

ALLUMBAUGH CONDOMINIUMSDECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by HUNTER CONSTRUCTION COMPANY, an Idaho partnership, hereinafter referred to as "DECLARANT".

W I T N E S S E T H:

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

Commencing at the quarter section corner common to sections 6 and 7, Township 3 North, Range 2 East, Boise Meridian, Ada County, Idaho; thence North 89°28' West 673.20 feet on the section line to a point; thence South 0°17' East 792.93 feet; thence North 89°28' West 25.00 feet to the point of beginning; thence continuing 89°28' West 525.00 feet to a point; thence South 0°17' East 150.47 feet; thence South 89°28' East 200.00 feet; thence North 0°17' West 4.90 feet to a point; thence South 89°28' East 325.00 feet to a point; thence North 0°17' West 145.57 feet to the POINT OF BEGINNING.

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

ARTICLE I

Section 1. "CORPORATION" shall mean and refer to ALLUMBAUGH CONDOMINIUM OWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "OWNER" and "MEMBER" are synonymous and shall mean the party or parties having an estate in any Lot which is part of the Properties, in fee or by contract of sale, excluding any person or entity who holds such interest merely as security for the payment or performance of an obligation, but including any mortgagee, beneficiary under a deed of trust or other security holder in actual possession of any Lot, as a result of foreclosure or otherwise, and any person taking title through such security holder, by purchase at foreclosure sale or otherwise.

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

Section 4. "COMMON AREA" shall mean all real property (including any improvements thereon) owned by the Corporation for the common use and enjoyment of the Owners.

Section 5. "LOT" and "DWELLING UNIT" are synonymous and as used herein shall mean and refer to any plot of land (together with the improvements constructed thereon) shown upon the recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "DECLARANT" shall mean and refer to HUNTER CONSTRUCTION COMPANY, an Idaho general partnership, its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "MORTGAGEE" shall mean and refer to the holder of a mortgage or deed of trust, not subordinate to any other mortgage or deed of trust, encumbering all or any singular Lot within the real property described above or all or any portion of the Common Area.

Section 8. "BOARD" shall mean and refer to the duly elected and acting Board of Directors of the Corporation.

ARTICLE II

PROPERTY RIGHTS

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

- (a) the right of the Corporation to charge reasonable admission and other fees for the use of any recreational parking or storage facility situated upon the Common Area;
- (b) the right of the Corporation to suspend the right to use of the Common Area by an Owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Corporation to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes

and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each Class of Members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Lot to which the Owner has title.

Section 3. Partition and/or Subdivision. No unit, including the improvements thereon or all or any portion of the Common Area shall be partitioned or subdivided and any attempt to so partition or subdivide, whether voluntary or involuntary, shall be void and of no force or effect.

Section 4. Parking and Storage Lockers. Each Lot owner shall have an exclusive license to use one (1) parking stall and storage locker, marked for each unit on the plat of said property and an exclusive license to a storage locker adjacent to each unit.

ARTICLE III

USE AND REGULATION OF USES

Section 1. Use. (a) Each Lot shall be used for single family residential purpose only, on an ownership rental or lease basis; and for the common social, recreational or other reasonable uses normally incident to such use, and also for such additional uses or purposes as are from time to time determined appropriate by the Board. Lots may be used for the purposes of operating the Corporation and for the management of the Corporation if required. The provisions of this Section shall not preclude use by Declarant for any purposes permitted under this Section, and Declarant may conduct sales activities for all Lots and dwelling units owned by Declarant.

(b) Unenclosed parking spaces for visitors and guests are restricted to use for parking of operative motor vehicles; parking on any portion of the Common Area shall be regulated by the Board and shall be shared by all owners on an equitable basis, except designated unit parking described herein; inoperative motor vehicles and other items and equipment shall be parked only in those areas, if any, designated by the Board. The Board may require removal of any inoperative vehicle, or any unsightly vehicle, and any other vehicle, equipment or item improperly parked or stored. If the same is not removed, the Board may cause removal at the risk and expense of the Owner thereof. Any other item or equipment determined by the Board to be objectionable may be similarly removed.

(c) Common drives and walks shall be used exclusively for normal transit and no obstructions shall be placed thereon or therein except by express written consent of the Board.

