

BONNEVILLE COUNTY RECORDER
1183427 APR 20 05 AM 8 40

AMT
T-32285k

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FENWAY PARK TOWNHOMES**

INSTRUMENT NO.	1183427
DATE	4-20-05
INST CODE	937
IMAGES PGS	20
FEE	60.00
STATE OF IDAHO	SS
COUNTY OF BONNEVILLE	
I hereby certify that the within instrument was recorded.	
Ronald Langmore, County Recorder	
By	<i>[Signature]</i>
Deputy Request of	AMT

Dated:
Recorded:
Instrument No.:

THIS DECLARATION, Made on the date hereinafter set forth by the undersigned referred to as Declarant.

WHEREAS, Declarant is the Owner of certain real property in the County of Bonneville, State of Idaho (*hereinafter*, the Property) more particularly described as follows:

Lot 2, Block 2 Fenway Park Subdivision as recorded as Instrument No. 1162959 records of Bonneville County, Idaho.

NOW, THEREFORE, Declarant hereby declares, pursuant to the provisions of Idaho Code Title 55, Chapter 15 (*hereinafter*, the Act), that all of the Property is and shall be held and conveyed upon and subject to the easements, conditions, covenants, restrictions, and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of said real property. Said easements, covenants, restrictions, conditions, and reservations shall constitute covenants to run with the land and shall be binding upon all persons claiming under them and also that these conditions, covenants, restrictions, easements and reservations shall inure to the benefit of and be limitations upon all future owners of said Property, or any interest therein.

CREATION OF UNIT OWNERSHIP. Declarant intends to construct on the above described real property, a project known as Fenway Park Townhomes (*hereinafter*, the Project), according to the plat recorded as Instrument No. 1169766 (*hereinafter*, the Plat). The Declarant hereby declares its intent to and does hereby create a separate ownership of a portion (the Units) of the Project an undivided interest in the Common Areas of the Project. All such ownership shall be governed by and be subject to both the provisions of this Declaration and all amendments that may hereafter be made hereto and the Act as in effect on the date of the recording of this Declaration.

DIAGRAMMATIC PLANS. Exhibit "A" hereto consists of a diagrammatic plan for the Project. More detailed diagrammatic plans can be found on the Plat. Exhibit A and the Plat identify each Unit, its relative location and approximate dimension, with designations thereon of Units and all areas which shall be Common Areas.

CONVEYANCE AND FORM OF HOLDING UNITS. The Units in the Project may be conveyed and recorded as individual properties capable of independent usage, each having its own exit to the Common Areas of the Project and/or public streets. Each Unit may be held in any traditional form of holding real property interests including, but not limited to, community property, joint tenancy, or tenancy in common. The Owners of the respective units shall have the

absolute right to lease the residential living areas within each unit provided the lease is made subject to the rules and regulations made by the Association and this Declaration

ARTICLE I

DEFINITIONS

Whenever used in this Declaration, the following terms shall have the following meanings:

1. "Association" shall mean Fenway Park Townhomes Owners Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors and assigns.
2. The "Property" or the "Project" shall mean and refer to that certain real Property hereinbefore described.
3. "Common Area" shall mean all real Property and appurtenances thereto, now or hereafter owned by the Association for the common use and enjoyment of the Members of the Association. The Common Area to be owned by the Association upon its incorporation as legally described on the Plat.
4. "Unit" means the separate interest in a unit in the Project. The boundaries of the Units shall be as shown on the Plat. Each Unit in the Project shall consist of one (1) dwelling Unit, landscaped areas around the building and parking areas located within the boundaries of the Unit. Each owner shall also own in fee simple the real property beneath or in such Unit. The legal description for each Unit shall be as designated on Exhibit "A" hereto and on the Plat. Each Unit is an estate in property as defined in Title 55, Chapter 55, Idaho Code, as amended.
5. "Member" shall mean and refer to every person or entity that holds membership in the Association.
6. "Owner" shall mean and refer to the recorded Owner of any Unit (including contract sellers), whether one or more persons or entities, excluding those having such interest merely as security for the performance of any obligation. Each Owner shall be a member of the Association.
7. "Declarant", "Developer" or "Grantor" shall mean and refer to the undersigned, its successors, heirs, and assigns, if such successors, heirs, or assigns should acquire more than one undeveloped Unit or building site from the Declarant for the purpose of development.
8. "Building Site" shall mean and refer to a Unit or to any parcel of said Property under one ownership which consists of a portion of one of such Units or contiguous portions of two or more contiguous Units if a building is constructed thereon.

9. "Mortgage" shall mean and refer to any mortgage or deed of trust, "Mortgagee" shall refer to the mortgagee or beneficiary under a deed of trust, and "Mortgagor" shall refer to the mortgagor or grantor of a deed of trust.

10. The Board of Directors of the Association shall be referred to herein as the "Board" or the "Management Body" of the Project.

ARTICLE II

MEMBERSHIP

1. Except as otherwise provided herein, every person or entity who is a record Owner (including contract sellers) of a Unit shall by virtue of such ownership be a Member of the Association. When more than one person holds such interest in any such Unit all such persons shall be Members. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any such Unit subject to assessment by the Association. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person becoming such owner and shall automatically terminate and lapse when such ownership in said Unit shall terminate or be transferred. The Association shall maintain a membership list and may require written proof of any Member's Unit ownership interest.

2. The financial reports, books and records of the Association may be examined at reasonable times by any Member or mortgagee.

3. **Parking Rights.** The parking spaces in the Project shall be regulated by the Association in accordance with the provisions set forth herein. In the event parking spaces are assigned to specific buildings or dwelling units, a proportionate number of spaces shall be allocated to each Member's Unit(s).

