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ALLIANCE TITLE & ESCROW
P.O. BOX 732
REXBURG, ID 83440

AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS OF HENDERSON ADDITION, DIVISION #1 ALSO KNOWN AS HENDERSON DIVISION NO. 1

This amendment to and restatement of the Declaration of Covenants of Henderson Addition, Division #1, also known as Henderson Division No. 1, intended to amend that certain Declaration of Covenants of Henderson Addition, Division #1, also known as Henderson Division No. 1, dated January 8, 2003, recorded as Instrument No. 300876, in the official records of Madison County, Idaho, on January 15, 2003 and as amended on April 27, 2004 as Instrument No. 311636 is made this 20th day of June, 2005, by W. R. Henderson and Frances A. Henderson of 1335 South Second East, Rexburg, Idaho 83440, hereinafter the Declarants, made pursuant to the authority of he Declaration of Covenants previously adopted and recorded as stated above and more consistently with paragraph I.D. thereof.

WITNESSETH

WHEREAS, Declarants are the owners in fee or vendors of all the land contained within the boundaries of Henderson Addition, Division #1, also known as Henderson Division No. 1, City of Rexburg, located in a portion of the Northeast Quarter of Section 24, Township 6 North, Range 39 East, Boise Meridian, as per the recorded plat thereof, recorded on the 8th day of May, 2002, as Instrument No. 295720, in the official records of Madison County, Idaho, and which by referenced is incorporated herein, and

WHEREAS, Declarants desire to impose and amend and restate already existing certain protective covenants upon the real property for the mutual benefit of all owners, present and future,

NOW, THEREFORE, Declarants hereby declare as follows:

I. GENERAL PROVISIONS

A. **TERM.** These covenants are to run with the land described above and shall be binding on all parties and all persons claiming under them for a period of twenty-five years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument, signed by a majority of the then owners of the lots, is recorded before the end of the initial twenty-five year period or any period of renewal of the ten years in which a majority of the then owners of the lots agree to change said covenants in whole or in part.

Instrument # 320772
REXBURG, MADISON, IDAHO
2005-08-30 04:16:00 No. of Pages: 8
Recorded for : ALLIANCE TITLE AND ESCROW
MARILYN R. RASMUSSEN Fee: 24.00
Ex-Officio Recorder Deputy

B. **AREA COVERED**. The covenants and all covenants contained in this Declaration of Covenants shall be applicable to the entire acreage covered by the subdivision described above.

C. **ENFORCEMENT.** The lots shall be held, sold and conveyed subject to the easements, covenants, conditions and restrictions set forth herein, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the lots. No lot shall be resold without attaching a copy of these covenants to the deed conveying such lot. Enforcement may be by the Architectural Control Committee or any aggrieved party by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages.

D. **AMENDMENT**. This declaration can be amended by any time only by an affirmative 2/3 majority vote of the lot owners.

E. **SEVERABILITY.** Invalidation of any one of these covenants shall not affect the other provisions, which shall remain in full force and effect.

F. **NOTICE.** Any notice required hereunder shall be deemed effective when personally delivered or when mailed by certified mail to the owner of public record at the time of such mailing to such owner's address as appears on the Madison County tax records.

II. COVENANTS

A. **BUILDING LOCATION**. No building shall be located on any lot nearer to the lot lines than as required by the building codes and ordinances of the City of Rexburg at the time of construction. For the purposes of this covenant, steps porches and patios without cover shall not be considered as part of the building.

B. **EASEMENTS.** Easements for installation and maintenance of utilities such as electric power, telephone lines, gas lines, water lines, sewer lines and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may change the direction of flow of drainage channels in the easements. 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.

C. **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 value.

D. **PARKING OF VEHICLES.** Unless enclosed in an attached garage, recreation vehicles shall be parked only in designated driveways, and never for a period of more than four consecutive days and a cumulative total of 30 days in a calendar year. No vehicle of any kind shall be parked in any front or side yard except in a designated driveway.