(d) Nothing shall be done or kept in any dwelling unit or in the Common Area which will increase the rate of insurance on the Common Area or dwelling units without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his dwelling unit or in the Common Areas which will result in the cancellation of insurance on any dwelling unit or any part of the Common areas, or which would be in violation of any laws.

(e) No waste will be committed in the Common Area or any dwelling unit.

(f) No sign of any kind shall be displayed to the public view or from any dwelling unit or the Common Area without the prior consent of the Board. Owners may advertise a dwelling unit for rent or for sale by display of a neat, reasonably sized vacancy sign or "for sale" sign from the dwelling unit. The Board may regulate this practice by its rules and may, in its discretion, maintain such a sign for use of the Owners as needed.

(g) No animals (which term includes livestock, domestic animals, poultry, reptiles and any other living creature of any kind) shall be raised, bred, or kept in any dwelling unit or in the Common Area, whether as pets or otherwise, except as may be allowed by rules and regulations adopted by the Board, or By-Laws adopted by the Corporation. The Board may at any time require the removal of any animal which it finds is disturbing other Owners unreasonably, in the Board's determination, and may exercise this authority for specific animals even though other animals are permitted to remain.

(h) No noxious or offensive activity shall be carried on in any dwelling unit or Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners.

(i) Nothing shall be altered or constructed in or removed from the Common Area except upon written consent of the Board and after procedures required herein or by law.

(j) No Owner shall install any or place any item on the exterior of his dwelling unit or on any building without the consent of the Board.

(k) Either the Board or the Members of the Corporation upon a majority vote of the Board or the Members, as the case may be, are empowered to pass, amend and revoke detailed administrative rules and regulations, "House Rules", or rules of conduct necessary and convenient to insure compliance with the general guidelines of this Section.

Section 2. Maintenance--Interior and Lot Easements. Each owner shall, at his sole expense, keep the interior of his dwelling unit and its equipment, appliances, and appurtenances in good order, condition and repair and shall do all redecorating and painting at any time necessary to maintain the good appearance and condition of his dwelling unit. Each Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, fans, heating and air conditioning equipment,

electrical fixtures or appliances which may be in or connected with his dwelling unit.

Section 3. Maintenance--Exterior and Common Area. The Corporation shall provide all maintenance upon the Common Area. In addition, the Corporation shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, stain, repair, replacement of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair or the Common Area, or a Lot (including the improvements thereon) is caused through the wilful or negligent act of an Owner, or through the wilful or negligent act of the family, guest or invitee of an Owner, the cost of said maintenance or repairs shall be added to and become part of the assessment against the Lot owned by said Owner.

Section 4. Uniform Appearance. In order to preserve a uniform exterior or appearance of the dwelling units, the Board shall have the right to require and, if necessary, provide for the refinishing, painting, maintenance or repair of any portion of a dwelling unit or Limited Common Area and, further the Board may prescribe the type and color of paint or refinish, and may prohibit, require, or regulate any modification or decoration thereof undertaken or proposed by any Owner. This power of the Board extends to screens, doors, awnings, railings or other visible portions of each dwelling unit or Limited Common Area.

Section 5. Entry for Repairs. The Board and its agents or employees, may enter any dwelling unit when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergencies. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board out of the common expense fund if the entry was due to an emergency (unless the emergency was caused by an Owner in which case the cost shall be specially assessed to the Lot owned by said responsible Owner) or for the purpose of maintenance, or repairs, to the Common Area where the repairs were undertaken by or under the direction or authority of the Board. If the repairs or maintenance were necessitated by or for the dwelling unit entered or its Owners, or requested by its Owners, the costs thereof shall be specially assessed to such dwelling unit.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Corporation. Membership shall be

appurtenant to and may not be separated from ownership of any Lot which is subject to the assessment.

Section 2. Classes of Members. The Corporation shall have two classes of voting membership.

- (a) Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote or each Lot owned. When more than one person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the Owners determine, but in no event shall more than one (1) vote be cast with respect any Lot.
- (b) Class B. The Class B Member(s) shall be the Declarant and shall be entitled to two (2) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of a Lot covenants and agrees by acceptance of a deed therefor, whether or not it shall be so expressed in such deed to pay to the Corporation: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due and payable. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Declarant Not Liable for Assessments. Declarant as Owner of any dwelling unit shall not be liable for any annual or special assessment unless such dwelling unit is leased or rented by the Declarant.

