

DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS  
FOR  
SUNNY HEIGHTS SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS:

That LandMark Development Properties, LLC ( hereinafter referred to as the Owner) being the owner of real property ( hereinafter referred to as the Property ) situated in Jefferson County, State of Idaho, and legally described in Exhibit A attached hereto and incorporated herein by reference, does hereby declare that in order to protect its interest and that of subsequent lot owners and homeowners on said Property, and in order to insure the uniform and desirable use, occupancy, and improvements on said Property, does hereby impress the Property with the following covenants and restrictions:

**ARTICLE I**

**1.1 Purpose:** The Owner is the developer of the Property and desires to sell the Property in small lots for residential and limited purposes only and desires to impose upon the Property mutually beneficial restrictions upon improvements thereto and use thereof. It is the purpose and intent of these covenants to protect and enhance the value, desirability and attractiveness of the Property and to prevent the construction of improper or unsuitable improvements. The restrictions and covenants are imposed in order to : (1) insure the right of property owners to enjoy their property in attractive surroundings free of nuisances, undue noise, and danger, and (2) insure the uniform and desirable use, occupancy, and improvements on the Property, and (3) protect the living environment and preserve the values in the Property.

**1.2 Declaration:** The Owner hereby publishes and declares that all of the Property is held and shall be held, conveyed , sold, leased, and encumbered subject to the covenants, restrictions, limitations and obligations contained in this document for the improvement of the property, and each part thereto, and the division of the Property into lots, and these covenants, restrictions, limitations and obligations shall run with the land and shall apply to and bind the Owner and any person acquiring or owning an interest in the Property and improvements thereon, and the grantees, successors, assigns, heirs devisees, and personal representatives of said Owner and persons.

**ARTICLE II**

**2.1 Land Description:** The Property covered by the “ Declaration of Protective And Restrictive Covenants For Sunny Heights Subdivision “ is located in Jefferson County, State of Idaho , and is described in Exhibit A, attached hereto and incorporated herein by reference.

**2.2 Filing of Plat:** The Owner contemplates recording a plat of the property, dividing it into lots and specifying access roads and easements. Uses authorized on the plat are specifically authorized under this document, and the plat and this document shall be construed together.

**2.3 Name of Property:** The Property shall be known by the name of Sunny Heights Subdivision

## ARTICLE III

### GENERAL USE RESTRICTIONS

**3.1 Lot Size:** The Property shall be subdivided into lots of approximately one acre in size. No lot, as delineated on the filed plat, or as contained in the original deed of conveyance from the Owner, shall be subdivided or in any way reduced in size. This shall not prevent adjoining property owners from making minor adjustments in their common boundary, provided that each such adjustment must first be approved in writing by the committee or the Association, established herein, and must be in harmony with the general character of the Property and must not be detrimental to the planning concepts contained in this document.

**3.2 Building Location, Standards and Quality:** No dwelling residence shall be located on any lot nearer than thirty ( 30 ) feet to the front lot line, or nearer than ten ( 10 ) feet to any side lot line, or nearer than twenty- five ( 25 ) feet to any rear lot line, unless a deviation from such restriction shall have been approved, in writing , by the committee or seventy-five percent (75% ) of the recorded property owners.

The construction of all residences, when commenced, shall be completed with reasonable promptness not to exceed one (1) year, and an unfinished building shall not be left on the property.

No construction or placement of a residence is permitted if the total property (including the land ), when completed, should appraise at less than \$ 200,000.00 at values prevailing on the date these covenants are recorded in Jefferson County, Idaho. All dwellings shall be of good workmanship and materials and substantially the same or better than that which can be produced on the date these covenants are recorded; moreover, all residences must have at least 20 % hard material in front only. Also all residences shall be in compliance with applicable building codes and have appropriate and lawful sanitation facilities.

**3.3 Residence Size; Garage:** For a single story residence (with or without a basement ) , exclusive of open porches and garages, the ground floor shall be not less than 1600 square feet. For a split level residence, the combined area of the top and nest to the top level, exclusive of open porches and garages, shall be not less than 1600 square feet. For two story residence, the area of the ground floor shall be not less than 1300 square feet, exclusive of open porches and garages. It is further required that no residence, whatsoever, shall be constructed or placed on any lot without at least an attached two car garage. The design of garages and accessory buildings shall be in harmony and compliance with the theme of the residence as determined by the Committee or the Association.

