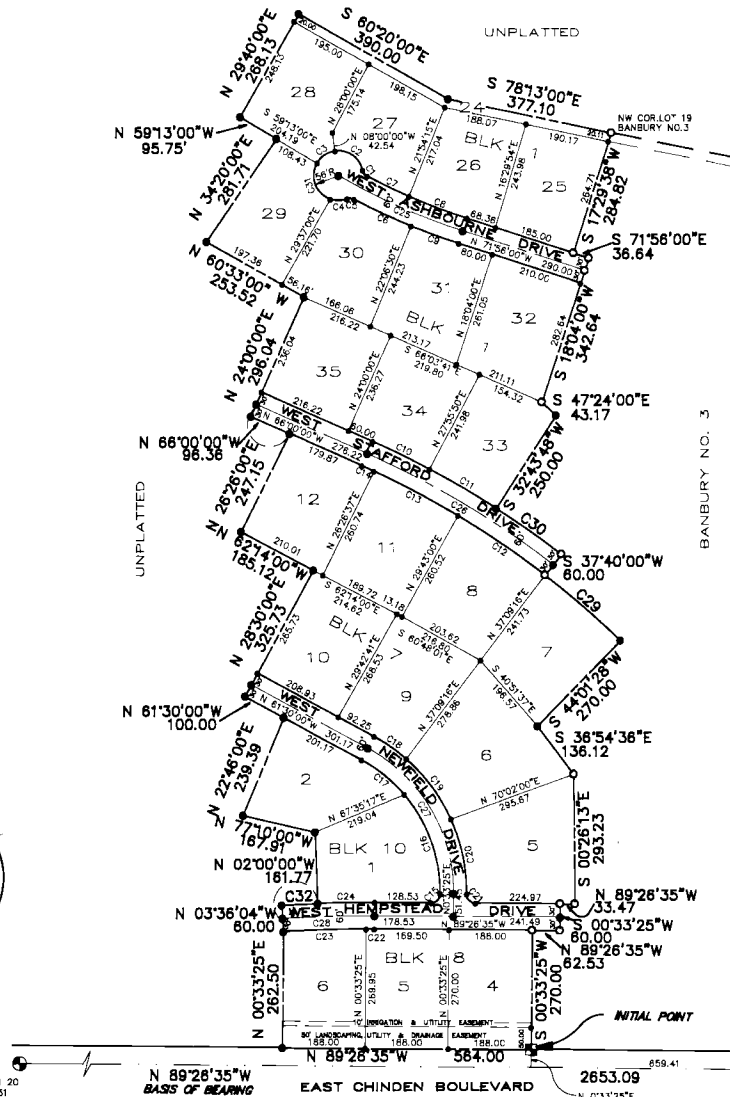
## CURVE TABLE

CURVE	DELTA	RADIUS	ARC	CHORD	TANGENT	CHORD BRG
1	49° 59' 44"	20.00	17.45	16.90	9.33	S 37° 15' 19" E
2	85° 31' 05"	56.00	83.58	76.04	51.78	N 55° 00' 59" W
3	51° 26' 35"	56.00	50.28	48.61	26.98	S 56° 30' 11" W
4	39° 30' 40"	56.00	38.62	37.86	20.11	N 89° 47' 45" E
5	47° 46' 53"	20.00	16.68	16.20	8.86	N 86° 04' 08" E
6	5° 24' 01"	1512.40	142.55	142.49	71.33	S 64° 52' 42" E
7	4° 09' 27"	1452.40	105.39	105.37	52.72	S 64° 19' 54" E
8	5° 31' 22"	1452.40	140.00	139.94	70.05	S 69° 10' 19" E
9	4° 21' 17"	1512.40	114.95	114.92	57.50	S 69° 45' 21" E
10	3° 55' 50"	2089.16	143.32	143.29	71.69	N 64° 02' 05" W
11	4° 47' 58"	2089.16	175.00	174.95	87.55	N 59° 40' 11" W
12	6° 39' 29"	2029.16	235.80	235.67	118.03	N 55° 39' 45" W
13	6° 09' 09"	2029.16	217.90	217.80	109.05	N 62° 04' 04" W
14	0° 51' 22"	2029.16	30.32	30.32	15.16	N 65° 34' 19" W
15	89° 44' 25"	20.00	31.33	28.22	19.91	N 45° 41' 12" E
16	41° 11' 41"	340.00	244.45	239.22	127.78	N 19° 46' 51" W
17	21° 07' 19"	340.00	125.34	124.63	63.35	N 50° 56' 21" W
18	12° 44' 46"	400.00	88.98	88.80	44.68	N 55° 07' 37" W
19	24° 27' 53"	400.00	170.80	169.50	86.72	N 36° 31' 18" W
20	25° 02' 38"	400.00	174.84	173.45	88.84	N 11° 46' 02" W
21	90° 11' 52"	20.00	31.48	28.33	20.07	S 44° 20' 39" E
22	0° 22' 20"	2848.00	16.50	16.50	9.25	N 89° 37' 45" W
23	3° 47' 09"	2848.00	188.18	188.15	94.13	S 88° 17' 31" W
24	2° 32' 38"	2808.00	129.11	129.10	64.58	S 89° 17' 06" W
25	11° 55' 52"	1482.40	308.69	308.13	154.91	S 65° 58' 04" E
26	13° 40' 00"	2058.16	491.17	490.00	245.75	N 58° 10' 00" W
27	62° 03' 28"	370.00	400.75	381.44	222.57	N 30° 28' 17" W
28	4° 09' 29"	2878.00	208.86	208.81	104.48	S 88° 28' 41" W
29	6° 21' 28"	2029.16	225.16	225.05	112.70	N 49° 09' 17" E
30	4° 56' 11"	2089.16	180.00	179.94	90.06	S 54° 48' 13" E
31	10° 13' 49"	56.00	98.94	86.56	68.21	S 19° 50' 01" E
32	1° 36' 51"	2908.00	81.93	81.93	40.37	S 87° 12' 22" W

## PLAT LEGEND

- Initial Point, Set 2"x 36" Galv. Pipe With Alum. Cap
- Found Brass Cap
- Set 5/8"x 30" Rebar with Plastic Cap
- Set 1/2"x 24" Rebar with Plastic Cap
- Found 5/8"x 30" Rebar

- Boundary Line
- Right-Of-Way Line
- Lot Line
- Centerline
- 10' Drainage Easement Unless Otherwise Designated



SW CORNER SECTION 20  
C.P. & F. NO. 7704851

N 89°28'35"W  
BASIS OF BEARING

EAST CHINDEN BOULEVARD

2653.09  
N 03°32'25"E  
46.00

SOUTH 1/4 CORNER SECTION 20  
C.P. & F. NO. 7513773

THE HOFF COMPANIES  
Developer  
Boise, Idaho

BRIGGS ENGINEERING, INC.  
Consulting Engineers  
Boise, Idaho

SHEET 1 OF 2

\\BB4-PLAT  
8/9/91

# BANBURY NO. 4 SUBDIVISION

## CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS: THAT THE HOFF COMPANIES INC., A CORPORATION ORGANIZED AND EXISTING UNDER THE LAW OF THE STATE OF IDAHO AND DULY QUALIFIED TO DO BUSINESS WITHIN THE STATE OF IDAHO, DO HEREBY CERTIFY THAT THEY ARE THE OWNERS OF THE REAL PROPERTY AS DESCRIBED BELOW AND IT IS THEIR INTENTION TO INCLUDE SAID REAL PROPERTY IN THIS SUBDIVISION PLAT.