Section 3. Purpose of Assessments. The assessments levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and residents of the Properties and for the operation, improvement, maintenance and insuring of the Common Area and for such other purposes authorized by this Declaration, the Articles of Incorporation or the By-Laws of the Corporation.

Section 4. Annual Assessment. The amount of the annual assessment shall be established by the Board in accordance with the provisions of this Article. Provided, however, that commencing with the assessment for the second full year following the conveyance of the first Lot to an Owner the maximum annual assessment for general operating expenses, excluding insurance premiums, may be increased each year not more than twenty percent (20%) above the maximum annual assessment for the previous year without a vote of the membership. The maximum annual assessment may be increased above twenty percent (20%) by the approval of two-thirds (2/3) of each class of members voting in person or by proxy, at a meeting duly called for this purpose. Written notice of such meeting shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting setting forth the purpose of the meeting.

(a) Within thirty (30) days prior to the beginning of each calendar year the Board shall estimate the net charges to be paid during such year, and may include a reasonable provision for contingencies and replacement and acquisition and operating reserves, less any expected income and any surplus available from the prior year's operating fund; provided, that the Declarant or initial Board may at any suitable time establish the first such estimate. Said estimated requirement or budget shall be assessed to each dwelling unit and the Owner thereof in equal shares, subject to the provisions of Section 2 of this Article V. If the sum estimated and budgeted at any time proves inadequate for any reason, including non-payment of any Owner's assessment, the Board may, if the same be approved by the Members as provided in Section 4(a) of this Article, at any time levy a further assessment, which shall be assessed to the Owners in like proportions. Each Owner shall be obligated to pay assessments made pursuant to this paragraph to such person or agent as may be designated by the Board in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate, and any unpaid assessments shall bear interest as hereafter provided. The proposed budget shall be referred to the annual meeting of the Members, with the notice of such meeting, or may be sent out earlier, and unless specific action is taken to change it, shall be deemed approved by the Owners. Subsequent changes necessary during any year may be approved by the Board.

(b) All funds collected hereunder shall be expended for the purposes specified in Section 3 of this Article.

(c) The Board shall require that the Corporation maintain separate accounts for current operations, reserves, and a special separate reserve account for payment of insurance. Each month the Board shall first deposit to the insurance reserve account that portion of the common expenses assessment necessary to pay at least one-twelfth (1/12) of the total cost of all of the insurance policies provided regarding the Properties and such insurance reserve account shall be held separately and inviolate until utilized for payment of insurance premiums. Thereafter, the remainder of the common expenses collected may be utilized for payment of other expenses or deposited or credited to other accounts.

(d) The omission by the Board to fix the estimate and assessments hereunder for any year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

(e) The Board shall cause to be kept detailed accurate records in the form established by the Corporation's accountant or the receipts and expenditures of the Corporation, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expense incurred. Such records and any resolutions authorizing the payments involved shall be available for examination by an Owner at convenient hours of week days.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Corporation may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, providing that any such assessment shall have the approval thereof by two-thirds (2/3) of the votes of each class of members voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Authority of the Board. The Board for the benefit of the Corporation and the Owners shall enforce the provisions of this Declaration of the By-Laws, shall have all powers and authority permitted to the Board under the By-Laws and this Declaration, and shall acquire and shall pay for out of the common expense fund hereinafter provided for, all goods and services requisite for the proper functioning of the Corporation and the Properties, including but not limited to the following:

(a) Water, sewer, garbage collection, electrical, and any other utility service as required for the Common Area. If one or more dwelling units or the Common Areas are not separately metered the utility service may be paid as a common expenses, and the Board may be reasonable formula allocate a portion of such expense to each such dwelling unit involved as a portion of its common expense. The Board may arrange for special metering of utilities as appropriate.

(b) Policies of insurance providing coverage for fire and other hazard, public liability and property damage, and fidelity bonding as the same are more fully described in the By-Laws or this Declaration. Each Owner shall be responsible for his own insurance on the contents of his dwelling unit, his additions and improvements to his dwelling unit, and decorating and furnishings, and his personal property stored elsewhere on the property, and his personal liability or injury, to the extent not covered by the Corporation for all Owners in common

Corporation policies.