**3.4 Property Use:** None of the Property nor any fraction thereof shall be improved, used or occupied for and purpose other than for private residential purposes, except as herein provided, and such restrictions to private residential purposes shall include, but not be limited to, the following specific covenants and restrictions:

Not more than one residential dwelling shall be constructed upon each lot and all lots within the property shall be owned and used exclusively for single family residential purposes. Any residence constructed on any lot shall be designed for occupancy by not more than one family, and shall be a detached single family residence not to exceed two stories in height. No manufactured homes allowed.

**3.5 Outbuilding Standards:** All out buildings and similar structures shall, when commenced, be completed within a reasonable time not to exceed one ( 1 ) year, and shall not be left in an unfinished or unsightly condition. The design of each shall be in harmony with the residence and surroundings, as determined by the Committee or Association. No outbuilding or similar structure may be built closer than ten ( 10 ) feet to any property boundary.

**3.6 Landscaping:** Diverse kinds of landscaping shall be permitted with the major restriction that the property shall not be permitted to be overgrown with noxious weeds nor continuously left in an uncared for condition. Any plantings on a lot must be reasonably maintained by the lot owner. Leafy spurge, bull thistle and all other noxious weeds must be controlled by each lot owner, and no unkept yards shall be allowed.

**3.7 Fences, Mailboxes And Satellite Dishes:** No fences shall be constructed except after approval and review by the Committee, and all fences shall be designed and constructed so as to be compatible with the Property. Except as provided herein, all fences shall be constructed of wooden , metal, vinyl or masonry materials. All fences shall be designed and constructed so as to not constitute a nuisance or offensive effect on other owners. Chain-link fences for animal containment purposes, with proper screening from neighbors and public view, may be acceptable on approval of the Committee. All mailboxes and mailbox holders shall be of a standard design and accepted by the Committee and adhering to the applicable specification of the U.S. Postal Service. Each owner shall be responsible for the maintenance and replacement of his or her mailbox so as to keep it in a state of repair at all times. Satellite dishes shall not be placed anywhere within the front boundaries of any residence.

**ARTICLE IV**

**SPECIFIC USE RESTRICTIONS**

**4.1 Temporary Residences And Recreational Vehicles:** No structures of temporary character, recreational vehicle, camper unit, or trailer may be used on the Property for a period in excess of ninety ( 90 ) days in a calendar year. No basement, tent, shack, garage , barn or the like , or other outbuilding or structure erected or placed on the property shall, at any time, be used as a residence, either temporarily or permanently; except, temporary, recreational camping by family members and guests, on a non-commercial and non-offensive basis, is allowed for a time period not to exceed two (2) weeks. Owners actually residing in a residential dwelling on a lot may park or leave upon their lot their personal travel trailer or other recreational vehicle. Guests and visitors may temporarily, for a time period not to exceed two ( 2 ) weeks, park recreational vehicles on an owner's lot , but no commercial rental of space for such vehicles may be undertaken.

**4.2 Animals And Agricultural Usage:** No livestock or animals of any kind or character shall be kept or maintained on the Property except the following may be allowed with each dwelling residence: (1) each family actually residing in a house on a lot shall be allowed no more than three household pets, and all household pets shall be kept in an

enclosure or under control at all times. All pets shall be maintained in such a way that they shall not become offensively odorous or noisy to any owner of the Property. Under no circumstances shall any horses, cows, swine, goats, chickens or sheep be permitted to be kept or maintained on the Property. All household pets shall be kept in an enclosure or on a leash, kennel or fenced area. Under no circumstances shall any animals be bred and/ or maintained on the Property for any commercial purpose. Under no circumstances shall any feed lot be operated or maintained on the Property. Dog Or Pet Houses. Dog or pet houses are allowed provided that both the dog or pet house and its surroundings are kept in a neat and orderly fashion. Dog runs, pens and kennels are not permitted, unless approved by the Committee or Association.

A. No commercial truck farming, fruit raising or greenhouse operation shall be utilized or maintained on the property, temporarily or otherwise.

B. There shall be no storage of farm machinery, farm trucks, or other agricultural equipment on the Property.

C. Crops and other agricultural products shall not be stored on the Property, except for personal, family, or household use, and the storage of those products on the Property for such use shall not be visible from the street.