E. **HOME BUSINESSES.** Before applying to the city for a conditional use permit for a home occupation or business, a home owner must register an intention to have a home occupation or business with the Architectural Control Committee, hereinafter provided for, and approval must be obtained from said committee.

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

G. **SIGNS.** No advertising signs of any kind shall be displayed to the public view on any lot, except one sign of not more than five (5) square feet advertising the property for sale or for rent, or signs used by a builder or Declarants to advertise the property during construction and sale period, which signs shall be no larger than four (4) feet by eight (8) feet.

H. **ANIMALS.** 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 or maintained for commercial purposes. No such household pet which is or becomes an annoyance or nuisance to the neighborhood shall thereafter be kept on any lot.

I. **GARBAGE AND WASTE MATERIAL.** No vacant lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, and other waste. All waste will be kept in sanitary containers which shall be set out only on pick up days by the city. No trash, refuse pile, junked or inoperable vehicles, underbrush, compost piles or other unsightly growth or objects shall be allowed to accumulate or remain on any lot so as to be a detriment to the neighborhood or become a fire hazard. During construction, periodic efforts shall be made by the lot owner or his contractor to pick up scrap materials and other construction debris and to

dispose of said materials.

J. **FENCES.** No fence, including a solid board, chain link, concrete block, picket fence or retaining wall shall be erected that does not have an equally pleasing appearance from either side, unless the adjoining lot owners whose property such fence separates, have been given an opportunity, and accepted and rejected the opportunity to participate, in writing. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line.

K. **INTENTIONALLY OMITTED.**

L. **COMPLIANCE WITH CODES AND ENVIRONMENTAL LAWS.** In all cases, ultimate responsibility for complying with all statutes, ordinances, rules and regulations of federal, state and local government, including those relating to hazardous waste, rests with the lot owner and contractor employed by owner. The owner of each lot shall hold the Architectural Control Committee, hereinafter formed, and Declarants harmless in the event of owner's failure to comply with any such laws.

M. **LANDSCAPING**. Landscaping of the exterior of the dwelling shall be done in a manner pleasing to behold, compatible with adjoining properties and shall be substantially completed within one (1) year of occupancy of the dwelling.

N. **SIDEWALKS**. All public sidewalks running parallel to the street shall be constructed in accordance with the rules and regulations of the City of Rexburg, and shall be completed prior to occupancy of the dwelling.

O. **ROOFS.** 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.

P. **LAND USE.** Lots shall be used only for single family residences.

Q. **DWELLING QUALITY AND SIZE**. It is the intention of these covenants to insure that all dwellings shall be of a high quality of workmanship and materials and that as each home is built, it shall enhance the value of the other homes in the subdivision. No car ports are allowed. 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 dwellings shall be as follows:

(a) **Single Story Dwellings.** The ground floor area of the main structure, exclusive of one story open porches and garages, shall be not less than One Thousand One Hundred (1,100) square feet.

(b) **One and a Half Story, Two Story and Bi-Level Dwellings**. One and a half story, two story and bi-level dwellings shall have a ground floor area of not less than Nine Hundred (900) square feet, provided, however, that such residence shall contain not less than One-Thousand five Hundred (1,500) square feet exclusive of any basement space, garage and open porches.

(c) **Split Level Dwellings**. For split level dwellings, the combined area of the top level and next to top level, exclusive of garage and open porches, shall be not less than One Thousand One Hundred (1,100) square feet, provided, however, that such residence shall contain not less than One Thousand Four Hundred (1,400) square feet exclusive of any basement space, garage and open porches.

(d) **Brick and/or Stone Facing**. All dwellings shall have either brick or stone facing on the fronts of the dwellings. This requirement is satisfied if there is a wainscot of brick or stone on the front of the dwelling that is aesthetical.

R. **BUILDER**. All homes shall be built by an experienced, qualified builder, who must be approved by the Architectural Control Committee hereinafter provided for. The builder shall be responsible for obtaining all necessary permits, licenses and approvals required by the City of Rexburg and the State of Idaho at the time of construction.