(c) The services of persons or firms as required to properly manage the affairs of the Corporation to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Common Area.

(d) Legal and accounting services necessary or proper in the operation of the Corporation affairs, administration of the Common Area, or the enforcement of this Declaration.

(e) Painting, maintenance, repair and all landscaping and gardening work for the Common Area, and such furnishings and equipment for the Common Area as the Board shall determine are necessary and proper for the Common Area provided that the interior of each dwelling unit shall be maintained and repaired by the Owners thereof as previously provided in this Declaration.

(f) Exterior maintenance upon each dwelling unit which is subject to assessment as follows: Paint, stain, repair, replace and care of roofs, gutters, downspouts, and exterior building surfaces except glass surfaces. In the event that the need for such exterior maintenance or repair is caused through the wilful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become part of the assessment to which such dwelling unit (Lot) is subject.

(g) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration; provided that if for any reason such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular dwelling units or their Owners, the cost thereof shall be specially assessed to the Owner of such dwelling units.

(h) Maintenance and repair of any dwelling unit, its appurtenances and appliances, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Area or preserve the appearance and value of the Properties, and the Owner or Owners of said dwelling unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered

by the Board to the Owner or Owners, provided that the Board shall levy a special assessment against the dwelling unit of such Owner or Owners for the cost of such maintenance or repair.

(i) The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the Properties or any part thereof, which is claimed to or may, in the opinion of the Board, constitute a lien against the Common Area, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs and expenses incurred by the Board by reason of such lien or liens shall be assessed against the Owners and the dwelling units (Lots) responsible to the extent of their responsibility.

(j) The Board shall not make any non-budgeted expenditure in excess of \$1,000.00 without the approval thereof by two-thirds (2/3) of each class of members voting thereon at a meeting called for such purpose except for emergency threatening the security of any improvement on the Properties.

Section 7. Notice and Quorum for Any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 and 5 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to vote sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots subject to assessment except that dwelling units which will require more exterior maintenance because of greater exterior exposure may be assessed more than other units based on the additional maintenance cost to be incurred.

Section 9. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of said Lot and the first annual assessment as to each Lot shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed or delivered to every Owner subject thereto. The due dates shall be established by the Board provided that the same shall payable not more

frequently than monthly. The Corporation shall, upon demand of an Owner, and for a reasonable charge, furnish such Owner a certificate signed by an Officer of the Corporation setting forth whether the assessments on a specified Lot have been paid.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Corporation. 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. The Corporation may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. Any action to foreclose said lien as applicable statutes of the State of Idaho relating to and regulating the foreclosure of liens against real property. No owner may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the Common Area of abandonment of his Lot. In the event of a delinquency in the payment of an assessment an appropriate notice thereon shall be filed for record in the office of the Ada County Recorder, provided, however, that the failure to file said notice shall in no way prejudice the right(s) of the Corporation as provided herein.

Section 11. Security Deposit. An Owner may be required by the Board, from time to time, to make and maintain a security deposit not in excess of three (3) months installments on the annual assessment, which may be collected as are other assessments. Such deposit shall be held in a separate fund, credited to such Owner, and resort may be had thereto at any time when such Owner is ten (10) days or more delinquent in paying his monthly or other assessments.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust encumbering the Lot assessed. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure of any prior lien or encumbrance or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from Liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the dwelling units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or wilful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or wilful acts of omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or wilful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of the arbitrators.

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, wall, hedge, structure, addition, improvement, painting, ornament, landscaping or obstruction shall be commenced, erected, added or maintained upon the Properties, not shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Board, or its designated committee, fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. This Article shall not affect or in anywise be applicable to the Declarant.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Corporation, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Corporation or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event suit is brought to enforce the covenants contained herein, the prevailing party shall be entitled to be awarded his reasonable attorneys fees in addition to allowed costs.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter, by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in the office of the Ada County Recorder.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the approval thereof by two-thirds (2/3) of the share of stock of the Corporation voted at a meeting called for such purpose.

