THIS IS BEING RECORDED TO CORRECT AND REPLACE INSTRUMENT NO 306369 RECORDED AUGUST 29, 2003

DECLARATION OF PROTECTIVE COVENANTS FOR HARVEST HEIGHTS SUBDIVISION

This declaration of Protective Covenants made and entered into this 26th day of July, 2003 by Richard F. Smith and Jill D. Smith, husband and wife, hereinafter referred to as declarants.

WHEREAS, Declarants are the owners of the following described property:

Beginning at a point that is N.00°22'45"W. along the North-South Center Section line 410.00 feet from the South 1/4 Corner of Section 29, Township 6 North, Range 40 East of the Boise Meridian; running thence N.00°22'45"W. along said North-South Center Section line 908.87 feet to the Northwest Corner of the South 1/2 of the Southeast 1/4 of said Section 29; thence N.89°44'51"E. along North line of said South 1/2 of the Southeast 1/4 a distance of 619.50 feet; thence S.00°07'53"W. 7.99 feet; thence S.89°52'07"E. 219.08 feet to a point on a curve with a radius of 1508.73 feet and a chord bearing S.31°15'03"E. 127.65 feet, said point being on the Southwesterly Right-of-Way line of Mill Hollow Road; thence to the left along said Right-of-Way line curve 127.69 feet through a central angle of 04°50'57"; thence S.33°40'32"E. along said Right-of-Way line 830.00 feet; thence S.56°19'28"W. 160.00 feet; thence N.51°01'46"W. 167.63 feet; thence N.62°52'23"W. 77.90 feet; thence N.86°44'48"W. 189.74 feet; thence S.07°12'55"W. 150.00 feet; thence S.89°37'15"W. 570.00 feet; thence S.00°22'45"E. 12.00 feet; thence S.89°37'15"W 248.00 feet to the TRUE POINT OF BEGINNING.
CONTAINING 21.90 acres.
and;

WHEREAS, said real property has been platted and divided into building lots and is to be known as Harvest Heights Subdivision, and;

WHEREAS, Declarants desire to impose certain protective covenants for the mutual benefit of all future owners of the building lots described.

NOW THEREFORE, Declarants do hereby certify and declare that all or any portion of the above described property shall be owned, held and enjoyed by any future owners or grantees and their heirs and assigns subject to the following restrictions and covenants:

1. **LAND USES AND BUILDING TYPE** – All lots located in the above described property shall be used for single family residences only. No building shall be erected, altered, placed or permitted to remain on any such lot other than one single -family dwelling not to exceed two stories in height and a private garage for at least two cars. No pre built or log homes of any nature shall be permitted on any lot, nor shall any condominium or apartment or other multiple structure be built. Sheds or detached garages will be allowed; provided, such structures will be compatible

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with the residence constructed on said lot and shall be located on the rear of the lot. Any shed or detached garage or other structure will be allowed only with permission from the Control Committee.

2. **ARCHITECTURAL CONTROL COMMITTEE** – The Architectural Control Committee is composed of Mark Orchard, Blake Willis, Mike Colvin, Bret Jensen and Richard Smith. A majority of the committee may designate a representative to act for them in the events of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate a representative to designate a successor. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. After all of the lots have been sold by the Declarants, The record owners of a majority of the lots shall have the power to change the membership of the Committee or to withdraw from or restore to the committee any of its powers and duties.

3. **ARCHITECTURAL CONTROL** – No building shall be erected, placed or altered on any lot until the construction plans, specifications, and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship, material, and color harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation.

4. **DWELLING QUALITY AND SIZE** – It is the intention and purpose of these covenants to insure that all dwellings within the real property shall be of high quality workmanship and materials, and that as each home is built, it shall enhance the value of the other homes in the subdivision. All dwellings shall be of a "stick built" construction type. Mobile homes, manufactured housing and modular homes are specifically not permitted. The size and quality of the dwelling in the Real Property shall be as follows:

Single Story Dwelling-. The ground floor area of the main structure, exclusive of one story open porches, garages, and basements shall be not less than one thousand eight hundred (1,800) square feet.

One and a Half Story, Two Story and Bi-level Dwellings- One and a half story, two story and a bi-level dwelling shall have a ground floor area of not less than one thousand six hundred (1,600) square feet; provided, that such a residence shall contain not less than a total of two thousand four hundred (2,400) square feet, exclusive of any basement space, garage and open porches.