A PARCEL OF LAND LOCATED IN THE SW 1/4 OF SECTION 20, TOWNSHIP 4 NORTH, RANGE 1 EAST, BOISE MERIDIAN, EAGLE CITY, ADA COUNTY, IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MARKING THE SOUTH 1/4 CORNER OF SECTION 20, T.4N., R.1E., B.M.; THENCE ALONG THE SOUTH LINE OF SECTION 20 N 89°28'35"W 859.41 FEET TO A POINT; THENCE N 03°33'25"E 40.00 FEET TO AN ALUMINUM CAP ON THE NORTHERLY RIGHT-OF-WAY LINE OF EAST CHINDEN BOULEVARD, WHICH IS THE INITIAL POINT OF THIS DESCRIPTION;

THENCE N 89°28'35"W 564.00 FEET ALONG SAID NORTH RIGHT-OF-WAY OF CHINDEN BOULEVARD; THENCE N 00°33'25"E 262.50 FEET TO A POINT; THENCE N 03°36'04"W 60.00 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT 81.93 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 1°36'51", A RADIUS OF 2,908.00 FEET, TANGENTS OF 40.97 FEET AND A LONG CHORD OF 81.93 FEET BEARING N 87°12'22"E TO A POINT; THENCE N 02°00'00"W 161.77 FEET TO A POINT; THENCE N 77°10'00"W 167.91 FEET TO A POINT; THENCE N 22°46'00"E 239.39 FEET TO A POINT; THENCE N 61°30'00"W 100.00 FEET TO A POINT; THENCE N 28°30'00"E 325.73 FEET TO A POINT; THENCE N 62°14'00"W 185.12 FEET TO A POINT; THENCE N 28°26'00"E 247.15 FEET TO A POINT; THENCE N 68°00'00"W 86.36 FEET TO A POINT; THENCE N 24°00'00"E 296.04 FEET TO A POINT; THENCE N 60°33'00"W 253.52 FEET TO A POINT; THENCE N 34°20'00"E 281.71 FEET TO A POINT; THENCE N 58°13'00"W 85.75 FEET TO A POINT; THENCE N 29°40'00"E 268.13 FEET TO A POINT; THENCE S 60°20'00"E 390.00 FEET TO A POINT; THENCE S 78°13'00"E 377.10 FEET TO A POINT, SAID POINT BEING THE NORTHWEST CORNER OF LOT 23, BLOCK 1, BANBURY NO. 3 AND ALONG THE BOUNDARY OF SAID BANBURY NO. 3 THE FOLLOWING COURSES AND DISTANCES:

THENCE S 17°28'38"W 284.82 FEET TO A POINT; THENCE S 71°56'00"E 36.64 FEET TO A POINT; THENCE S 18°04'00"W 342.64 FEET TO A POINT; THENCE S 47°24'00"E 43.17 FEET TO A POINT; THENCE S 32°43'48"W 250.00 FEET TO A POINT ON A CURVE; THENCE ALONG A CURVE TO THE RIGHT 180.00 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 4°56'11", A RADIUS OF 2089.16 FEET, TANGENTS OF 90.06 FEET AND A LONG CHORD OF 178.94 FEET BEARING S 54°48'13"E TO A POINT; THENCE S 37°40'00"W 60.00 FEET TO A POINT ON A CURVE; THENCE ALONG A CURVE TO THE RIGHT 225.16 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 6°21'28", A RADIUS OF 2029.16 FEET, TANGENTS OF 112.70 FEET AND A LONG CHORD OF 225.05 FEET BEARING S 48°09'17"E TO A POINT; THENCE S 44°01'28"W 270.00 FEET TO A POINT; THENCE S 36°54'36"E 136.12 FEET TO A POINT; THENCE S 00°26'13"E 283.23 FEET TO A POINT; THENCE N 89°28'35"W 33.47 FEET TO A POINT; THENCE S 00°33'25"W 60.00 FEET TO A POINT; THENCE N 89°28'35"W 82.53 FEET TO A POINT; THENCE S 00°33'25"W 270.00 FEET TO THE INITIAL POINT OF THIS DESCRIPTION, COMPRISING 33.19 ACRES, MORE OR LESS.

THE STREETS SHOWN ON THIS PLAT OF BANBURY NO. 4 ARE HERBY DEDICATED TO THE PUBLIC AND THE EASEMENTS INDICATED ON SAID PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR PUBLIC UTILITIES AND FOR ANY OTHER USES AS DESIGNATED HEREON, AND NO PERMANENT STRUCTURES ARE TO BE ERECTED WITHIN THE LINES OF SAID EASEMENTS.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS THIS 1<sup>st</sup> DAY OF July, 1991

HOFF COMPANIES, INC.  
Harvey B. Hoff  
HARVEY B. HOFF, PRESIDENT

## APPROVAL OF CITY ENGINEER

I, THE UNDERSIGNED, CITY ENGINEER IN AND FOR EAGLE CITY, ADA COUNTY, IDAHO, HEREBY APPROVE THIS PLAT OF BANBURY NO. 4.

CITY ENGINEER

8/29/91

## CERTIFICATE OF COUNTY ENGINEER

I, JOHN E. PRIESTER, P.E., REGISTERED PROFESSIONAL ENGINEER/LAND SURVEYOR FOR ADA COUNTY, IDAHO, HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT OF BANBURY NO. 4, AND FIND THAT IT COMPLIES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

JOHN E. PRIESTER, P.E., COUNTY ENGINEER



## CERTIFICATE OF SURVEY

I, MICHAEL E. MARKS, L.S., DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, LICENSED BY THE STATE OF IDAHO, AND THAT THIS PLAT OF BANBURY NO. 4 AS DESCRIBED IN THE CERTIFICATE OF OWNERS AND THE ATTACHED PLAT, WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON; AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODES RELATING TO PLATS, SURVEYS AND THE CORNER PERPETUATION AND FILING ACT, IDAHO CODE 55-1601 THROUGH 55-1612.

MICHAEL E. MARKS, L.S. NO. 4998



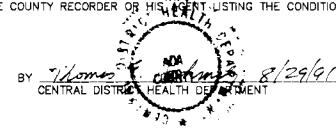
STATE OF IDAHO }  
COUNTY OF ADA } SS  
ON THIS 1<sup>st</sup> DAY OF July, 1991, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED HARVEY B. HOFF, KNOWN TO ME TO BE PRESIDENT OF HOFF COMPANIES, INC., THAT EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT SAID CORPORATION EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

Justin J. Crawford  
NOTARY PUBLIC FOR IDAHO  
RESIDING AT BOISE, IDAHO  
MY COMMISSION EXPIRES: 12/9/92

## APPROVAL OF CENTRAL DISTRICT HEALTH DEPARTMENT

SANITARY RESTRICTIONS OF THIS PLAT ARE HEREBY REMOVED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER OR HIS REPRESENTATIVE LISTING THE CONDITIONS OF APPROVAL.



## ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ACCEPTANCE

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ON THE 1<sup>st</sup> DAY OF August, 1991

CHAIRMAN  
ADA COUNTY HIGHWAY DISTRICT

## APPROVAL OF CITY COUNCIL

I, Barbara Montgomery, CITY CLERK IN AND FOR EAGLE, ADA COUNTY, IDAHO DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 13 DAY OF July, 1991, THIS PLAT OF BANBURY NO. 4 WAS DULY ACCEPTED AND APPROVED.

Barbara Montgomery, CITY CLERK  
EAGLE, IDAHO

## CERTIFICATE OF COUNTY TREASURER

I, BARBARA BAUER, COUNTY TREASURER IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO, PER THE REQUIREMENTS OF I.C. 50-130B, DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS PROPOSED SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

BARBARA BAUER, By James B. Bingham, Deputy  
COUNTY TREASURER DATE 9-10-91

## COUNTY RECORDERS CERTIFICATE

INSTRUMENT NO. 9150428

STATE OF IDAHO )  
COUNTY OF ADA ) SS

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED AT THE REQUEST OF HOFF COMPANIES, INC. AT 52 MINUTES PAST 3 O'CLOCK P.M. THIS 10 DAY OF SEPTEMBER, 1991 IN MY OFFICE AND WAS DULY RECORDED IN BOOK 59 OF PLATS AT PAGES 5694 AND 5695.

Michael E. Marks  
DEPUTY RECORDER  
David P. Puro  
EX-OFFICIO RECORDER

INDEXED

9150690

ADA COUNTY, ID. FOR  
J. DAVID NAVARRO  
RECORDER BY *Belver*

'91 SEP 11 PM 3 37

240

SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BANBURY NO. 4 SUBDIVISION

133400964

THIS SUPPLEMENTAL DECLARATION is made on the date hereinafter set forth by Hoff Companies, Inc., an Idaho corporation, hereinafter referred to as "Declarant";

WITNESSETH:

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

BanBury No. 4 Subdivision, according to the official plat thereof on file in the office of the County Recorder of Ada County, State of Idaho, in Book 59 of Plats at pages 5694 and 5695 (which real property is hereinafter referred to as the "Property"); and

WHEREAS, Declarant has heretofore recorded a Declaration of Covenants, Conditions and Restrictions for BanBury No. 1 Subdivision, recorded as Instrument No. 8729275, records of Ada County, Idaho, on May 18, 1987, hereinafter the "Declaration"; and

WHEREAS, BanBury No. 4 Subdivision is being developed according to a master plan of development and is thereby related to BanBury No. 1 Subdivision, BanBury No. 2 Subdivision and BanBury No. 3 Subdivision, and Declarant desires that the Property be

subject to the same covenants, conditions and restrictions set forth in the Declaration (as the Declaration may be, from time to time, amended), and that owners of Lots or parcels within the boundaries of the Property be members of the BanBury Homeowners' Association, Inc.;

NOW, THEREFORE, Declarant hereby declares:

#### ARTICLE I

The Property shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions set forth in the Declaration (a copy of which is attached hereto as Exhibit A, and incorporated herein by this reference) as amended from time to time, which easements, restrictions, covenants and conditions are for the purpose of protecting the value and desirability of, and which shall run with and bind, the Property and each and every part, parcel and Lot thereof, and be binding on all parties having any right, title or interest in the Property or any part, parcel or Lot thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

#### ARTICLE II

Pursuant to Article XI of the Declaration, the Declaration is hereby amended to include the Property, and the Property is hereby made subject to and the beneficiary of the rights, privileges, restrictions and covenants set forth in the Declaration.

## ARTICLE III

Except for terms expressly defined herein, all capitalized terms shall have the same meaning as defined in the Declaration.

## ARTICLE IV

Lot 24, Block 1 of BanBury No. 4 Subdivision shall be and is Common Area.

## ARTICLE V

The Property shall be subject to the following additional or modified covenants, conditions and restrictions:

Section 1. Common Facilities. "Common Facilities" shall mean and refer to those physical improvements constructed by Declarant or the Association upon the Common Area or upon the utility easements over each Lot, including the Equestrian Trail, Pedestrian Trail, sidewalks, curbs and gutters, street lights (but excluding the entryway light required to be placed near the driveway entry to each Lot by the Owner of each Lot), the domestic water system and the irrigation water system.

This provision shall supersede and replace Section 5 of Article I of the Declaration, as it affects the Property.

Section 2. Lot. "Lot" shall also mean and refer to all Lots within and shown upon the official recorded plat of BanBury No. 4 Subdivision, except the Common Area, and except for streets dedicated to the public, as shown upon the recorded plat.

Section 3. Building Restrictions. Each Lot (except for Common Area Lots) shall be restricted to one single-family dwelling, and usual and appropriate out-buildings. No dwelling structure shall be erected upon any Lot which shall exceed thirty-two (32) feet in height above the natural surface elevation of the ground on which the structure is constructed, and no barn, animal shelter or similar out-buildings shall exceed sixteen (16) feet in height above the natural surface elevation of the ground

on which the structure is constructed. Each structure constructed on any Lot shall be placed upon the Lot in such a manner as to minimize obstruction of the view of the Boise Front from other lots. All buildings shall be of frame, stone or brick construction and, if other than brick or stone, shall be finished, painted and kept in good repair. The size, configuration, style and finish of each proposed building or structure on each Lot shall be subject to architectural and aesthetic control pursuant to Section 17 of Article V of the Declaration and pursuant to Article VIII of the Declaration. Said Property shall be used in such manner as to be inoffensive to any other property Owners in the Project.

This provision shall supersede and replace Section 1 of Article V of the Declaration, as it affects the Property.

Section 4. Building Location. Unless otherwise specifically approved in writing by the Architectural Control Committee, no dwelling structure or garage or any part thereof, or any other structure (exclusive of fences and similar structures) shall be placed nearer than forty (40) feet to the front or to the rear Lot line of the Lot on which it is located, or nearer than twenty (20) feet to any side Lot line of the Lot on which it is located. No structure used or to be used for sheltering animals shall be placed nearer than sixty (60) feet to any Lot line, provided that a dog kennel and/or dog shelter may be located within said sixty foot set back, but in no event nearer than twenty (20) feet to any side Lot line or forty (40) feet to the front or rear Lot line. For the purposes of this section, eaves, steps, chimneys and gutters shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any eaves, steps, chimneys or gutters or any portion of the building on any Lot to encroach upon any other Lot. Open porches shall not be considered as a part of the building, but any open porch which would extend beyond the building lines as herein established shall, prior to construction, require the approval of the Architectural Control Committee.