Section 5. Notice to Mortgagee. The Corporation shall, by notice in writing thirty (30) days prior to the effective date thereof, advise the Mortgagee of (a) any changes or amendments in the Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation, or the By-Laws relating to ALLUMBAUGH CONDOMINIUMS and (b) any change of a manager (not including a change in employees of the Corporation) in the event the affairs of the Corporation are managed by a person or persons other than its officers and Board. Further, the Corporation shall, by notice in writing, advise the Mortgagee of any default by an Owner of any obligation imposed by this Declaration which default has not been cured within thirty (30) days and for which default the Corporation intends to take any affirmative action provided herein.

Section 6. Non-Waiver. The failure of the Board in any one or more instances to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or of the By-Laws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any assessment from an Owner, with

knowledge of any such breach, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless express in writing and signed for the Board. This Section also extends to the Declarant exercising the powers of the Board during the initial period of operation of the Corporation.

Section 7. Limitation of Liability. The Board shall not be liable for any failure of any utility or other service to be obtained and paid for by the Board, or for injury or damage to person or property caused by the elements, or by another dwelling unit or person; or resulting from electricity, gas, water, rain, dust or sand which may lead or flow from outside or from any parts of the buildings, or from any pipes, drains, conduits, appliances, or equipment, or from any other place; or resulting from loss, damage, or theft of articles used or stored by Owners on the Properties or in dwelling units. No diminution or abatement of common expense assessments shall be claimed or allowed or inconveniences or discomfort arising from the making of repairs or improvements to the Common Areas, including the Limited Common Areas, or from any action taken to comply with any law, ordinance, or order of a governmental authority. This Section shall not be interpreted to impose any form of liability by any implication upon the Board or the Corporation. This section also extends to the protection of the Declarant exercising the powers of the Board during the initial period of operation of the Corporation and the Properties.

Section 8. Indemnification of Board Members. Each member of the Board shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of being or having been a member of the Board, or any settlement thereof, whether or not he or she is a member of the Board, or any settlement thereof, whether or not he or she is a member of the Board at the time such expenses or liabilities are incurred, except in such cases wherein the member of the Board is adjudged guilty of wilful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Corporation or Owners. This Section shall extend to and apply also for the indemnification of the Declarant during the initial period of operation of the Corporation and the Properties.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has

hereunto set their hand and seal this 8th day of June, 1983.

HUNTER CONSTRUCTION COMPANY,
an Idaho partnership

By *Rachel S. Gilbert*

By *Joe W. Hunter*
"GENERAL PARTNERS"

STATE OF IDAHO)
) ss
COUNTY OF ADA)

On this 8th day of June, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared RACHEL S. GILBERT and JOE W. HUNTER, known or identified to me to be the persons whose names are subscribed to the within instrument as "GENERAL PARTNERS", of HUNTER CONSTRUCTION COMPANY, an Idaho company, and acknowledged to me that they 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.

Clarence A. Brady
Notary Public for Idaho
Residing at Boise, Idaho

ARTICLES OF INCORPORATION
OF
ALLUMBAUGH CONDOMINIUM OWNERS ASSOCIATION, INC.

THE UNDERSIGNED, acting as incorporators of a non-profit corporation (hereinafter referred to as the "Corporation") under the Idaho Business Corporations Act (hereinafter referred to as the "Act"), and in particular Chapter 3 of Title 30, Idaho Code, adopted the following Articles of Incorporation for such Corporation:

ARTICLE I

NAME

The name of the corporation is:

ALLUMBAUGH CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE II

PERIOD OF DURATION

The period of duration of the Corporation is perpetual.

ARTICLE III

PURPOSES AND POWERS

Section 1. Purposes. This Corporation does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it if formed are to provide for the maintenance, preservation and architectural control of the residential Lots and Common Area within that certain tract of land described as follows:

Commencing at the quarter section corner common to sections 6 and 7, Township 3 North, Range 2 East, Boise Meridian, Ada County, Idaho; thence North 89°28' West 673.20 feet on the section line to a point; thence

South 0°17' East 792.93 feet; thence North 89°28' West 25.00 feet to the point of beginning; thence continuing North 89°28' West 525.00 feet to a point; thence South 0°17' East 150.47 feet; thence South 89°28' East 200.00 feet; thence North 0°17' West 4.90 feet to a point; thence South 89°28' East 325.00 feet to a point; thence North 0°17' West 145.57 feet to the POINT OF BEGINNING.

