

ORIGINAL

DECLARATION, RECIPROCAL EASEMENT AND PARTY WALL DECLARATION
RIVER RUN PLAZA, A TOWNHOUSE SUBDIVISION

This Declaration, Reciprocal Easement and Party Wall Declaration is made on this 3RD day of MARCH, 1991, by MORGAN SAMUELS PENSION AND PROFIT SHARING TRUST, FBO RICHARD J. MORGAN ("Declarant").

RECITALS

Declarant is the owner of real property located in Blaine County, Idaho described in Exhibit "A" attached hereto and made a part hereof by this reference (the "real property"). Declarant has improved the real property by constructing improvements on it containing four (4) dwelling sublots and three associated (3) parking sublots and other facilities in accordance with plans and specifications on file with the City of Ketchum, Idaho. By this Declaration, Declarant intends to establish a plan of subplot ownership.

DECLARATION

Declarant declares that the real property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, for the subdivision, improvement, protection, ownership, maintenance, and sale of four (4) sublots and three (3) associated parking sublots within the real property, and all of which are declared in and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the real property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the real property, and shall be binding on and inure to the benefit of the successors in interest of such parties.

1. Common Area. For the purposes of this Declaration, the term "common areas" shall refer to the roof, common walls, any common water main, any common sewer line, any common utility area, any common storage area for maintenance tools and utility meters, any common area to be used for a trash enclosure, any common easement areas, any driveways and parking areas, all landscaping surrounding the dwellings, and all shared utilities and meters within the boundaries of each subplot.

2. Sublot and Owners Affected. For the purposes of this Declaration, the terms "Sublot" and "Owner" shall hereafter have the following meanings, unless the context otherwise requires: "Sublot" shall mean Sublot A, Sublot B and Sublot PB, Sublot C and Sublot PC, and Sublot D and Sublot PD of the plat of River Run Plaza, a

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Townhouse Subdivision, Lot 4, Block 81, Ketchum Townsite, Ketchum, Blaine County, Idaho, including any common areas within such Sublots; and "Owner" shall mean the party or parties having any estate in any Sublot, excluding any person who holds such interest as security for the payment of an obligation but including any mortgagee, beneficiary under deed of trust or other security holder in actual possession of any Sublot, as a result of foreclosure or otherwise, and also including any person taking title through such security holder by purchase at foreclosure sale or otherwise. The benefits and burdens of this Declaration shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3. Easements. Declarant hereby grants and conveys to the Owners of the Sublots for their mutual nonexclusive use the following reciprocal easement:

Nonexclusive perpetual easements for the benefit of and appurtenant to each Sublot, to enter upon any Sublot for the installation, maintenance, repair or replacement of roof, common walls, any common electric utility service facilities, any common sewer and water mains, landscaping, driveways, parking areas and all easements for access and egress, pedestrian use and for the utility and trash areas, including but not limited to, those shown on the plat for River Run Plaza.

4. Definitions.

(a) Association Rules. The "Association Rules" means the rules and regulations regulating the use and enjoyment of the exterior of the townhouse units and landscaping adopted by the management body from time to time.

(b) Association. The "Association" means the management body created by this Declaration.

(c) Common Expenses. "Common expenses" means all expenses incurred for the upkeep, maintenance, repair, replacement, management and operation of the exterior walls and roofs of the townhouse units, the utility area, the trash enclosure, driveways and parking areas and including the surrounding landscaping, together with any reserve for maintenance and repairs, reinstatement, rebuilding and replacement of the same; the cost of insurance permitted or required herein to be procured and maintained by the Association; the cost and maintenance of landscaping; wages, accounting and legal fees; management fees; and any other expenses and liabilities incurred by the Association for the benefit of the owners under or by reason of this Declaration. The Association shall provide exterior maintenance upon each townhouse unit as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building services, and exterior improvements. Such exterior maintenance shall not include glass surfaces which shall be the responsibility of the unit owner.

In the event that the need for maintenance or repair of a townhouse unit or the improvements thereon is caused by the willful or negligent acts of the lessees, guest or invitees of the owner of the townhouse unit needing such maintenance or repair, the cost of such exterior maintenance shall be added to or become part of the assessment to which such townhouse unit is subject.

(d) Townhouse Unit. A "townhouse unit" means an estate in real property with a fee interest in a townhouse unit shown and described on the plat for River Run Plaza, a Townhouse Subdivision.

5. Property Rights.

(a) Ownership. Ownership of each townhouse unit within the project shall include a membership in the Association.