This provision shall supersede and replace the provisions of Section 3, Article V of the Declaration, as it affects the Property.

Section 5. Fences; Hedges. No fence, wall, hedge or shrub planting with an elevation of more than three feet (3') above the adjacent ground shall be permitted to be placed or maintained between the front plane of

the dwelling structure and the street without special written consent of the Architectural Control Committee.

This provision shall supersede and replace the provisions of Section 12, Article V of the Declaration, as it affects the Property.

Section 6. Noxious Use of Property. No portion of the Common Area, or any Lot or any structure thereon shall be used for the conduct of any trade or business or professional activities. The prohibition of use of any Lot or any structure thereon for the conduct of any trade or business or professional activities includes and prohibits use of any Lot or any structure thereon for a "half-way house," treatment center, shelter home, school, day-care center or other similar use, including use for the care or the residence of unrelated physically or mentally handicapped persons (notwithstanding the provisions of Section 67-6530 and 67-6531, Idaho Code). The occupancy of a dwelling structure on a Lot shall be limited to one or more persons related by blood, adoption or marriage, living together as a single housekeeping unit, or not more than two persons, though not related by blood, adoption or marriage, living together as a single housekeeping unit, except that one (1) live-in housekeeper may be included in a single housekeeping unit. Noxious or undesirable acts or undesirable use of any portion of the Property including (but not limited to) acts or uses causing loud noise which interferes with the peaceable enjoyment of neighboring properties is prohibited and shall not be permitted or maintained; provided, however, that an office or model home for the purpose of the development, construction and sale of the Lots and homes in the Project may be maintained by Declarant.

This provision shall supersede and replace the provisions of Section 13, Article V of the Declaration, as it affects the Property.

Section 7. Landscaping. Prior to the beginning of construction of the dwelling structure upon any Lot, the Owner or his agent shall submit a landscaping plan to the Architectural Control Committee for approval. Each Lot shall be improved, weather permitting, within thirty (30) days of occupancy of the dwelling structure with the landscaping specified in the plan approved by the Architectural Control Committee.

The landscaping plan shall provide for the planting of street trees at fifty foot (50') intervals along the

street. The trees shall be selected from a list of approved street trees provided by Declarant and shall be at least two and one-half (2½) inches caliper at the time of planting.

This provision shall supersede and replace Section 18 of Article V of the Declaration, as it affects the Property.

Section 8. Sanitary Facilities. Each Lot shall be improved with a waste disposal facility, for sewage and waste water disposal, of a design and construction approved by the Central District Health Department and the Architectural Control Committee prior to the occupancy of any structure thereon. No septic tanks or drain field shall be installed within seventy-five feet (75') of the edge of the bench on Lots 25, 26, 27 and 28 of Block 1, BanBury No. 4 Subdivision.

This provision shall supersede and replace the provisions of Section 20, Article V of the Declaration, as it affects the Property.

Section 9. Pasture Areas. Areas used for pasturing of animals shall be maintained in good condition and free of weeds, uncontrolled vegetation growth and refuse. Pasture areas shall be maintained in a clean and odor-free condition. Pasture areas shall not extend beyond the front plane of the dwelling structure on any Lot.

Section 10. Maximum Annual Assessment. Until January 1 of the year immediately following the year in which the conveyance of the first Lot to an Owner occurs, the maximum annual assessment shall be Five Hundred Forty Dollars (\$540.00) per Lot. The annual assessment may be made payable (by action of the Board of Directors of the Association) on a monthly basis, one-twelfth per month, or on a quarterly basis, one-fourth per quarter, in advance. Increases in the amount of the annual assessment shall be limited as follows:

- (a) Each year, beginning with the calendar year beginning January 1 of the year immediately following the year in which the conveyance of the first Lot to an Owner occurs, the maximum annual assessment may be increased effective as of that January 1 (and each year thereafter), by action of the Board of Directors of the Association without a vote of the membership, by an amount of not more than fifteen



percent (15%) above the prior year's assessment.

- (b) For the calendar year beginning January 1 immediately following the year in which the conveyance of the first Lot to an Owner occurs, or any subsequent year, the maximum annual assessment may be increased more than fifteen percent (15%) above the prior year's assessment only by an affirmative vote 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.

This provision shall supersede and replace Section 3 of Article VII of the Declaration, as it affects the Property.

Section 11. Architectural Review Fee. Upon submission of plans and specifications to the Architectural Control Committee for review, the submitting Owner shall pay an Architectural review fee of Two Hundred Fifty Dollars (\$250.00). No submission for approval shall be considered complete until such fee has been paid. Two Hundred Dollars (\$200.00) of said fee shall be refunded to the submitting Owner upon satisfactory completion of improvements to the Owner's Lot (including landscaping) as specified by the approved plans and specifications.

This provision shall supersede and replace Section 4 of Article VIII of the Declaration, as it affects the Property.

Section 12. Limitations on Use of Domestic Water System. No Owner, nor any person claiming right under any Owner, shall use water from the Domestic Water System to water a lawn, pasture, landscaped area or other similar areas (provided that each Owner may use water from the Domestic Water System to water an area not to exceed a total of sixteen thousand (16,000) square feet), nor shall water from the Domestic Water System be used to supply an exterior decorative pond, or heat exchange system or any other similar use or system, except for a swimming pool, without the prior written approval of each such use by the Architectural Control Committee. No Owner, nor any other person claiming right under any Owner, shall cause or allow to be caused any connection between the Domestic Water System and the Irrigation System.

This provision shall supersede and replace Section 2 of Article X of the Declaration, as it affects the Property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereto set its hand and seal this 21<sup>ST</sup> day of AUGUST, 1991.

HOFF COMPANIES, INC.,  
an Idaho corporation

By Harvey B. Hoff  
President

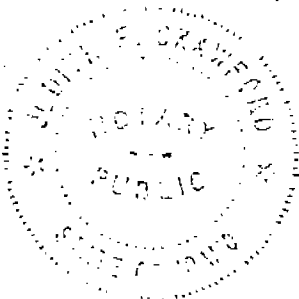
ATTEST:

James D. Kelly  
Notary Secretary

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 21<sup>st</sup> day of August, 1991, before me, JUDITH F. CRAWFORD, a Notary Public in and for said State, personally appeared Harvey B. Hoff, and James D. Kelly, known or identified to me to be the president and secretary, respectively, of HOFF COMPANIES, INC., the corporation that executed the within instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



Judith F. Crawford  
Notary Public for Idaho  
Residing at Boise, Idaho  
My commission expires 12/91, 1991

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INDEXED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

## BANBURY NO. 1 SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by HOFF COMPANIES, INC., an Idaho corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property situate in the City of Eagle, County of Ada, State of Idaho, which is more particularly described as:

Banbury No. 1 Subdivision, according to the official plat thereof on file in the Office of the County Recorder of Ada County, State of Idaho, in Book 54 of Plats at pages 4930 and 4931;

which real property is hereinafter referred to as the "Property."