ARTICLE III

VOTING RIGHTS

The Association shall have two classes of voting membership:

1. **Class A.** Class A Members shall be all Owners of Units, with the exception of the Declarant, and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit. Class A Owners owning more than 4 Units may not cast more than 4 votes on any matter put up for vote.

2. Class B. The Class B Member(s) shall be the Declarant and shall be entitled to (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) When the total votes outstanding in Class A membership equals or exceeds the total votes outstanding in the Class B membership; or

(b) On December 31, 2009.

ARTICLE IV

PROPERTY RIGHTS

1. Common Property Ownership. Each Owner shall own an undivided 1/24 or 4.16% interest in the Common Area for the purposes of tax assessment under Idaho Code § 55-1514, and for the purposes of liability as provided by Idaho Code § 55-1515. If substantial changes are made to the value or size of any one or more Units as compared with other Units, such percentages can be changed once every 3 years, pursuant to Idaho Code § 55-1505 (I)(c).

2. Members' Easements of Enjoyment to Common Area. Every Owner and Member of the Association and every tenant of an Owner or Member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Unit subject to the following provisions:

(a) The right of the Association to suspend any Member's voting rights and/or a Member's tenant's right to use any of the recreational facilities owned by the Association, for any period during which any assessment against said Member's Unit remains unpaid;

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such condition or transfer shall be effective amenities of the project and provide a place to hang smaller signs advertising the properties for sale or rent. The mailboxes shall be placed on the Common Area. The mailboxes may not be relocated without prior approval from the US Postmaster.

(c) Owners are permitted to construct fences within the subdivision provided the fencing is constructed at the Owner's expense, and the Owner has received prior written approval by the Association and the proposed fencing matches the exterior fencing of the Property.

5. Additional Buildings. Construction of additional buildings shall be prohibited on all Units.

6. Legal Description of Units. For purposes of conveying, mortgaging or otherwise affecting title, any Unit may be legally described by its identifying number shown on the Plat. Such legal description shall be construed to describe the Unit and the appurtenant undivided

interest in the Common Areas and to incorporate all the rights and limitations incident to the ownership of a Unit in this Project. Such legal description shall be substantially as follows:

Unit No. ___ of Fenway Park Townhomes, in the City of Idaho Falls,
County of Bonneville, State of Idaho as per the duly recorded plat thereof.

ARTICLE V

ASSESSMENT AND MORTGAGEE RIGHTS

1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for all of said Property; and each Owner of any Unit by ratification of these Covenants or by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association.

(a) Regular periodic assessments or charges; and

(b) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The regular and special assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Property against which such assessment is made. Each such assessment, together with such 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 such assessment was levied. The obligation shall remain a lien on the Property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

2. Purpose of Assessments. The assessments levied by the Association shall not be used for any purpose other than promoting the recreation, health, safety and welfare of the owners and tenants of said Property and in particular for the improvement and maintenance of said Property, Common Areas all improvements constructed thereon, services and facilities devoted for this purpose and related to the use and enjoyment of the Common Area, and including, without being limited thereto, the payment of taxes and insurance on all or any part of said Property, including insurance on the Common Areas. Subject to the above provision, the Association shall determine the use of assessment proceeds.

3. Basis and Maximum Annual Assessments. Until December 31 of the year immediately following the conveyance of the first dwelling unit or Unit to any Owner, the maximum regular assessment shall be \$150.00 per month, in lawful money of the United States of America for each Unit subject thereto or such lesser sums as may be provided in the Bylaws:

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not

more than 10% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above 5% by a vote of three-fourths (3/4) of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

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

(d) In addition to the regular assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, provided the assent of a three-fourth (3/4) majority of the complete votes represented by those Members who are voting in person or by proxy at the meeting duly called for this purpose is obtained.

(e) Units shall not be subject to assessments until such time that a building has been constructed thereon and said building is complete and ready for occupancy.

4. **Uniform Rate of Assessment.** Both regular assessments and any special assessment must be fixed at a uniform rate for all Units and may be collected on an annual, quarterly, or monthly basis at the discretion of the Board.

5. **Notice and Quorum for any Action Authorized Under Sections 3 and 4.** Written notice shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting unless waived in writing. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) 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 requirements and the required quorum at the subsequent meeting shall be one-quarter (1/4) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

6. **Date of Commencement of Annual Assessments, Due Dates.** Except as provided in paragraph 9 of this Article V, all Units upon which buildings have been constructed shall be subject to the annual or monthly assessments provided for herein on the first day of the month following the conveyance of the Common Area. The Board of Directors shall fix the amount of the regular assessment at least thirty 30 days in advance of each assessment period. Written notice of the assessment dates shall be established by the Board of Directors. The Association shall within 48 hours of written demand, provide any Member with the total amount of unpaid assessments against said Member's Unit. A reasonable charge may be made by the Association for transfer/set up fees when any Unit is transferred to a new owner. The transfer/set up fee shall initially be \$50.00 but may be adjusted by the Directors of the Association at any meeting. The

Association may assess a late fee for any payment not paid within 15 days of the due date which shall be the 15th day of each month. The late fee shall be the greater of \$45.00 or 10% of the amount past due, plus \$5.00 per day thereafter.