(b) Utilities. All townhouse unit owners shall have mutual reciprocal easements for existing water, cable television, sewerage, telephone and electrical lines over, under and across their townhouse units and sublots for the repair, maintenance and replacement thereof subject to any restoration of the easement premises for any damage resulting from such repair or replacement.

(c) Encroachments. If any portion of a unit encroaches on any other unit, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it so long as it remains.

6. Use Restrictions.

(a) Residential Use. The townhouse units are restricted to residential use.

(b) Maintenance. Each owner of a townhouse unit shall be responsible for maintaining the interior of his unit in a clean, sanitary and attractive condition.

(c) Offensive Conduct. No obnoxious or offensive activities shall be conducted within a townhouse unit. Nothing shall be done within or on the townhouse sublots that may be or may become an annoyance or nuisance to the residents of the townhouses, or that in any way interferes with the quiet enjoyment of occupants of the units.

7. Parking Restrictions. The Association may require removal of any inoperative vehicle, any unsightly vehicle, or any improperly parked or stored vehicle located on a townhouse subplot.

8. External Fixtures. No television or radio poles, antennae, flag poles, clotheslines or other external fixtures other than those originally installed by Declarant or approved by the Association

shall be constructed or erected or maintained on or within River Run Plaza.

9. Trash. Trash, garbage, or other waste shall be kept only in sanitary containers. No owner shall permit or cause any trash or refuse to be kept on any portion of the property other than in receptacles customarily used for it, which shall be located only in the trash enclosure except on the scheduled day for trash pickup.

10. The Management Body. Each owner shall be entitled and required to become a member of the management body of the Association. An owner shall be entitled to one membership for each townhouse owned by him. No person or entity other than an owner may be a member of the management body, and membership may not be transferred except in connection with the transfer of the townhouse unit.

(a) Responsibility. The management body shall be responsible for the exclusive management and control of the exterior of the townhouse units, townhouse sublots, and all improvements thereon and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The management body shall be responsible for the maintenance and repair of the exterior surfaces of the buildings and improvements located on the townhouse sublots, including without limitation the painting of the same as often as necessary, and replacement of the trim and caulking, the maintenance and repair of roofs, the maintenance and repair of yard and landscaping, including utility lines, areas of access to any automobile parking, driveways and all other exterior improvements on the townhouse sublots.

The management body shall maintain in a proper first class manner, all landscaping and natural vegetation constituting part of the townhouse sublots. Payments for such maintenance repair and replacement of improvements shall be by Association check. The Association cancelled check shall constitute the payment voucher.

(b) Management Services. The management body may obtain and pay for services to manage its affairs and may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of River Run Plaza Townhouses or enforcement of this Declaration. The management body may acquire and hold for the use and benefit of the owners, tangible and intangible personal property and may dispose of the same by sale or otherwise and the beneficial interest in any such property shall be deemed to be owned by the owners in equal proportion. Upon ten (10) days written notice to the Association and payment of a reasonable fee as determined by the management body but not exceeding \$25.00, a townhouse unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing for such assessments or otherwise.

(c) Rules. The management body may adopt reasonable administrative rules and regulations by consent of 3/4 of the owners, governing the use of the townhouse units which rules and regulations may be amended by consent of 3/4 of the owners, as deemed in the best interest of River Run Plaza Townhouses. The management body by approval of 3/4 of the owners may designate and remove personnel necessary for the maintenance, repair and replacement of improvements on River Run Plaza Townhouses.

(d) Voting. The approval of 3/4 of the owners shall be necessary for any decisions required by this Declaration except for amendment of the Declaration which shall be controlled by the terms of Section 15.

(e) Meetings. The regular meetings of the management body may be held at such time and place as shall be determined from time to time by the subplot owners, but at least two (2) such meetings shall be held during each fiscal year. Regular meetings shall be scheduled as agreed by the subplot owners.

If all the members of the management body are present at any meeting of the management body, no notice shall be required and any business may be transacted at such meetings.

(f) Order of Business. The order of business of all meetings shall be as follows:

- (1) Roll call;
- (2) Reading of minutes of preceding meeting;
- (3) Reports;
- (4) Unfinished business;
- (5) New business; and
- (6) Adjournment.

(g) Personal Liability. No member of the management body shall be personally liable to any owner, or any other party for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such member, if member has, on the basis of such information as may be possessed by him acted in good faith without willful or intentional misconduct.