NOW, THEREFORE, Declarant hereby declares that the Property 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 and bind, the Property and each and every part, parcel and Lot thereof, and be binding on all parties having any right, title or interest in the Property or any part, parcel or Lot 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 BANBURY HOMEOWNERS' ASSOCIATION, INC., a non-profit corporation organized under the laws of the State of Idaho, or any successor or assign of the Association.

Section 2. "Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract purchasers, but excluding those having an interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to the real property constituting Banbury No. 1 Subdivision according to the official recorded plat thereof, and every part, parcel and Lot thereof, and shall further mean and refer to such additional real property as may hereafter be made subject to this Declaration of Covenants, Conditions and Restrictions by Supplemental Declaration, pursuant to the provisions hereof for the annexation and addition of additional parcels of real property.

Section 4. "Common Area" shall mean and refer to any "Well Lot," and Lot 1, Block 5, of Banbury No. 1 Subdivision, and to any Lot or parcel designated as Common Area in any Supplemental Declaration filed by Declarant subjecting additional real property to this Declaration. Said areas are intended to be devoted to the common benefit, use and enjoyment of the Owners (subject to the provisions hereof) and are not dedicated to the public.

Section 5. "Common Facilities" shall mean and refer to those physical improvements constructed by Declarant upon the Common Area or upon the utility easements over each Lot, including the Equestrian/Pedestrian Trail, sidewalks, curbs and gutters, street lights (but excluding the entry way light required to be placed near the driveway entry to each Lot by the Owner of each Lot), the domestic water system and the irrigation water system.

Section 6. "Well Lot" means any Lot identified as such upon the recorded subdivision plat of Banbury No. 1 Subdivision, or upon any subsequent recorded subdivision plat of real property subjected to this Declaration by Supplemental Declaration.

Section 7. "Lot" shall mean and refer to all Lots within and shown upon the official recorded plat of Banbury No. 1 Subdivision, except the Common Area, and except for streets dedicated to the public, as shown upon the recorded plat.

Section 8. "Declarant" shall mean and refer to HOFF COMPANIES, INC., its successors and assigns, provided that, such successor or assign has acquired more than two (2) Lots and that such Lots constitute the entire remainder of unconveyed Lots owned by Declarant.

Section 9. "Project" shall mean and refer to the Property and all contemplated improvements thereto.

Section 10. "Annexed Property" shall mean and refer to any real property made subject to this Declaration by Supplemental Declaration pursuant to the provisions hereof for the annexation and addition of additional parcels of real property.

Section 11. Whenever the context so requires, the use of the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

## ARTICLE II

### BANBURY HOMEOWNERS' ASSOCIATION

Section 1. It is contemplated that simultaneously with the execution and recordation of this Declaration of Covenants, Conditions and Restrictions (the "Declaration"), the Association will be incorporated, and the Association will adopt ByLaws (the "ByLaws") for its governance. To the extent the Articles of Incorporation or ByLaws of the Association may conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

## ARTICLE III

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and Common Facilities, subject to such reasonable rules and regulations governing use and access as may be adopted by the Association, which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association shall have the right to charge reasonable admission and other fees for the use of any Common Facility;
- (b) The Association shall have the right to suspend the voting rights and right to use the Common Area of 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 published rules and regulations; and
- (c) The Association shall have the right to dedicate or transfer all or any part of the Common Area or Common Facilities 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 his right to enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers of his Lot, provided such designees reside on the Property.

#### ARTICLE IV

##### RIGHTS RESERVED BY DECLARANT

Notwithstanding anything to the contrary contained in this Declaration, the Declarant expressly reserves unto:

- (a) Itself, its employees, successors and assigns, its agents, representatives, contractors and their employees, easements and rights-of-way on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Property, or any adjacent real property owned by Declarant, or its successors or assigns;
- (b) Itself, its successors and assigns (including any district or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, or other similar services), easements on, over, under and across all or part of the Common Area, and the utility easements as provided on the recorded subdivision plat of Banbury No. 1 Subdivision, and any subsequent subdivision plat of Annexed Property, for installation, use, maintenance and repair of all lines, wires, pipes, and all other things necessary for all such services, provided that any such lines, wires or pipes shall be underground and, further, provided that all work done in connection therewith shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of such work; and
- (c) Itself, its employees, successors, assigns, agents, representatives, contractors and their employees, the right to use the Common Area, where applicable, to facilitate and complete the development of the Property, and any Annexed Property, including without limitation the use of the Common Area, where applicable for:
  - (1) Construction, excavation, grading, landscaping, parking and/or storage;

- (2) The maintenance and operation of a sales office and model units for sales purposes;
- (3) The showing to potential purchasers of any unsold Lot, unit or improvements within the project;
- (4) The display of signs to aid in the sale of any unsold Lots and units or all or part of the Project.

## ARTICLE V

### USE AND BUILDING RESTRICTIONS

Section 1. Building Restrictions. Each Lot shall be restricted to one single family dwelling, and usual and appropriate out-buildings. No structure shall be erected upon any Lot which shall exceed two (2) stories in height, and no barn, animal shelter or similar out-building shall exceed one (1) story in height. Each structure constructed on any Lot shall be placed upon the Lot in such a manner as to minimize obstruction of the view of the Boise Front from other lots. All buildings shall be of frame, stone or brick construction and, if other than brick or stone, shall be finished, painted and kept in good repair. The size, configuration, style and finish of each proposed building or structure on each Lot shall be subject to architectural and aesthetic control pursuant to Section 17 of this Article V and pursuant to Article VIII hereof. Said Property shall be used in such manner as to be inoffensive to any other property Owners in the Project.

Section 2. Minimum Building Size. Each single family dwelling structure erected upon a Lot shall satisfy the minimum floor area requirements of the Architectural Control Committee established in accordance with the provisions of Article VIII hereof, provided, however, that in no event shall the required floor area be less than two thousand six hundred (2,600) square feet of floor area inclusive of garages, but exclusive of patios, breezeways, storage rooms, porches and similar structures.

Section 3. Building Location. Unless otherwise specifically approved in writing by the Architectural Control Committee, no dwelling, structure or garage or any part thereof, or any other structure (exclusive of fences and similar structures) shall be placed nearer than forty (40) feet to the front or to the rear Lot line of the Lot on which it is located, or nearer than twenty (20) feet to any side Lot line of the Lot on which it is located. No structure used or to be used for sheltering animals shall be placed nearer than sixty (60) feet to

any Lot line. For the purpose of this section, eaves, steps, chimneys and gutters shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any eaves, steps, chimneys or gutters or any portion of the building on any Lot to encroach upon any other Lot. Open porches shall not be considered as a part of the building, but any open porch which would extend beyond the building lines as herein established shall, prior to construction, require the approval of the Architectural Control Committee.

Section 4. Building Site. A building site shall consist of at least one (1) Lot, or a parcel composed of more than one Lot.