7. Effect of Nonpayment of Assessments, Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessments are not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Property. The Association or its managing agent shall file in the office of the County Recorder of Bonneville County, Idaho, a lien reflecting the amount of any such charges or assessments with interest, as aforesaid, which have become delinquent with respect to any Unit on said Property and upon payment in full thereof, shall execute and file a proper release of the lien releasing the same. The aggregate amount of such assessments, together with interest, costs and expenses and a reasonable attorney fee for the filing and enforcement thereof shall constitute a lien on the whole Unit (including any improvement located thereon) with respect to which it is fixed from the date the lien is filed in the office of said County Recorder until the same has been paid or released as herein provided. Such lien may be enforced by said Association in the manner provided by law with respect to liens upon real property. The Owner of said Property at the time said assessment is levied shall be personally liable for the expense, costs and disbursements, including attorneys' fees of the Association, of processing, and if necessary, enforcing such liens, all of which expenses, costs, disbursements and attorneys' fees shall be secured by said lien, including all aforementioned expenses, costs, disbursements and attorneys' fees on appeal. Such Owner, at the time such assessment is levied shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Areas or abandonment of his dwelling Unit or building site.

8. Subordination of the Lien and Mortgages. The lien of the assessments provided for herein shall be inferior, junior, and subordinate to the lien of all first mortgages and trust deeds now or hereafter placed upon said Property or any part thereof. The sale or transfer of any Unit or any other part of said Property shall not affect the assessment lien. However, the sale or transfer of any Unit which is subject to any mortgage, pursuant to a judgment or decree of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which became due prior to such sale or transfer, and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

9. Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All properties expressly dedicated to and accepted by a local public authority;
- (b) Any Common Areas; and

(c) Property owned by the Declarant.

10. Mortgagees Approval. The Association shall not undertake or cause to be undertaken the following acts without the prior written consent of seventy- five percent (75%) of the first mortgagees (based upon one vote for each mortgagee), if such act would materially lessen the security of such mortgagees:

(a) Abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned directly or indirectly by the Association, except that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Property by the Association shall be permitted;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner

(c) Change, waive or abandon any scheme or regulations of enforcement thereof, pertaining to architectural design, appearance or maintenance of structures or improvements located on the properties; and

(d) Use of hazard insurance proceeds for losses to any Common Area improvements for other than the repair, replacement, or reconstruction of such improvement.

11. Association Budget. The Association shall prepare an annual budget which shall indicate anticipated management, operating, maintenance, repair, and other common expenses for the Association's next fiscal year and which shall be sufficient to pay all estimated expenses and outlays of the Association for the next calendar year growing out of or in connection with the maintenance and operation of the Common Area and improvements and may include, among other things, the cost of maintenance, management, taxes, costs to repair or replace exterior improvements on buildings constructed by the Declarant, including the repair and replacement of siding or roofing on buildings on the Property owned by any Member, assessments, irrigation assessments, special assessments, fire, casualty, and public liability insurance, common lighting, irrigation, landscaping, and care of grounds, repairs, renovations, and paintings in Common Areas, snow removal, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from a previous period and the creation of any reasonable contingency or other reserve or surplus funds as well as all costs and expenses relating to the Common Area and improvements.

12. Repair, Etc. If any of the Property located in the Common Area and/or improvements located upon other Property located within the subdivision owned by the Association is damaged or destroyed, the Members shall, at a special meeting called for that purpose, determine whether to rebuild, repair, restore or otherwise take action with regard to such damage or destruction. A quorum shall be necessary for any such decision, in accordance with the provisions of paragraphs 3 and 5 hereof and further, any such action shall be approved by the affirmative vote of not less than three- fourths (3/4) of the votes of Members who are voting in person or by proxy at such meeting duly called for this purpose, written notice of which

shall be sent to all Members not less than ten (10) nor more than fifty (50) days in advance of the meeting, unless waived in writing.

ARTICLE VI

ARCHITECTURAL CONTROL

1. Approval. After the initial improvements are constructed by the Declarant, no building, wall, hedge, structure, addition, painting, improvement, obstruction, ornament, landscaping, or planting shall be placed upon, added, or permitted to remain upon any part of said Property unless a written request for approval thereof containing the plans and specifications therefore, including exterior color scheme, has been approved in writing by the Architectural Control Committee. The Architectural Control Committee shall be comprised of three (3) or more members of the Board of Directors of the Association and will only be convened upon receipt of a written request for approval of plans and specifications requiring action by the Architectural Control Committee. In the event said Board, or its designated Architectural Control Committee, fails to approve or disapprove such design or location within thirty (30) days after said plans and specifications have been submitted to it in writing, approval shall not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII

MAINTENANCE AND INSURANCE

1. Maintenance of landscaped areas and Common Areas, Etc. The Association shall maintain or provide for the maintenance of any storage facilities, recreational facilities, open spaces, private street lights, landscaped areas and Common Areas within the Project, including but not limited to the perpetual maintenance of the private street and private street signs, sanitary sewer, water lines and drainage facilities within the Common Areas and in addition, the irrigation and drainage facilities and lines under Units privately owned within the subdivision.

2. Unit Maintenance. The Association shall establish reserves and a schedule for the repair and/or replacement of the exterior of the buildings constructed on each Unit based upon the anticipated useful life of such exterior improvements. Such reserves shall be used to pay for repairs and replacements made necessary because of ordinary wear and tear on such exterior improvements. In the event such exterior improvements are damaged by something other than ordinary wear and tear, and the cost of such repairs or replacements is not paid by insurance purchased by the Association for damages to such exterior improvements, the Association may decide to make repairs and/or maintain the exterior of any Unit, if the Owner fails to maintain it in a manner deemed appropriate by the Association.