**4.3 Noxious Activities:** No noxious or offensive activity shall be carried on or upon any portion of the Property, nor shall anything be put thereon which may be or may become an annoyance or nuisance to any of the other owners. No noxious or offensive operation and / or business or trade of any kind, even if allowed by Municipal, County or State law or zoning, shall be allowed or maintained on any lot. In case of a dispute, at the request of any owner, the Committee, and then the Association after it is created, shall make the final determination of what constitutes a nuisance. No owner shall cause or allow the origination of excessive odors or sounds from his or her lot, and owner shall cause or allow any nuisance of any kind whatsoever to exist on his or her property.

**4.4 Garbage And Refuse Disposal:** Rubbish, garbage or other waste shall be kept and promptly disposed of in a sanitary manner, and all containers shall be kept in a clean and sanitary condition. No rubbish, garbage or other waste shall be dumped on any vacant lot or upon any canal right-of way or any other easement or right -of-way. All garbage and refuse must be kept in receptacles of an approved design and placed in uniform locations out of sight of the general public. Said garbage and refuse must be disposed of at least weekly. Property owners will be responsible for and maintain the said receptacles. No weeds, garbage or refuse piles, trash, vehicles, discarded articles, or other unsightly objects shall be placed or suffered to remain on any part of any lot, including vacant lots. When the construction of any building is once begun, waste or debris associated with said construction must be kept reasonably and timely piled and removed. Burning of trash in outside receptacles is prohibited. Motor Vehicles. No inoperable vehicles will be allowed to be parked on a lot for more than sixty ( 60 ) days.

**4.5 Oil And Mining Operations:** No oil or mineral drilling, development, refining,

quarrying or mining operations of any kind are permitted upon or in any lot, or shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on or in any lot. No derrick or other structure designed for use in boring for oil, natural gas or any mineral shall be erected, maintained or permitted upon any lot.

**4.6 Wellwater And Septic Tanks:** All lots shall have individual septic tanks and wells and shall be installed by a contractor explicitly approved by the appropriate agency and or political subdivision of the State of Idaho.

**4.7 Signs:** No sign of any kind shall be displayed to the public view on any lot except: (1) a sign of not more than one square foot showing the owners name and conventional house address or number; or (2) one professional sign of not more than five (5) square feet advertising the property for sale or rent, or (3) signs of the owner, or approved by the Owner, to advertise the property during the construction and sales period of the Property.

**4.8 Commercial or Noncommercial Uses Prohibited:** No commercial or noncommercial enterprise, industrial venture or business of any type or nature may be constructed, conducted or maintained upon the Property; however, this prohibition is subject to the condition that seventy-five ( 75%) of the property owners, in their sole discretion, may permit , only by a written document signed by said percentage, one home-occupation, home-profession or home-business to be conducted solely within the confines of a single family residential dwelling, without resort to other structures on the lot. This prohibition shall not prevent the Owner from maintaining a temporary office on the Property that relates to the business of the Owner and the development and sale of the Property.

#### ARTICLE V

#### **DURATION, AMENDMENT, INTERPRETATION**

**5.1 Initial Term:** These covenants and restrictions shall remain in force and be binding upon the Property and run with the land and all owners and subsequent owners that acquire any interest in any of the Property, or any lot, portion or parcel thereof shall be subject to these covenants and restrictions for a period of twenty (20) years from the date this document is recorded in Jefferson County, Idaho, and at the expiration of said twenty ( 20 ) year time period these covenants shall be automatically extended for successive periods of ten (10) years each.

**5.2 Amendment:** The recorded owners of seventy-five percent (75%) of the lots may change, modify, amend or vary these covenants and this document, in whole or in part, during any term or extended term thereof, by a written instrument signed by said owners and properly recorded in Jefferson County, Idaho. Said change, modification or amendment will be effective upon said recordation.

**5.3 Liberal Construction:** The provisions of this declaration shall be liberally construed to effectuate its purpose of creating a mutually beneficial plan for the development and maintenance of a superior, attractive and harmonious residential area.

**5.4 Saving Clause:** The provisions of this declaration shall be deemed independent and

severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof. The failure of any party, owner, or entity to enforce any covenant or restriction shall not constitute a waiver or abrogation of said covenant or restriction.

## ARTICLE VI

### COMMITTEE

**6.1 Establishment, Nature, Power And Duties of Committee:** There is hereby established a Building And Design Committee (herein referred to as the Committee) composed of three members which shall have the duties and powers specified in this document, including, but not limited to: a) the control of the architecture and location of residential dwellings, buildings and other improvements and landscaping, b) the determination and resolution of disputed issues under this document, c) the approval of variations and amendments to this document, and d) the enforcement of the covenants, conditions and restrictions herein. All plans for structures of any kind intended to be constructed or placed on any lot shall first be submitted in the form of a written document to the committee for approval as to: (1) the location on the lot, and (2) the architectural design and /or appearance and /Or harmony of the proposed structure with the rest of the actual or intended development of the property, and (3) topography and finish grade elevation. The decision of the Committee in approving or denying said plans shall be final.