Section 5. Moving of Buildings; Construction of Outbuildings. No buildings or structures shall be moved onto the Property except a new prefabricated structure of a type and design approved by the Architectural Control Committee. No trailer houses or similar mobile unit designed for overnight accommodation shall be parked in any street or within building setback lines. No trailer, basement, tent, shack, garage, barn or other out-building erected on a Lot shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted. No building of any kind shall be erected or maintained on a building site prior to the construction of the dwelling house thereon, except that a garage or other small building of permanent construction may be erected for the purpose of storing tools and other articles prior to the construction of a permanent dwelling. Notwithstanding the foregoing restrictions, a portable construction office may be placed upon any Lot during the period in which construction of a dwelling unit thereon is in progress, provided that such office may not remain or be kept upon such Lot for more than eight (8) months; a temporary sales office of a portable nature may be placed upon a Lot by Declarant to facilitate Lot sales.

Section 6. Prosecution of Construction Work. The construction of the dwelling and associated structures shall be prosecuted diligently and continuously from time of commencement thereof until such dwelling and associated structures are fully completed and painted. All structures shall be completed as to external appearance, including finished painting, within eight (8) months from the date of commencement of construction, unless prevented by causes beyond the control of the Owner or builder and only for such time as that cause continues.

Section 7. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in a Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure



designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 8. Excavation. No excavation for stone, sand, gravel, earth or minerals shall be made upon a Lot unless such excavation is necessary in connection with the construction of an approved structure thereon.

Section 9. Unsightly Structures or Practices. No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing, all unsightly facilities, equipment or structures shall be enclosed within approved structures or appropriately screened from view. All refuse, garbage and trash shall be kept at all times in covered, reasonably noiseless containers, which shall be kept and maintained within an enclosed structure or appropriately screened from view, except when necessarily placed for pickup by garbage removal services. Storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrubs or tree clippings or scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Lot.

Section 10. Vehicle and Equipment Parking. No campers, recreational vehicles, trailers, boats, motorcycles, snowmobiles, snow removal equipment, golf carts, or similar equipment or vehicles, except those owned and/or leased by the Lot Owner and for the personal use of the Lot Owner and/or his family, shall be kept or stored upon any Lot. Such vehicles or equipment shall not be parked on any street, nor shall they be parked or stored in the area between the front plane of the dwelling unit on any Lot and the street, nor shall they be parked or stored within any building setback area (as defined in Section 3 hereof). Such vehicles or equipment as permitted hereunder shall be appropriately screened from the street view. No working or commercial vehicles larger than three-quarter ton, and no junk cars, shall be parked upon any Lot.

Section 11. Material Storage. No building material of any kind shall be placed or stored upon a building site until the Lot Owner or his builder is ready and able to commence construction and then such material shall be placed within the property lines of the building site upon which the structure is to be erected. The Architectural Control Committee and/or Association, through its agents, shall have the right to enter upon any vacant building site for the purpose of burning or removing weeds, brush, growth or refuse.

Section 12. Fences; Hedges. No fence, hedge or boundary wall situated anywhere upon any Lot shall have a height greater than six (6) feet, or such other lesser heights as the Architectural Control Committee may specify, above the finished

graded surface of the ground upon which such fence, hedge or wall is situated. No fence shall be constructed of any material other than wood nor finished in other than a natural finish, except as may be specifically approved by the Architectural Control Committee. No fence except an open rail fence (or fence of a similar type approved by the Architectural Control Committee) shall be constructed so as to extend toward the front of the Lot past the front plane of the dwelling structure constructed thereon, or closer than ten (10) feet to any side Lot line adjacent to a dedicated street on a corner Lot. No fence, wall, hedge, or shrub planting with an elevation above three (3) feet shall be permitted in front of building setback requirements without special written consent of the Architectural Control Committee. No fence, wall, hedge, or shrub planting which obstructs sight lines at an elevation between four (4) and eight (8) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 13. Noxious Use of Property. No portion of the Common Area, or any Lot (except Lot 1 in Block 1) or any structure thereon shall be used for the conduct of any trade or business or professional activities. Noxious or undesirable acts or undesirable use of any portion of the Property, including (but not limited to) acts or uses causing loud noise which interferes with the peaceable enjoyment of neighboring properties, is prohibited and shall not be permitted or maintained; provided, however, that an office or model home for the purpose of the development, construction and sale of the Lots and homes in the Project may be maintained by Declarant. Lot 1 in Block 1 may be used for commercial purposes, such as the conduct of a trade or business.

Section 14. Billboards; Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than five (5) square feet advertising the Property for sale or rent, or signs used by a builder to advertise the Property during the construction and sales period. The Association may maintain one (1) subdivision identification sign, and appropriate informational signs, upon the Common Area, of a size and design approved by the Architectural Control Committee. No other signs shall be placed or maintained upon the Common Area. The restrictions of this Section 14 shall not apply

to Lot 1, Block 1, or any other Lot within an Annexed Property upon which a trade or business is allowed to be conducted. Notwithstanding the provisions of this Section 14, Declarant shall be entitled to place such signs, of such size, as Declarant may deem appropriate, to identify the Project, relate information with regard thereto, and advertise Lots for sale.

Section 15. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets, horses and llamas for the Owner's personal use may be kept, provided that such animals are not kept, bred or maintained for any commercial purpose, and provided further that no more than two horses or llamas (that is, two animals in the aggregate, whether two horses, two llamas, or one of each) may be kept or maintained on any Lot. Any such animals shall be properly restrained and controlled at any time that they are within the Project and outside the boundaries of Owner's Lot. It shall be the obligation of each Owner to control his animals in accordance with the rules and regulations of the Association. In the event an Owner constructs or maintains a kennel upon his Lot, such kennel shall:

- (a) Be located on the Lot in a manner to avoid any endangerment of or nuisance to, adjacent Lot Owners; and
- (b) Be kept in a clean and odor-free manner.

Section 16. Exterior Antennas. No outside television antennas, radio aerials, or similar devices or structures shall be installed on any Lot or the exterior of any structure located thereon. Satellite dishes shall be permitted only if located behind the front plane of the dwelling structure (toward the rear of the Lot) outside of any building site setbacks, and if appropriately screened from view from any direction.

Section 17. Control of Exterior Walls, Roofs, Etc. The visual harmony and aesthetic appeal of the Project being of mutual concern to all Owners and having a direct bearing on the value of Lots and improvements thereon, the Architectural Control Committee shall have the right to control the texture, design and color scheme of the outside walls, fences, roofs and patio roofs of all structures erected upon Lots, and to require basic landscaping. The Owner shall not repaint the outside walls or fences without first obtaining approval of the Architectural Control Committee as to color. All patio roofs shall be of design and color consistent with the roof of the dwelling unit.

Section 18. Landscaping. Prior to the beginning of construction of the dwelling house upon any Lot, the Owner or his agent shall submit a landscaping plan to the Architectural Control Committee for approval. Each Lot shall be improved prior to the occupancy of the dwelling structure with the landscaping

specified in the plan approved by the Architectural Control Committee.