Each Owner shall be fully responsible for maintaining and keeping in good order and repair the interior of improvements upon his own entire Unit. The Members shall at a special

meeting called for that purpose, determine whether to repair, restore or otherwise take action with regard to such lack of maintenance. A quorum shall be necessary for any such decisions in accordance with the provisions of Article V, Paragraph 5 hereof and further, any such action shall be approved by the affirmative vote of not less than three-fourths (3/4) of the votes of Members who are voting in person or by proxy at such meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than fifty (50) days in advance of the meeting unless waived in writing. The Association shall give written notice, delivered by certified mailed to the Owner of any Unit subject to this provision not less than ten (10) days before taking action to maintain said Unit. If the situation is not remedied by the Owner within said ten (10) days, the Association shall proceed to maintain said Unit. Payment for said repairs or maintenance shall be treated as an assessment against said Unit in the amount of 125% of the cost of said repairs or maintenance and shall be immediately due and payable. The Association shall not be required to get competitive bids for any repairs or maintenance costing less than \$5,000.00.

3. Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following insurance coverage on the Project, provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association deems appropriate from time to time.

(a) Casualty Insurance. Any improvement constructed on the Project may, at the discretion of the Directors of the Association, be insured for the full replacement thereof in the event of damage or destruction, including fire, and extended coverage which policy or policies shall be purchased by the Association and show the Association, the Owners, and Mortgagor's named insured as their interest may appear. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such deductible provisions and in the Association's opinion are consistent with good business practice. No individual Owner shall be excused from assessments attributable to such policy, for any reason and the existence of such a blanket policy is declared to be in the mutual interests of all owners and the Declarant, except upon the approval of three-fourths (3/4) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

(b) Public Liability and Property Damage Insurance. The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as to deem advisable to provide adequate protection. Coverage shall include, without limitation, liability for the personal injuries occurring in the Common Areas, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Common Areas.

(c) Workman's Compensation and Employer's Liability Insurance. The Association shall purchase workman's compensation and employer's liability insurance and all other similar insurance for any employees of the Association in the amounts and in the form now or later required by law.

(d) Other. The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

(e) Form. Casualty insurance shall be carried in a form or forms naming the Association and the Property Manager as insureds. The Association shall furnish to each Owner and to Declarant a true copy of such policy. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence, or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name the Association and the insured, as trustee for the Owners, and shall protect each Owner against liability for acts of the Association, its Members, agents and employees, in connection with the ownership, operation, maintenance or other use of the Project.

(f) Owner's Responsibility. Unless otherwise purchased by the Association, all fire and casualty insurance coverage for full replacement of the Unit, and casualty and public liability insurance coverage within each individual Unit and for activities of the Owner, not acting by the Association, with respect to the Project, insurance coverage against loss from theft on all personal property and insurance coverage on items of personal property placed in the Unit by Owner, shall be the responsibility of the respective Owners. ✓

(g) Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Article. The Association shall apportion the proceeds to the portions of the proceeds attributable to damages to the Common Area. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be distributed to the Owners in an amount proportionate to their interest in the Project equivalent to the amount each Owner paid for a Unit and improvements thereon. Each Owner and each Mortgagee shall be bound by total apportionment of damage and of the insurance proceeds made by the Association, pursuant hereto.

(h) Owner's Own Insurance. Notwithstanding the other provisions hereof, each Owner may obtain insurance at his own expense providing coverage upon his Unit, his personal property, for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies the Association obtains pursuant to this Article. All such insurance shall waive the insurance company's rights to subrogation against the Association, the

other Owners, and servants, agents and guests of any of them if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation.

ARTICLE VIII

CASUALTY DAMAGE OR DESTRUCTION

1. **Affects Title.** Title to each Unit is hereby made subject to the terms and conditions hereof, which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires his Unit.

2. **Association as Agent.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

3. **General Authority of Association.** As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the Project to substantially the same condition in which it existed prior to damage, with each improvement having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or the construction unless the Owners and all first mortgagees unanimously agree not to rebuild in accordance with the provisions set forth, hereinafter.

In the event any mortgagee does not agree not to rebuild, the Association shall have the option to purchase such mortgage by payment in full of the amount secured thereby if the Owners are in unanimous agreement not to rebuild. The Association shall obtain the funds for such purpose by special assessments under Article V of this Declaration.

4. **Estimate of Costs.** As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

5. **Repair or Reconstruction.** As soon as practicable after receiving these estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent to other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Common Area or may be in accordance with any other plans and specifications the Association may approve.

provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such dwelling units as originally constructed pursuant to such original plans and specifications, and the location of the buildings shall be substantially the same as prior to damage or destruction.

6. Funds for Reconstruction. The proceeds of any insurance collected shall be available to the Association for any purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Article V hereof, may levy in advance a special assessment for repair or reconstruction. Such assessment shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

7. Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 6 constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be paid from insurance proceeds; if there is a balance after payment of all costs of repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the assessments by the Association under Section 6 of this Declaration.

8. Decision not to Rebuild. If all Owners and all holders of first mortgages on Units agree not to rebuild, as provided herein, the Project shall be sold and the proceeds distributed to the members, pro rata.

ARTICLE IX

PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to the real Property subject to this Declaration, and shall be for the benefit of and limitation upon, all present and future Owners of said Property or any interest therein:

(a) Unless written approval is first obtained from the Board of Directors, no sign of any kind shall be displayed to public view on any building or building site on said Property except one professional sign of not more than five square feet advertising the Property for sale, or a sign used by the owner to advertise the Property during the construction and sale period. If a Property is sold, any sign relating thereto shall be removed immediately except that the Declarant and only Declarant or its agent may post a 'sold' sign for a reasonable period following a sale. Signage for rental of a Unit is permissible in the front yards of the Units, provided the size of the sign is no larger than 18" x 6" and is promptly removed after a tenant is found. This sign may contain the Owners or Owner's agent's name and phone number and the address of the Unit for rent. No other signage may be used to advertise the property for rent.