S. **LANDSCAPE STRIP**. Landscape strip (7 ft.) and sidewalk (5 ft.) adjacent to curb will be installed and maintained by builder/owner.

III. ARCHITECTURAL COMMITTEE

A. **MEMBERSHIP.** The Architectural Control Committee shall be composed of three members, the original committee to consist of W. R. (Bill) Henderson, Frances Allene Henderson and Jill Yost. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority 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 lots are sold, the then record owners of a majority of the lots shall have the power, through a duly recorded written instrument, to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties. If said committee ceases to function for any reason, the requirements of this entire Section IV shall be met by filing plans and specifications for approval or disapproval with the Building Inspector of the City of Rexburg, Idaho.

B. **PROCEDURE.** The Architectural Control Committee shall be responsible for reviewing the plans and specifications for each home proposed for all areas within the Henderson Addition #1, also known as Henderson Division No. 1, as well as considering the qualifications of the proposed contractor for such homes. The committee is hereby granted full power and authority to approve or disapprove of any house plans. Such approval or disapproval shall be in writing, and if approved, a copy of the plans and specifications shall be retained by the committee until the home is completed.

C. **MODIFICATION OF COVENANTS AND RULES.** The committee may make modifications to these covenants and rules as may be reasonable, and may adopt such procedures as it deems necessary, provided, however, that such modifications and adoptions may be consistent with the provisions of these covenants. A consensus of a 2/3 majority of all property owners, may make changes to these covenants at any time, but such changes must be made in writing, and a record of the vote on said changes, must be submitted to the committee, and maintained by said committee.

IV. HOMEOWNERS ASSOCIATION

A. **COMMON AREAS.** At such time as all lots are sold in the subdivision, owner may transfer to the Henderson Addition #1, also known as Henderson Division No. 1, homeowners association, the members of which shall consist of the owners of all lots in the subdivision, any common areas remaining in the subdivision consisting of the real estate comprising the entry to the subdivision from Fifth West.

B. **NON-PROFIT CORPORATION.** The owners of the subdivision at such time agree to take all steps necessary to and shall incorporate a non-profit corporation to perform the functions of the association under the

names described in paragraph A above and to properly maintain such association according to the laws of the State of Idaho. If the members do not establish such a non-profit corporation, owners may do so and the homeowners shall reimburse owners for any expense in setting up the non-profit corporation.

C. **STOCK.** The owner of each lot in the subdivision shall hold one stock or one membership unit in the corporation.

D. **VOTE.** The owner of each lot shall have one vote in connection with the business of the association.

E. **PURPOSE.** The primary purpose of the association shall be to own, manage and maintain for the benefit of the owners of the subdivision all commonly held property transferred to the association at the time that the owner sells the last lot of the subdivision.

F. **TAXES.** The association shall have such rights, powers and duties as necessary to raise money to pay for the taxes and maintenance of the common property areas.

IN WITNESS WHEREOF, the Declarants have hereunto set their hands this 30th day of June, 2005.

HENDERSON ADDITION #1 aka
HENDERSON DIVISION NO. 1

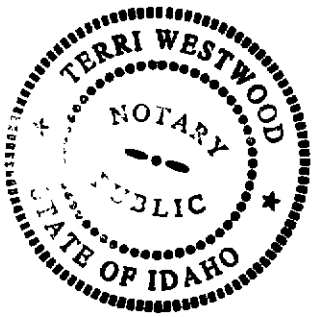
By W R Henderson
W. R. Henderson

By Frances A. Henderson
Frances A. Henderson

STATE OF IDAHO)
)SS
County of Madison)

On this 30th day of June, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared **W. R. Henderson and Frances A. Henderson**, known to me

to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.



Terri Westwood

Notary Public For Idaho
Residing at: Rexburg, Idaho
My Commission Expires: 02/28/06