Garage- Each home must have at minimum, a two car enclosed garage attached to the home. Open car-ports are not allowed.

Exterior Finish - Exterior finish shall be of brick, stone, stucco, steel siding or vinyl siding. It is required to have brick or stone on 50 % of the exterior of the house. It is recommended that said coverage be on the front and sides of the house.

Minimum setback – No building or structure shall be located on any lot nearer to the street than forty-five (45) feet. Side setbacks on homes built on corner lots shall conform to the front set back requirement.

Roofing- All roofing must be cedar shakes or asphalt shingles unless otherwise approved in writing by the Architectural Control Committee. No roof covering of a metal substance shall be allowed unless an exception is granted by the Architectural Control Committee, and then only if the metal roof covering is textured to such a degree as to have the appearance of shingles or tiles. All roofs on any home or other structure shall have a minimum pitch of 6 x 12.

Color- Exterior colors of the dwelling must be earth tones, unless otherwise approved in writing in advance by the Architectural Control Committee.

Mailboxes – Mailboxes located in the subdivision shall comply with all U.S. Postal Services rules and regulations and shall be constructed of brick, rock or masonry.

5. **CONTRACTOR CONSTRUCTED HOMES** – All homes shall be built by a full-time, qualified building contractor, who must be approved by the Architectural Control Committee. The contractor shall be responsible for obtaining all necessary permits, licenses and approvals require by the City of Rexburg and the State of Idaho at the time of construction. Any lot owner may serve as the general contractor for the construction of a home or other structure located on said lot. Any lot owner serving as a general contractor shall provide a list of all subcontractors to the Architectural Control Committee. All subcontractors shall be subject to the approval of the Architectural Control Committee.

6. **CONSTRUCTION** – Construction of any buildings or structures, residential or otherwise, shall be completed no later than 12 months from the date of commencement (deemed to be upon issuance of the building permit) of construction thereof. Completion of construction of the structure shall be deemed to be upon issuance of the Certificate of Occupancy unless otherwise approved by the Architectural Control Committee.

7. **TEMPORARY STRUCTURES** – No structure of a temporary character, trailer, basement house, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence either temporarily or permanently.

8. **EASEMENTS** – Easements for installation and maintenance of utilities such as electric power, telephone lines, gas lines, water lines, sewer lines, drainage facilities and future streets are reserved as shown on the record plat. Within these easements, no structures, planting, or other material shall be placed or permitted to remain which damage or interfere with installation and maintenance of utilities, or which may change the direction of flow drainage channels in the easement. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

9. **FENCES** – No fence or wall shall be erected, placed, or altered on any lot nearer to any street (front or side) than the minimum building set back line as set forth in the City of Rexburg Zoning Ordinance or as established herein, whichever is greater. Chain link fences are not allowed.

10. **SIGNS** – Except for the following described signs, no sign of any kind shall be displayed to the public view on any lot: one sign of not more than five(5) square feet advertising the property for sale or rent; or signs used by a builder to advertise the property during the construction and sales period.

11. **NUISANCES** – No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon, which may be or may become an annoyance or nuisance to the neighborhood or detract from its values. No satellite dishes or radio towers shall be permitted without the approval of the Architectural Control Committee.

12. **NO RENTALS** – No basement apartments or other portions of the dwelling may be used or leased for rentals, apartments or other such uses to any other person or entity. No separate apartments within the dwelling shall be allowed.

13. **PETS AND LIVESTOCK** – No animals or fowls of any kind shall be raised, bred or kept on any lot except that dogs, cats, or other household pets may be kept, provided they are not kept, bred or maintained for commercial purposes. All lot owners shall comply with city regulations and ordinances regarding the keeping of pets.

14. **GARBAGE AND REFUSE DISPOSAL** – No rubbish, trash, garbage, or other wastes shall be dumped on any vacant lot. All such wastes shall be kept in clean, sanitary containers.

15. **LANDSCAPING** – Landscaping of the exterior of the dwelling shall be done in a manner compatible with other landscaping in the subdivision. Each lot owner shall plant a minimum of ten (10) trees and shall incorporate flower beds and shrubs into the landscape plan. Landscaping of lots shall be completed within one year of home occupancy. No line rows of poplar or related extreme height trees shall be allowed on any lot.