(b) No animals, birds, insects, or livestock shall be kept on said Property except domesticated dogs, cats, or other common household pets which do not reasonably bother or constitute a nuisance to others and on such portions of roads and other public ways or easements as may be designated or permitted for such use from time to time by Grantor. No dogs or cats in excess of two shall be kept by any residential household within said subdivision, and no animals of any kind shall be bred or kept for commercial purposes, and no dog weighing in excess of twenty five (25) pounds shall be kept by any residential household in the subdivision unless otherwise approved by the Association. All dogs must be leashed when outside a dwelling Unit, and shall not be allowed in the Common Area or kenneled outside the dwelling Units, and all Owners owning dog(s) shall have a fenced yard.

(c) No part of said Property shall be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste shall be kept or maintained on any part of said Property except in a sanitary container. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall not be permitted to be in public view.

(d) No noxious, offensive or unsightly conditions shall be permitted upon any part of said Property, nor shall anything be done therein which may be or become an annoyance or nuisance to the neighborhood.

(e) No trailer, camper-truck, tent, garage, barn, shack, or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of the property.

(f) Parking of boats, trailers, motorcycles, trucks, truck-campers, and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any part of said Property nor on public ways adjacent thereto. All other parking of equipment shall be prohibited except as approved in writing by the Board of Directors.

(g) No Owner shall remove or otherwise alter any plant, tree or any landscaping or improvement in any Common Area without the written consent of the Board of Directors.

(h) The Board of Directors and the Owners shall not materially change the color of paint, stain or finish from that initially placed upon the exterior of the improvements placed upon said Property without first obtaining the approval of the Architectural Control Committee.

(i) No overhangs, wing walls, or other architectural appendages shall encroach or project onto adjoining Units.

(j) There shall be no television antenna, satellite television dishes, radio antenna or other appurtenances or appendages to any dwelling unit except as are approved by the Architectural Control Committee.

(k) There shall be no metal storage nor wood storage attachments to any dwelling

Unit except as approved by the Architectural Control Committee.

(1) All dwelling units within the subdivision shall be used solely for residential purposes and shall be occupied by not more than one family unit.

ARTICLE X

EASEMENTS

1. General. All conveyances of land situated in the said Property, made by the Declarant, and by all persons claiming by, through, or under the Declarant, shall be subject to the foregoing restrictions, conditions, and covenants, whether or not the same be expressed in the instruments of conveyance, and each and every such instrument of conveyance shall likewise be deemed to grant and reserve, whether or not the same be declared therein, mutual and reciprocal easements over and across and under all Common Areas and easements over all Units for ingress and egress, maintenance and otherwise as authorized by this Declaration, and easements as otherwise shown on the Plat for Fenway Park Townhomes, and excepting any portion of said Property which may now or hereafter be occupied by a residence, the said Property shall not thereafter be subject to any easement not theretofore applied to use or provided for herein, for the purpose of building, constructing, and maintaining thereon underground or concealed electric and telephone lines, gas, water, sewer, storm drainage lines, radio or television cables, and other services now or hereafter commonly supplied by public utilities or municipal corporations. All of said easements shall be for the benefit of all present and future owners of Property subject to the jurisdiction of the Association by covenants and restrictions recorded and approved as hereinabove provided; said easements, however shall not be unrestricted, but shall be subject to reasonable rules and regulations governing rights of use, as adopted from time to time by the Directors of the Association in the interests of securing maximum safe usage of said Property without unduly infringing upon the rights or privacy of the Owner or occupant of any part of said Property. These easements provided for in this Article are in addition to those set forth in Article IV.

2. Common Areas. A further mutual and reciprocal easement for sidewalk purposes is granted and reserved over and across the Common Areas in the said Property, for the purpose of constructing and maintaining and repairing sidewalks for the benefit of the residents of said Property and adjacent properties not subject to this Declaration, their tenants and access for ingress and egress, subject, however, to rules and regulations reasonably restricting the right to use thereof for the safety and welfare of the public as may be promulgated from time to time by the Association and/or public authority.

3. The Project is subject to any easements of record at the time this Declaration is recorded, including but not limited to those easements shown on the Plat or any other plat affecting this property.

ARTICLE XI

GENERAL PROVISIONS

1. **Enforcement.** The Association, or any Owner, or the Owner of any recorded mortgage upon any part of said Property, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction hereby 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 recover a reasonable attorney fee in addition to allowable costs.

2. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

3. **Term of Restrictions and Amendment.** These restrictions shall run with the land described herein, and shall be binding upon the parties hereto and all successors in title or interest to said real Property or any part thereof, until January 1, 2025, at which time said restrictions shall be automatically extended for successive periods of ten (10) years unless the Owner or Owners of the legal title to no less than three-fourths of the Units by an instrument or instruments in writing, duly signed and acknowledged by them, shall then terminate or amend said restrictions. Such termination or amendment shall become effective upon the filing of such instrument or instruments for records in the office of the Recorder of Bonneville County, Idaho. Such instrument or instruments shall contain proper references by volume and page number to the records of the plats and record of this deed in which these Restrictive Covenants are set forth, and all amendments thereof.

4. **Right of Reversion.** Nothing herein contained in this Declaration or in any form of deed which may be used by Declarant, or its successors and assigns, in selling said Property or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or reentry for breach or violation of any one or more of the provisions hereof.

5. **Assignment by Declarant.** Any or all rights, powers and reservations of Declaration herein contained may be assigned to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of the Declarant hereunder pertaining to the particular rights, powers, and reservations assigned; and upon any such corporation or association evidencing its intent in writing to accept such assignment and assume such duties it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by the Declarant alone, so long as it owns any interest in any portion of said Property.