11. Architectural Control.

(a) Architectural Committee. The architectural committee shall be the management body of River Run Plaza Townhouses as constituted from time to time. The management body shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the property within River Run Plaza Townhouses conform and harmonize with the existing structures as to external design, materials, color and topography.

(b) Approval. No improvements of any kind or of any nature shall ever be altered, constructed, erected or permitted, nor shall any excavating, clearing or landscaping be done on any subplot within River Run Plaza Townhouses unless the same are approved by the management body prior to the commencement of such work. The management body shall consider the materials to be used on the exterior features of said proposed improvements, including exterior colors, harmony of exterior design with existing structures within River Run Plaza Townhouses.

12. Assessments. Each owner shall be deemed to covenant and pay to the management body periodic assessments for the purposes provided in this Declaration together with special assessments for capital improvements. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Section.

The total periodic assessments against the townhouse units shall be based upon advance estimates of cash requirements by the management body to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the exterior of the townhouse units and sublots, which may include, among other things, expenses of management; premiums for all insurance which the subplot owners are required or permitted to maintain pursuant hereto; landscaping and care of townhouse sublots; trash collection; snow removal; legal and accounting fees; and any other expenses and liabilities which may be incurred for the benefit of the subplot owners under and by reason of this Declaration.

The management body shall make periodic assessments, apportioned equally among the owners, which assessments may be quarterly or as the management body shall from time to time determine. Written notice of the assessment shall be given to each owner, which notice shall specify the amount of the assessment and the date of payment of the same. No payments shall be due less than fifteen (15) days after said written notice has been given. Each periodic assessment shall bear interest at the rate of eighteen percent (18%) per annum, from the date it becomes due and payable if not paid within thirty (30) days after such date.

In addition to the annual assessments, the management body may levy at any time a special assessment, payable over such a period as may be determined for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the townhouse sublots or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. Notice and payment of special assessments shall be the same as periodic assessments.

All sums assessed to any subplot owner, together with interest thereon, shall be secured by a lien on such townhouse in favor of River Run Plaza Townhouses upon recording of the notice of assessment

as herein provided. Such lien shall be superior to all other liens and encumbrances on such townhouse except only for: (a) valid tax and special assessment liens on the townhouse in favor of any governmental assessing authority; (b) a lien for all sums unpaid on a first mortgage or deed of trust duly recorded in Blaine County, Idaho real estate records; and (c) labor or materialmen's liens to the extent required by law. No notice of assessment shall be recorded until there is a delinquency of sixty (60) days in payment of the assessment. Such lien may be enforced by sale, by any owner after failure of the defaulting owner to pay such an assessment in accordance with its terms. In any such foreclosure, the defaulting owner shall be required to pay the costs and expenses of such proceeding, the cost and expenses of filing the notice of assessment and all reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The defaulting owner shall also be required to pay any assessments against the townhouse which shall become due during the period of foreclosure. Unless sooner satisfied and released, any lien created pursuant to this section shall expire and be of no further force or effect one (1) year from the date of recordation of said notice of assessment. The amount of any periodic or special assessment shall be a personal obligation of the owner thereof. Suit to recover a money judgment for such personal obligation shall be maintainable by any unit owner against the defaulting unit owner without foreclosing or waiving the lien securing the same. A purchaser of a townhouse subplot shall be jointly and severally liable with the seller for all unpaid assessments against the townhouse unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

13. Party Walls. River Run Plaza Townhouses are constructed with common party walls and roof structures. These walls and roof structures are situated on townhouse unit subplot lines between adjoining townhouse units and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(a) Maintenance. The cost of maintaining the party wall shall be borne equally by the owners on either side of said wall and the cost of maintaining the roof shall be borne equally by all owners.

(b) Damage to Party Wall. In the event of damage or destruction of said party wall from any cause, other than the negligence of either townhouse subplot owner, or their tenants or guests, then the townhouse subplot owners shall, at their joint expense, repair and rebuild said wall, and each party shall have the right to the full use of said wall so repaired and rebuilt. If either party's negligence shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost of repair or

reconstruction. If either party shall neglect or refuse to pay his share or all of such costs in the case of negligence, the other party may have the wall repaired and restored and shall be entitled to have a mechanic's lien filed and foreclosed on the townhouse subplot of the party so failing to pay for the amount of such defaulting party's share of the repair or replacement costs.

(c) Repair. Either party or the management body shall have the right to break through the party wall for the purpose of repairing or restoring utilities within the wall, subject to the obligation to restore the wall to its previous structural and aesthetic condition, at his own expense and the payment to the adjoining property owner of any damages caused thereby.