**6.2 Election and Term:** LandMark Development Properties, L.L.C. shall Elect / Appoint (3) individuals to serve as the committee referred to herein. They will serve as the Committee for a term of no more than three (3) years, and said term will commence upon the recording of this document in Jefferson County, Idaho. Upon the expiration of their term, members of the Committee shall thereafter be elected by vote of the recorded lot owners, to serve three (3) year terms. The Committee, at least thirty (30) days prior to the expiration of their term of office, shall call for an election to be held to select their replacements.

A written notice of the time and place of said election shall be given to all recorded owners not less than thirty (30) before the said election. One vote shall be allocated to each lot on the Property. The Owner shall be taken from the floor, and the three persons, which must be recorded lot owners, receiving the highest number of votes, by secret ballot, shall serve for the ensuing three years as the Committee. In the event of incapacity, death, resignation or inability to serve of any one member of the Committee prior to the next ensuing election, the remaining members of the Committee shall designate a successor, who shall be a recorded lot owner, to fill the unexpired term. In the event of incapacity, death, resignation or inability to serve of two or more members of the Committee, then the Owner shall select a new Committee to fill the unexpired terms, or if the Association has been created, then the Association shall select a new Committee by virtue of the election process described herein.

**6.3 Procedure:** The Committee shall elect a chairman and a secretary. The secretary

shall keep minutes and records of the proceedings of the Committee. Any member of the committee may call a formal meeting of the Committee on ten days prior written notice to the other two members. A majority of the whole Committee shall be required to decide questions. The Committee shall have the right to investigate, interview witnesses, and seek expert legal, engineering, or other advice or help. Decisions of the Committee shall be binding upon all owners, unless arbitrary or contrary to law.

**6.4 Remedies Preserved:** The grant of power and authority to the Committee shall not be construed to prevent any owner of record from bringing an action to restrain a violation of any of the terms of this document.

**6.5 Plan Approval:** The Committee shall act and decide within fifteen (15) days of the date of submission of any written plan for approval or any other issue, and if the request is not approved, the request, construction, placement or intended addition and /or improvement to any lot shall not be undertaken. If the Committee fails to act within fifteen (15) days, the matter shall be deemed to have been approved. The following are examples of reasons for disapproval: A. The design or color scheme of a proposed residential dwelling, building or improvement is not in harmony with the intended or actual general surroundings of the lot or with the adjacent buildings, structures, or other residential dwellings. B. The Proposed improvements, or any part thereof, would, in the opinion of the Committee, be contrary to the best interest and welfare of rights of all or part of the other owners.

## ARTICLE VII

### **HOMEOWNERS ASSOCIATION**

**7.1 Creation:** As soon as the Owner deems, in its sole discretion, that a sufficient number of lots have been sold, the Owner shall create a homeowner's association (herein referred to as the Association) for the purpose of maintaining the standards and enforcing the covenants and restrictions contained in this document and for such additional purposes as its membership shall, from time to time, deem necessary or proper. The said Association shall be known by the name of Sunny Heights Property Owners Association.

**7.2 Procedure For Creation:** When the Owner desires to create the Association, it shall give all of the recorded lot owners of the property written notice of that fact, and said notice will be mailed to the last known address of said owners per the tax records of Jefferson County. Said notice shall contain the proposed By-Laws will be approved and adopted, along with any changes approved by said owner, by a majority vote of the owners in attendance at said meeting. The initial officers of the Association shall be elected at the first meeting.

**7.3 Membership:** All owners of lots within the Property shall, by acceptance of their deeds, become members of the Association once it is created by the Owner: Said membership shall subject all owners to the rules and regulations of the Association. Each recorded lot owner shall have one (1) vote per lot owned, and the Owner shall have one (1) vote per lot owned by the Owner. Each lot owner shall be deemed to covenant and agree to pay to the association any annual or special assessment. The said annual or special

assessment, together with interest thereon and cost of collection, shall be a continuing lien on the property affected and shall also be a personal obligation of the owner of the lot on the when the assessment is due.