6. **Amendment.** Notwithstanding anything contained in the foregoing Declaration or in the Articles of Incorporation or Bylaws for Fenway Park Townhomes Owners Association, Inc., any amendment of the Articles of Incorporation or any mortgage or conveyance of the Common Area shall require the approval of at least three-fourths (3/4) of the Unit Owners.

7. **Annexation.** Additional property and Common Area may be annexed to the Property

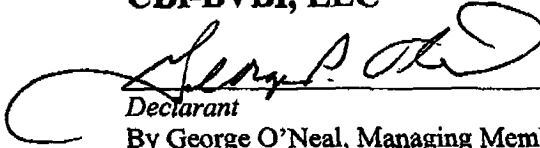
with the consent of three- fourths (3/4) of each class of Members.

8. Recording Requirements. The Board shall record in the office of the Bonneville County Recorder all instruments affecting this Project or in which any Owner waives any right under the provisions of the Act, all amendments to this Declaration, the Bylaws or Articles of Incorporation. The Board shall file with the Bonneville County Auditor's Office a certificate of identity of the person or persons serving as members of the Board and the person designated for service of process in accordance with the provision of the Act, Idaho Code Chapter 55, Title 55. The Certificate of Service of Process shall include an acknowledgement in writing of acceptance of such designation by the person so designated. The person to receive such process shall be the President of the Association unless otherwise designated by the Board. Upon termination of such person's capacity or authority to receive service, a new designation shall be duly made and filed, as above provided.

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IN WITNESS whereof, the undersigned being the Declarant herein, has hereunto set his hand and seal this ~~14th~~ day of April 2005.

CBI-BVBI, LLC

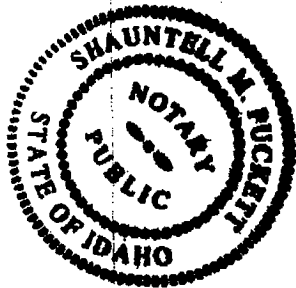

Declarant

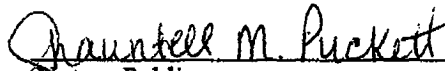
By George O'Neal, Managing Member

State of Idaho)
County of Ada)

ss.

On this the 14th day of April, 2005, before me, the undersigned Notary Public in and for said state, personally appeared George O'Neal known by me to be the Managing Member of CBI-BVBI, Inc., the company whose name is subscribed to the within and foregoing instrument and he acknowledged to me that he executed the same on its behalf.




Notary Public
Residing At: Ada
My Commission Expires: 2/11/2010

1169764
 STATE OF IDAHO)
 County of Bonneville)
 I hereby certify that this plat was prepared and
 recorded in accordance with the provisions of
 the Idaho Recording Act, Chapter 15, Title 55, of the Idaho Code
 and that the plat complies with Idaho Code 55-133A.
 RONALD B. BAKER, County Recorder

FENWAY PARK TOWNHOMES
 Pursuant to Idaho Code, Title 55, Chapter 15
 Located in Lot 2, Block 2 Fenway Park Subdivision Division No. 1
 Situated in the Northwest One Quarter of Section 21, Township 2 North, Range 38 East, Boise Meridian
 City of Idaho Falls, Bonneville County, Idaho
 2004

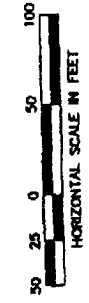
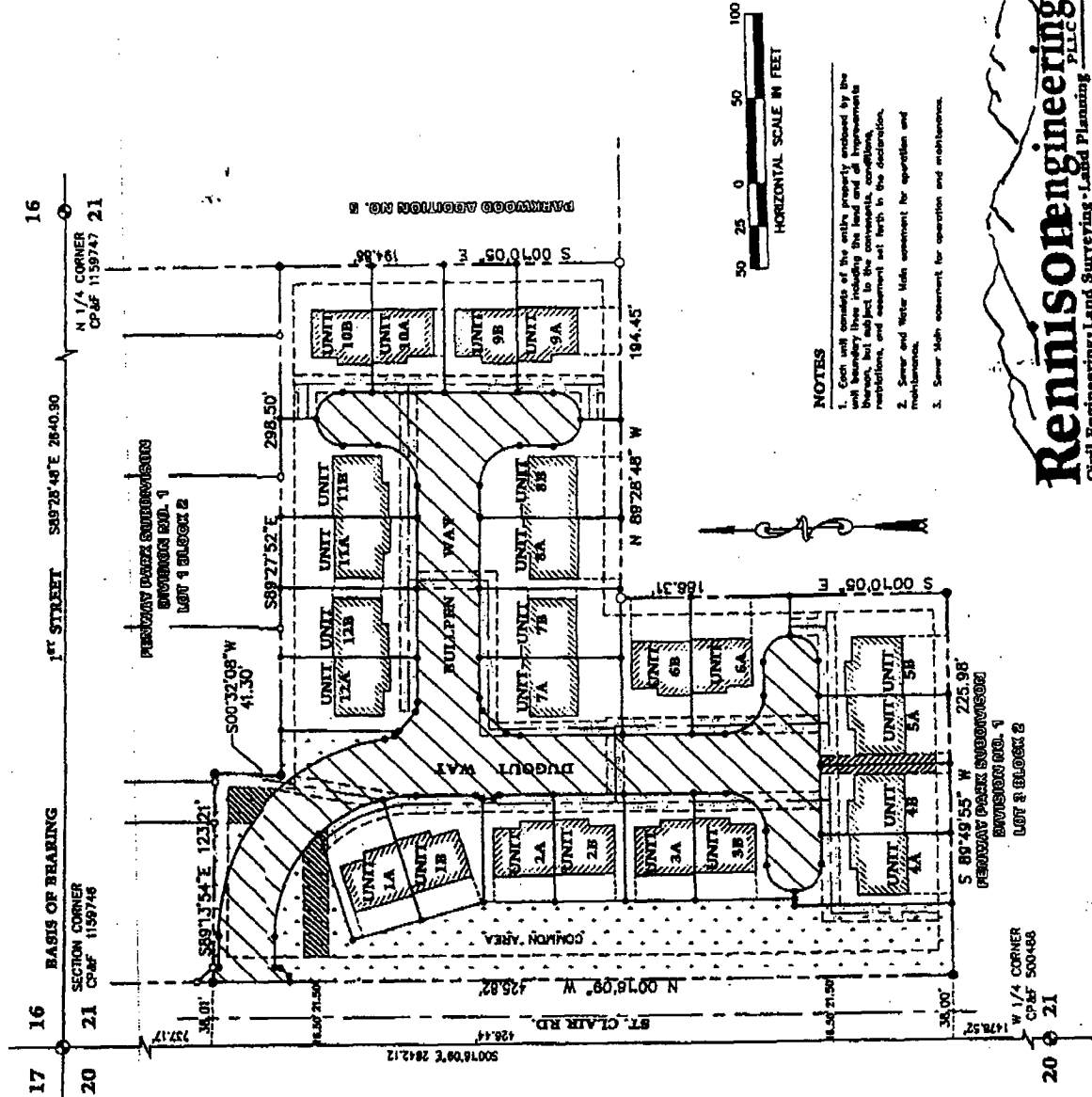
RECORDERS CERTIFICATE
 I hereby certify that the foregoing plat of Fenway Park
 Townhomes, Bonneville County, Idaho, was prepared and
 recorded in accordance with the provisions of the Idaho
 Recording Act, Chapter 15, Title 55, of the Idaho Code
 and that the plat complies with Idaho Code 55-133A.
 RONALD B. BAKER, County Recorder