(d) Easement. Neither party shall alter or change said party wall in any manner, interior decoration excepted, and said party wall shall always remain in the same location as when erected, and each party to said common or division wall shall have a perpetual easement in that part of the premises of the other on which said party wall is located for party wall purposes.

(e) Right to Contribution. The right of any subplot owner to contribution from the other subplot owner under this paragraph shall be appurtenant to the land and shall pass to such owner's successors in title.

(f) Arbitration. In the case of a dispute or disagreement regarding the party wall that cannot be resolved by the parties, the disputed matter or matters shall be referred to three disinterested parties, one chosen by each side and those two to choose another, the decision in writing signed by any two shall be final.

(g) The same provisions as listed in Sections (b) through (f), above, shall apply to the roof structure except that all parties shall share in repairs resulting from causes other than owners' negligence and disputes shall be decided in the manner described in Section 10(d), above.

14. Insurance.

(a) Types of Insurance. The management body shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Section shall not be construed to limit the power or authority of the management body to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the management body may deem appropriate from time to time.

(1) Casualty Insurance. The management body shall obtain insurance on River Run Plaza Townhouses in such amount as

shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the project would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief risk insurance if available and if deemed appropriate by the management body, and such other risks and hazards against which the management body shall deem it appropriate to provide insurance protection. The management body may comply with the above requirements by the purchase of blanket coverage and may elect such deductible provisions as in the management body's opinion are consistent with good business practice.

(2) Public Liability and Property Damage Insurance.

The management body shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage may include without limitation, liability for personal injuries, operation of automobiles on behalf of the management body, and activities in connection with the ownership, operation, maintenance and other use of the project.

(b) Form. Casualty insurance shall be carried in a form or forms naming the management body the insured as trustee for the subplot owners, which policy or policies shall specify the interest of each townhouse owner (owner's name and unit letter) and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the management body as trustee for the owners and for the respective first mortgagees which from time to time shall give notice to the management body of such first mortgages, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days' prior written notice is first given to each owner and to each first mortgagee. The management body shall furnish to each owner who requests it and to the Declarant a true copy of such policy together with a certificate identifying the interest of the owner. 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 the 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 management body the insured, as trustee for the subplot owners, and shall protect each owner against liability for acts of the management body in connection with the ownership, operation, maintenance or other use of the project.

(c) Insurance Proceeds. The management body shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this article. The management body shall apportion the proceeds to the portions of the project which have been damaged and shall determine the amount of the proceeds attributable to damage to the townhouse sublots. Each owner and each Mortgagee shall be bound by the apportionments of damage and of the insurance proceeds made by the management body pursuant hereto.

(d) Owner's Own Insurance. Each owner may obtain insurance at his own expense providing coverage upon his townhouse subplot, 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 which the management body obtains pursuant to this Section.

15. Amendment. This Declaration shall not be revoked nor shall any of its provisions herein be amended without the unanimous written consent of the owners, duly and properly recorded with the Blaine County Recorder.

This Declaration is executed this 3rd day of March, 1991.

DECLARANT:

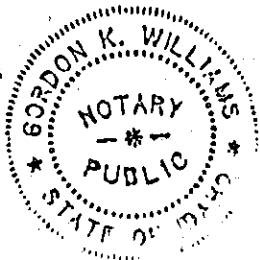
MORGAN SAMUELS PENSION AND PROFIT
SHARING TRUST, FBO Richard J. Morgan

By [Signature]
Trustee

STATE OF IDAHO)
) ss.
County of BLAINE)

On this 3RD day of MARCH, 1991, before me a notary public in and for said state, personally appeared RICHARD J. MORGAN whose name is subscribed to the within instrument as trustee of the MORGAN SAMUELS PENSION AND PROFIT SHARING TRUST, FBO Richard J. Morgan, and acknowledged to me that he executed the same as such trustee of the MORGAN SAMUELS PENSION AND PROFIT SHARING TRUST, FBO Richard J. Morgan.

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



Gordon K. Williams
Notary Public for: IDAHO
Residing at: SUN VALLEY
My commission expires: 9/28/95

EXHIBIT "A"

Lot 4 in Block 81 of the CITY OF KETCHUM, according to the official plat thereof, on file in the office of the County Recorder, Blaine County, Idaho.

BLAINE CO. REQUEST

OF *Dickens & Williams*

1991 APR -5 P 2:25 ~~\$2894~~ 11

MARY GREEN, CLERK *mp* *mic*

FEES \$ *36.00*