Section 19. Exterior Lighting. No exterior lighting shall be installed or maintained on any Lot (or structure thereon) which interferes with the use and enjoyment of adjacent Lots, or without prior approval of the proposed installation by the Architectural Control Committee.

Section 20. Sanitary Facilities. Each Lot shall be improved with a waste disposal facility, for sewage and waste water disposal, of a design and construction approved by the Central District Health Department and the Architectural Control Committee prior to the occupancy of any structure thereon.

Section 21. Entry-Way Light. Each building site shall be improved by the Owner thereof, prior to the occupancy of any structure thereon, by the installation of an entry-way light at the juncture of the site's driveway and the street, of a style and design approved by the Architectural Control Committee. Such light mechanism shall include a photo-cell device which causes the light to automatically illuminate during the period from sunset to sunrise.

## ARTICLE VI

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot.

Section 2. The Association shall have two (2) classes of voting membership:

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

Class B: The sole Class B member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be automatically converted to Class A memberships (one Class A

membership for each Lot owned) when the total votes outstanding in Class A memberships equal the total votes outstanding in the Class B membership.

## ARTICLE VII

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association:

- (a) Annual assessments or charges; and
- (b) Special assessments for capital improvements;

such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs of collection and reasonable attorneys' fees incurred in collection shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but unpaid assessments shall constitute a continuing lien against the Lot until paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, welfare and economic well-being of the residents in the Project and for the improvement, operation and maintenance of the Common Area and Common Facilities.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the year in which the conveyance of the first Lot to an Owner occurs, the maximum annual assessment shall be Three Hundred Sixty Dollars (\$360.00) per Lot. The annual assessment may be made payable (by action of the Board of Directors of the Association) on a monthly basis, one-twelfth per month, or on a quarterly basis, one-fourth per quarter, in advance. Increases in the amount of the annual assessment shall be limited as follows:

- (a) Each year, beginning with the calendar year beginning January 1 of the year immediately following the year in which the conveyance of the first Lot to an Owner occurs, the maximum annual assessment may be increased effective as of that January 1, (and each year thereafter) by action of the Board of Directors of the Association without a vote of the membership, by an amount of not more than fifteen percent (15%) above the prior year's assessment.
- (b) For the calendar year beginning January 1 immediately following the year in which the conveyance of the first Lot to an Owner occurs, or any subsequent year, the maximum annual assessment may be increased more than fifteen percent (15%) above the prior year's assessment only by an affirmative vote 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 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any calendar 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 Sections 3(b) or 4 of this Article VII shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting the presence of members in person or by proxy entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, the meeting shall be adjourned and rescheduled for a time and place not less than ten (10) days nor more than thirty (30) days subsequent. Written notice of the rescheduled meeting shall be mailed to all members not less than five (5) days in advance of the rescheduled meeting date. The required quorum at the subsequent meeting shall be satisfied by the presence in person or by proxy of twenty-five percent (25%) of each class of membership.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots; provided, however, that assessments for Lots which have not been improved with a dwelling unit or out-buildings shall be assessed at one-half (1/2) of the assessment for Lots which have been improved with a dwelling unit or out-buildings. A lot shall be deemed improved with a dwelling unit or out-building when such structure is occupied or substantially completed.

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 initial conveyance of a Lot by Declarant to a purchaser. The first annual assessment shall be adjusted (pro rata) according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period; provided, however, that in the event of an assessment proposed in excess of the authority of the Board of Directors, the amount of such assessment in excess of the Board's authority shall not be effective until membership approval. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

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 ten percent (10%) per annum or at such other interest rate as may be established annually by the Board of Directors. Each assessment, when levied, shall automatically constitute a lien on and against the Lot to which the assessment pertains, without any requirement of filing any documentation of such lien. Nonetheless, the Association may file an Affidavit of Lien evidencing such lien thirty (30) days after the due date of the assessment. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the assessment lien against the Property, in the same manner as provided by law as to statutory materialmen's liens. 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 assessment thereafter becoming due or from the lien thereof.

## ARTICLE VIII.

### ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. In order to protect the quality and value of all homes built in the Project and for the continued protection of the Owners thereof, an Architectural Control Committee, consisting of three or more members to be appointed by the Declarant is hereby established. At such time as the total number of Lots owned by Declarant (including Lots in any Annexed Property) total less than ten percent (10%) of the total number of platted Lots, then the membership of the Architectural Control Committee shall be appointed by the Board of Directors of the Association, to succeed the prior Committee membership upon such appointment.

Section 2. Approval by Committee. No building, fence, wall, patio cover, window awning or other structure shall be commenced, erected, or maintained upon any Lot, the Common Areas or other properties within the Project, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, location of the same, and such other detail as the Architectural Control Committee may require (including but not limited to any electrical, heating or cooling systems, sewage or waste disposal systems) shall have been submitted to and approved in writing by the Architectural Control Committee. In the event said Committee fails to approve or disapprove such plans, specifications and location within thirty (30) days after said plans and specifications have been submitted to it in such form as may be required by the Committee, in writing, approval will not be required, and this Article will be deemed to have been fully complied with.

Section 3. Rules and Regulations. The Architectural Control Committee is hereby empowered to adopt rules to govern its procedures, including such rules as the Committee may deem appropriate and in keeping with the spirit of due process of law with regard to the right of concerned parties due to be heard on any matter before the Committee. The Architectural Control Committee is further hereby empowered to adopt such regulations as it shall deem appropriate, consistent with the provisions of this Declaration, with regard to matters subject to the Committee's approval, including matters of design, materials and



aesthetic interest. Such rules, after adoption, shall be of the same force and effect as if set forth in full herein.

Section 4. Fees. The Architectural Control Committee may establish, by its adopted rules, a fee schedule for an Architectural review fee to be paid by each Owner submitting plans and specifications to the Committee for approval. No submission for approval shall be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Committee for the costs of professional review of submittals, and in any event shall not exceed the sum of One Hundred Dollars (\$100.00) per submittal.

## ARTICLE IX

### ENFORCEMENT

Section 1. Persons Entitled to Enforce. The provisions of this Declaration may be enforced by any of the following persons or entities in accordance with the procedures outlined herein:

- (a) The Association;
- (b) The Declarant;
- (c) The Owner or Owners of any Lot adversely affected, but only after demand made upon the Association and its failure to act, except that no such Owner shall have the right to enforce independently of the Association any assessment or lien herein.

Section 2. Methods of Enforcement. Subject to the provisions of Section 3 herein, the following methods of enforcement may be utilized:

- (a) Legal or equitable action for damages, injunction, abatement, specific performance, foreclosure, rescission, or cancellation of any contracts of an executory nature;
- (b) Eviction for trespass by police action;
- (c) Monetary penalties and temporary suspension from Association membership rights and privileges, in accordance with the Bylaws of the Association, provided that, except for late charges, interest, and other penalties for failure to pay as due assessments levied by the Association as provided in this Declaration, no discipline or sanction shall be effective against a member unless:

- (i) The member is given fifteen (15) days written notice of the proposed disciplinary action and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such member, be oral or in writing. The notice shall be given personally to such member or sent by first-class or registered mail to the last address of such member as shown on the records of the Association, and shall state the place, date and time of the hearing, which shall not be less than five (5) days before the effective date of the proposed penalty, termination, or suspension.
- (ii) The hearing shall be conducted by a committee composed of not less than three (3) persons, appointed by the President of the Association, which shall conduct the hearing in good faith and in a fair and reasonable manner and shall not reach a decision regarding discipline until the conclusion of the meeting.
- (iii) Any member challenging the disciplinary measures taken by the Board, including any claim alleging defective notice, must commence Court action within one (1) year after the date of the contested disciplinary measure taken by the Board.