OWNER'S DEDICATION
 I, the undersigned, do hereby dedicate to the City of Idaho Falls, Bonneville County, Idaho, the following described parcel containing 2.38 Acres more or less and subject to all existing easements and rights of way:
 The utility, drainage, and irrigation easements shown on this plat are not dedicated to the public, reserved for public use or shown in any plat or map of record, and are hereby dedicated to the City of Idaho Falls, Bonneville County, Idaho, for use in connection with the City's water system and sewer system.
 IN WITNESS WHEREOF, I have hereunto set our signature this 15th day of August, 2004.
 Steve P. O'Neil, Managing Member
 Ronald Baker, Member

LEGEND
 FOUND BRASS CAP
 FOUND 1/2" REBAR WITH CAP "W61 3721"
 FOUND 5/8" REBAR WITH CAP "W61 3721"
 SET 1/2" REBAR WITH PLASTIC CAP PLS 3721
 SET 5/8" REBAR WITH PLASTIC CAP PLS 3721
 EASEMENT LINE
 CENTERLINE OF ROAD
 UNIT LINE
 PROPERTY LINE
 OWNERSHIP LINE
 SECTION LINE
 TOWNHOME UNIT NO.
 COMMON AREA FOR PRIVATE ACCESS AND PUBLIC UTILITY EASEMENT
 COMMON AREA LANDSCAPING
 PUBLIC UTILITY EASEMENT
 INDICATES BUILDING ENVELOPE

While this is a photographic reproduction of portions of the recorded plat no representation is made as to accuracy and the Company assumes no liability therefor. Any reference to the plat of the subdivision is to the plat recorded with the County Recorder and not to this plat which is provided only to reflect the approximate location of the property.

97 N. Capital Ave. • P.O. Box 31699 • Idaho Falls, Idaho 83403-1699 • (208) 534-6000 • Fax (208) 534-6072



NOTES
 1. Each unit consists of the utility property indicated by the unit boundary lines including the load end of all improvements thereon, but subject to the easements, conditions, restrictions, and easements set forth in the dedication.
 2. Sewer and Water Main easement for operation and maintenance.
 3. Sewer Main easement for operation and maintenance.

Rennison Engineering
 Civil Engineering • Land Surveying • Land Planning • PLLC
 128 S. Eagle Rd. Suite B, Eagle, ID 83616 Office 208.938.7440 Fax 208.938.7441
 1241-0877

Index No. 2381-21-4-0-4

SEE SHEET 1 FOR THE TO SECTION LINE INFORMATION

FENWAY PARK TOWNHOMES

Purcutant to Idaho Code, Title 85, Chapter 15
 Being Lot 2, Block 2 Fenway Park Subdivision Division No. 1
 Situated in the Northwest One Quarter of Section 21, Township 1 North, Range 38 East, Boise Meridian
 City of Idaho Falls, Bonneville County, Idaho
 2004

EXHIBIT "A" (Page 2 of 2)

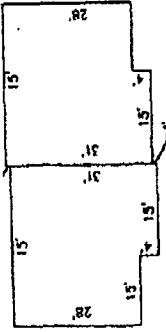
STATE OF IDAHO
 County of Bonneville
 I hereby certify that the within instrument was filed for record on this 11-12-2024 at 11:00 AM.
 RONALD LYNNHART, County Recorder
 D. L. Lanning, Clerk

LINE TABLE

LINE	LENGTH	BEARING
L1	1.00	S31°36'13"W
L2	9.95	S00°10'05"E
L3	1.00	S31°36'13"W
L4	20.00	S88°49'55"W
L5	4.51	S88°49'55"W
L6	1.00	S31°36'13"W
L7	3.00	S88°49'55"W
L8	3.44	S88°49'55"W
L9	1.00	S31°36'13"W
L10	20.00	S00°10'05"E
L11	20.00	S00°10'05"E
L12	20.00	S00°10'05"E
L13	15.40	N89°49'55"W
L14	15.40	N89°49'55"W
L15	3.00	N89°49'55"W
L16	3.37	N89°49'55"W
L17	8.48	N89°49'55"W