Section 2. Powers. The Corporation shall have and exercise the statutory powers provided for non-profit corporations in the State of Idaho, as specified in Title 30, Idaho Code, as the same now exists or may hereafter be amended, and, further, the Corporation shall have the power to do everything necessary, proper, adviseable or convenient for the accomplishment of the purposes hereinabove set forth, and to do all other things incident thereto or connected therewith, which are not forbidden by the Act, by other law or by these Articles of Incorporation. Without limitation of the foregoing stated powers, to promote the health, safety and welfare of the residents within the above described land and any additions thereto as may hereafter be brought within the jurisdiction of this Corporation, the Corporation shall have the power to:

(a) Exercise all of the powers and privileges and perform all of the duties and obligations of the Corporation as set forth in that certain Declaration of the Corporation as set forth in that certain Declaration of Covenants, Conditions and Restrictions (hereinafter called the "Declaration") applicable to the above-described land and recorded in the office of the Ada County Recorder, Ada County, Idaho, under Instrument No. 8359266,

and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes or governmental charges levied or imposed against the land, or any part thereof, owned by the Corporation;

(c) Acquire (by gift, purchase or otherwise) own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the business affairs of the Corporation;

(d) Borrow money, and with the assent of two-thirds, (2/3) of each class of members, mortgage, pledge, deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the Common Area (as the same is described and defined in the Declaration) 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 has been signed by two-thirds (2/3) of each class of members, agreeing to such dedication, sale or transfer;

(f) Participate in mergers and consolidations with other non-profit corporations organized for the same purposes as this Corporation or annex additional residential property and Common Area, provided that any such

merger, consolidation or annexation shall have the assent of two-thirds (2/3) of each class of members.

ARTICLE IV

MEMBERSHIP

Every person or entity who is an Owner (as the same is described and defined in the Declaration) of a Lot shall be a member of the Corporation. the foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, but shall include any mortgagee, beneficiary under a deed of trust or other security holder in actual possession of any Lot, as a result of foreclosure or otherwise, and any person at foreclosure sale or otherwise. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to assessment by the Corporation.

ARTICLE V

VOTING RIGHTS

The Corporation shall have two classes of voting membership:

A. Class A. Class A members shall be all owners (as the same are described and defined in the Declaration), with the exception of the Declarant (as the same is described and defined in the Declaration), and shall be entitled to one (1) vote for each Lot owned. When more than one person or entity hold an interest in a Lot, all such persons or entities shall be members but the votes for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

B. Class B. The Class B member(s) shall be the Declarant, and shall be entitled to two (2) votes for each Lot owned. The Class B membership

shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership.

The Corporation shall not have any voting rights by reason of its ownership of any Lot, including without limitation the common area.

ARTICLE VI

REGISTERED OFFICE AND REGISTERED AGENT

The location of the Corporation's initial registered office in this State is 1487 N. Cole Road, Boise, ID 83704, or at such other place as may be determined by the Board of Directors. The name of the initial registered agent of the Corporation at such address is Rachel S. Gilbert.

ARTICLE VII

BOARD OF DIRECTORS

The number of directors constituting the initial Board of Directors of the Corporation is two (2), who need not be members of the Corporation, and the name and address of each person who is to serve as a director until the first annual meeting of members or until the election and qualification of a successor(s) are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Rachel S. Gilbert	1111 Marshall Boise, ID 83704
Joe W. Hunter	1487 N. Cole Road Boise, ID 83704

ARTICLE VIII
INCORPORATORS

The name and address of each incorporator of the Corporation is as follows:

<u>NAME</u>	<u>ADDRESS</u>
Rachel S. Gilbert	1111 Marshall Boise, ID 83704
Joe W. Hunter	1487 N. Cole Road Boise, ID 83704

IN WITNESS WHEREOF, for the purpose of forming this non-profit Corporation under the laws of the State of Idaho, the undersigned, constituting the incorporator of this Corporation, has executed these Articles of Incorporation this 8th day of June, 1983.

Rachel S. Gilbert

RACHEL S. GILBERT

Joe W. Hunter

JOE W. HUNTER

Ada County, Idaho, ss.

Request of *Joe*

J. W. Hunter
TIME 2:10 P M.

DATE 11-2-83

JOHN BASTIDA

RECORDER

By *J.E. Kuchel*
Deputy

42.00