Section 3. Limitations on Enforcement. All methods of enforcement and discipline authorized by this Declaration are limited as follows:

- (a) The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot on account of the failure of the Owner to comply with provisions of this Declaration except by judgment of a Court or a decision arising out of arbitration or on account of a foreclosure for failure of the Owner to pay annual or special assessments duly levied by the Association.
- (b) A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the provisions of this Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Areas for which the member was allegedly responsible, or in bringing the member

and his Lot into compliance with this Declaration, may not be treated as an assessment which may become a lien against the members' Lot, enforceable by a sale of the interest. This provision does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and for charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Section 4. Fees and Costs. The Association, or any person entitled to enforce any of the terms hereof, by any of the means contained herein, who obtains a decree from any Court or arbitrator enforcing any of the provisions hereof, shall be entitled to reasonable attorneys' fees and all costs incurred or anticipated to be incurred in remedying or abating the offensive condition as a part of his or its judgment or decree against the party in violation hereof.

Section 5. Non-Liability For Enforcement Or For Non-Enforcement. Neither the Architectural Control Committee nor the Association shall be liable to any person under any of these covenants for failure to enforce any of them, for personal injury, loss of life, damage to property, economic detriment, or for any other loss caused either by their enforcement or non-enforcement. Failure to enforce any of the covenants contained herein shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE X

### WATER SYSTEMS

Section 1. Domestic Water System. Each Lot shall have access to a Domestic Water System, to be constructed by Declarant and to be owned and operated by the Association (subject to the transfer of ownership of such Domestic Water System as hereinafter provided). Said Domestic Water System shall consist of a well or wells (located on Well Lots), pumps, regulators, pipes and other delivery system equipment, and shall provide water for culinary and other ordinary domestic household use. The Association shall establish reasonable charges for water use from the Domestic Water System, which charges shall be separate and distinct from any assessment. Any Owner's use of water from the Domestic Water System shall constitute an agreement to pay the charges made by the Association for such use. Unpaid water use charges shall be collectible in an action at law. Should any Owner fail to pay the charges for his water use from the Domestic Water System, the Association shall, after reasonable notice, be entitled to terminate water service to such defaulting Owner.

Section 2. Limitations on Use. No Owner, nor any person claiming right under any Owner, shall use water from the Domestic Water System to water a lawn, pasture, landscaped area or other similar areas (provided that each Owner may use water from the Domestic Water System to water an area not to exceed a total of ten thousand (10,000) square feet), nor shall water from the Domestic Water System be used for any swimming pool, or to supply any exterior decorative pond, or heat exchange system or any other similar use or system without the prior written approval of each such use by the Architectural Control Committee.

Section 3. Transfer. Notwithstanding any other provision of this Declaration, Declarant shall have the right to transfer and convey the Domestic Water System, for and on behalf of the Association, to the City of Eagle or a water company licensed and regulated by the Idaho Public Utilities Commission, conditioned only upon reasonable assurances that the Domestic Water System will be operated in a manner that will provide water service from the Domestic Water System to Owners on a continuing basis with quality of service equal to or better than previously provided. For purposes of this Section, Declarant is hereby appointed and made attorney-in-fact for the Association, with full power of attorney to consummate any such transfer of the Domestic Water System.

Section 4. Irrigation System. Each Lot shall have access to a Pressurized Irrigation Water System ("Irrigation System") to be constructed by Declarant and to be owned and operated by the Association. Use of the Irrigation System shall be subject to such rules and regulations of the Association governing use of the Irrigation System as may be adopted by the Association from time to time.

## ARTICLE XI

### ANNEXATION OF ADDITIONAL PROPERTIES

Declarant intends to develop the property described in Exhibit A, attached hereto and incorporated herein by this reference (the "Additional Property"), by subdividing the Additional Property, and recording subdivision plats of such property. The Additional Property will be developed in stages, and will include Common Area and Common Facilities of the same style and nature as included in Banbury No. 1 Subdivision. Declarant shall have the right, without action, approval or consent of the Owners or the Association, to amend the Declaration to include the Additional Property (or parts thereof) as Declarant develops and plats such property. Amendment of the Declaration to include Additional Property, and to subject Additional Property to the rights, privileges, restrictions and covenants herein provided shall be made by the execution and

recordation by Declarant of a Supplemental Declaration, which shall describe the Additional Property being annexed, and shall describe the Common Areas thereof. Upon recordation of the Supplemental Declaration, the Annexed Property shall be subject to this Declaration as if included originally in this Declaration. Any such Supplemental Declaration may designate Lots within the affected Additional Property which may be used for the conduct of a trade or business.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions hereof, which shall remain in full force and effect.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless a document terminating the covenants and restrictions of this Declaration, signed by seventy-five percent (75%) of all Owners, duly acknowledged as to each executing Owner, is recorded in the official records of Ada County, Idaho. This Declaration may be amended during the first twenty (20) year period by an instrument signed and acknowledged by the Owners of not less than ninety percent (90%) of the Lots subject to this Declaration and thereafter by an instrument signed and acknowledged by the Owners of not less than seventy-five percent (75%) of the Lots subject to this Declaration.

Section 3. Conveyance of Common Area. The Common Area shall be conveyed by Declarant to the Association on or before the tenth (10th) day after conveyance of the first Lot in the Project. Until the Common Area has been conveyed to the Association, Declarant shall be solely responsible for the maintenance and management thereof, and for all costs and expenses arising therefrom.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 15<sup>th</sup> day of May, 1987.

HOFF COMPANIES, INC.,  
an Idaho corporation

By

Lawrence B. Hoff  
President

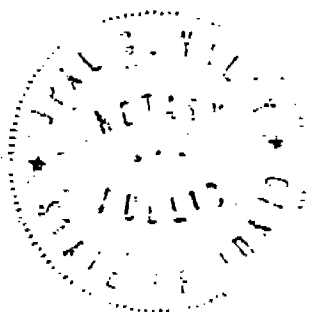
ATTEST:

Ann B. Hawley  
Secretary

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 15<sup>th</sup> day of May, 1987, before me, a notary public in and for said state, personally appeared Lawrence B. Hoff AND Ann B. Hawley, known or identified to me to be the President and Secretary, respectively, of HOFF COMPANIES, INC., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



Opal G. Dally  
Notary Public for Idaho  
Residing at Boise, Idaho  
My commission expires on 6/21, 1991