16. **PARKING OF VEHICLES** – Unless enclosed in an attached garage or detached structures, recreational vehicles shall be parked only in designated driveways, and never for a period of more than for a period of forty-eight (48) hours and a cumulative total of 20 days in a calendar year. No vehicle of any kind shall be parked in any front or side yard except in a designated driveway. Any such vehicle shall be kept behind a fence to screen the visibility thereof from the street. No trucks and trailers will be allowed to park in the subdivision at any time.

17. **MOTORBIKES, ATVS, SNOWMOBILE RESTRICTIONS** – No ATV, motorbike, or snowmobile course shall be erected or permitted on any lot. The roadways to the lots cannot be used consistently by said vehicles as a track or course.

18. **HOME OCCUPATIONS** – No home occupation as defined by the Rexburg Zoning Ordinance shall be allowed or maintained in the subdivision. Any business venture or other activity which generates delivery traffic is not allowed.

19. **VACANT LOTS** – All vacant lots must be mowed regularly by the lot owner and maintained in a clean and slightly manner.

20. **SIDEWALKS** – It shall be the owners responsibility to construct and install sidewalks as required by the City of Rexburg and in conformance with the sidewalk plan of the Harvest Heights Subdivision as developed by the Architectural Control Committee. All sidewalks shall be constructed by a professional concrete contractor approved in writing by the Architectural Control Committee prior to sidewalk construction. All sidewalks shall conform to the type of materials, type of finish and manner of construction which is used in the subdivision. It is the intent of this provision to require the sidewalks in Harvest Heights Subdivision to be uniform in design, construction, and appearance throughout the subdivision.

21. **VARIANCES** – The Architectural Control Committee shall have the option of permitting variances to the building restrictions contained herein. The prime concern of the Architectural Control Committee will be that design, finish, and location harmonize with and compliment the natural environment to the fullest extent practicable. Request for variances shall be made to the committee in writing, and the Architectural Control Committee's decision shall be made in writing, within thirty (30) days of the request.

22. **HARVEST HEIGHTS HOMEOWNERS ASSOCIATION** – There is hereby created the Harvest Heights Homeowners Association which is created to own, manage and care for any common areas that exist or may be designated in the future, and to care for and manage any special features and improvements such as trees, fences, waterfalls, if any, as may be designated by a majority of the members of the Association. Each lot owner in the Harvest Heights subdivision shall be a member of the association and each lot shall be entitled to one vote. The organization and authority of the Harvest Heights Homeowners Association will be established and set forth in articles of incorporation or articles of association adopted and agreed upon by a majority of lot owners. Officers and directors of the Harvest Heights Homeowners Association shall have the power to enforce any and all of the conditions, covenants, and restrictions set forth herein and shall have the power to levy assessments on the owners of all lots within the Harvest Heights subdivision. Such articles shall contain provisions requiring each lot to be liable for its percentage of assessments levied for the ownership, management and care of common areas, and designated improvements above described.

23. **ENFORCEMENT** – Enforcement of the covenants, duties and/or liens contained in these Covenants may be made by the Committee, the officers or directors of the Harvest Heights Homeowners Association, or by any individual lot owner. All costs and expenses thereof, including attorneys' fees, shall be paid by the defaulting party whether such is incurred by the filing of suit or otherwise. In the event an action is brought by the Committee to enforce any covenant and/ or condition contained herein and the costs and expenses thereof are not recoverable from the defaulting party for any reason, said costs and expenses shall be paid by the

Harvest Heights Homeowners Association. The actions, non-actions or negligence of the members of the Committee or the officers and directors of the Harvest Heights Homeowners Association shall not be actionable under any circumstances.

24. **SEVERABILITY** – Invalidation of any covenant herein contained shall have no effect on any other covenant or provision herein contained.

25. **AMENDMENT** – These covenants may be amended by a 2/3 majority vote of the lot owners. Each lot shall be entitled to one vote.

In Witness Whereof, the declarants have executed this declaration this 30th day of July, 2003

Richard F. Smith

Jill D. Smith

State of Idaho)
) ss
County of Madison)

On this 2nd day of ~~July~~ Sept, 2003, before me a Notary Public, personally appeared **RICHARD F. SMITH** and **JILL D. SMITH**, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

MARILYN J. FIRE
NOTARY
PUBLIC

Notary Public for Idaho
Residing at: Rigby
My Commission Expires: 9/7/06