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD BEG.	CHORD END
C1	87.73	82.50	47.30172	N89°49'55"W	N89°49'55"W
C2	43.36	82.50	23.65086	N89°49'55"W	N89°49'55"W
C3	17.34	82.50	9.46034	N89°49'55"W	N89°49'55"W
C4	3.14	82.50	1.80000	N89°49'55"W	N89°49'55"W
C5	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C6	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C7	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C8	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C9	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C10	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C11	7.89	21.50	18.3134	S89°27'52"E	S89°27'52"E
C12	35.34	21.50	80.70000	S89°27'52"E	S89°27'52"E
C13	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C14	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C15	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C16	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C17	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C18	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C19	24.38	15.50	80.70000	S45°10'05"E	S45°10'05"E
C20	18.82	17.50	81.2353	N89°49'55"W	N89°49'55"W



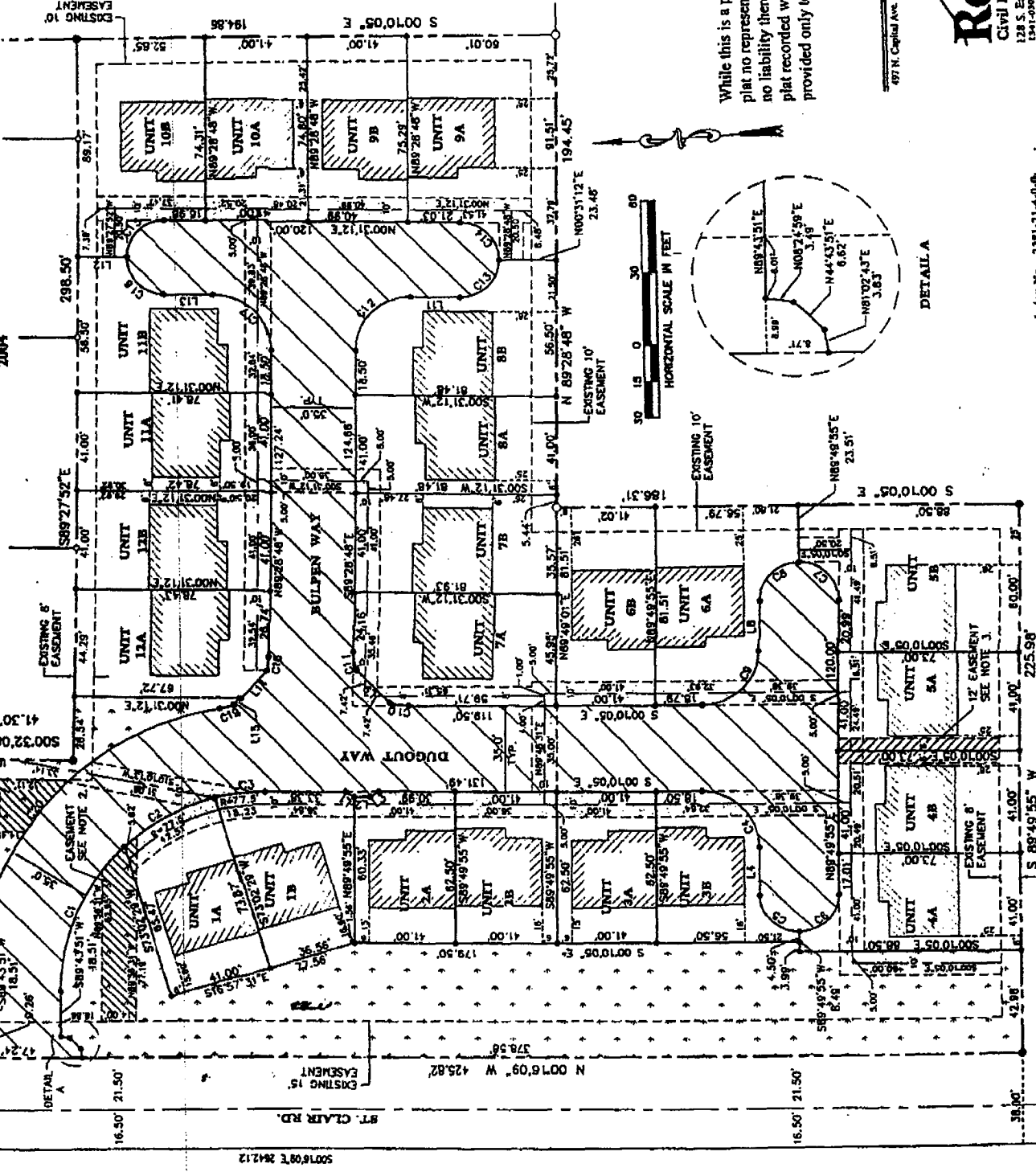
TYPICAL BUILDING ENVELOPE
 While this is a photographic reproduction of portions of the recorded plat no representation is made as to accuracy and the Company assumes no liability therefor. Any reference to the plat of the subdivision is to the plat recorded with the County Recorder and not to this plat which is provided only to reflect the approximate location of the property.



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 128 S. Eagle Rd. Suite B, Eagle, ID 83616 Office 208-938-1440 Fax 208-938-1441
 1591-0907



DETAIL A

SEE SHEET 1 FOR THE TO SECTION LINE INFORMATION

Index No. - 2381-21-1-0-0