**7.4 Owner's Responsibility Assumed By Association:** Subsequent to the adoption of the said By-Laws and election of said officers, the Owner shall have no further responsibility or liability for the maintenance of the Property's common areas or the payment of taxes or insurance thereon. ("Common areas", as used in this document, shall mean all property within the Property which is owned for the common use and enjoyment of the lot owners, the roads and entrance to the subdivision.) Such responsibility and liability shall then belong solely to the Association.

**7.5 Powers of Association:** The Association shall have, in addition to those powers and authority contained elsewhere in this document and as contained in the said By-Laws (said By-Laws may more specifically define and power enumerated herein), and not by way of limitation or restriction, the following powers and authority:

- A. To enforce and provide for the enforcement of the covenants Contained herein.
- B. To reasonably maintain all common areas within the Property, to Pay taxes thereon, and to maintain and pay for insurance thereon.
- C. To provide for the common protection and security of the Property.
- D. To assess and collect from all recorded owners of the Property Such monetary sums as may be reasonably necessary or proper to Maintain the entrance, roads, and any other common areas Of the Property, and for the payment of taxes and insurance thereon.

#### ARTICLE VIII

**8.1 Enforcement:** Enforcement of these covenants and restrictions shall be by proceeding at law or equity against any person or persons, owner or owners, violating or attempting to violate and covenant or restriction herein, and such proceedings may be either to recover damages or to restrain or both. Such proceedings may be brought by the Owner, any lot owner or the Association.

IN WITNESS WHEREOF, the Owner, by and through its lawful agent, has executed this document and set its hand this \_\_\_\_\_ Day of \_\_\_\_\_, 2005.

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LandMark Development Properties LLC  
James J. Bernard, Manager



**AMENDMENTS TO THE PROTECTIVE COVENANTS  
FOR THE  
SUNNY HEIGHTS  
SUBDIVISION, DIVISION NO. 1**

Pursuant to the "General Provisions" under the heading "Amendment" for the "Protective Covenants for the Sunny Heights Subdivision", which were recorded as **Instrument # 362262**, in the records of Jefferson County, Idaho, the undersigned owner of at least seventy-five (75%) of the lots of said Subdivision, hereby changes, modifies, and amends said Protective Covenants as follows:

3.3 Residence size: Garage: For a single story residence (with or without a basement), exclusive of open porches and garages, the ground floor shall be not less than **1400 Square feet**. For a split level residence, the combined area of the top and nest to the top level, exclusive of open porches and garages, shall be not less than **1400 square feet**. For two story residence, the area of the ground floor shall be not less than **1200 square feet**, exclusive of open porches and garages. It is further required that no residence, whatsoever shall be constructed or placed on any lot without at least an attached two car garage. The design of garages and accessory buildings shall be in harmony and compliance with the theme of the residence as determined by the Committee or the Association.

IN WITNESS of the above amendments, the undersigned has hereunto set its hand in agreement to said "Amendments To The Protective Covenants For The Sunny Heights Subdivision".

\_\_\_\_\_  
Land Mark Development Properties, LLC  
Jim Bernard, Registered Agent & Manager

State of Idaho        )  
County of Jefferson )

On this   1   day of November, 2007, before me the undersigned, A notary Public in and for the said State, personally appeared Jim Bernard, known to me to be the person whose name is subscribed to the within instrument as the registered agent of LandMark development Properties, LL, and acknowledged to me that he executed the same.

IN WITNESS WHERE OF I have hereunto set me and affixed my official seal the day and year written first above.

SEAL

\_\_\_\_\_  
Notary Public  
Residing at Jefferson Co. , Idaho  
Commission Expires: 1-26-13

**AMENDMENTS TO THE PROTECTIVE COVENANTS  
FOR THE  
SUNNY HEIGHTS  
SUBDIVISION, DIVISION NO. 1**

Pursuant to the "General Provisions" under the heading "Amendment" for the "Protective Covenants for the Sunny Heights Subdivision", which were recorded as **Instrument # 362262**, in the records of Jefferson County, Idaho, the undersigned owner of at least seventy-five (75%) of the lots of said Subdivision, hereby changes, modifies, and amends said Protective Covenants as follows:

**3.2 Building Location, Standards and Quality:** No dwelling residence shall be located on any lot nearer than fifty (50) feet to the front lot line, or nearer than ten (10) feet to any side lot line, or nearer than twenty-five (25) feet to any rear lot line, unless a deviation from such restriction shall have been approved, in writing, by the committee or seventy-five percent (75%) of the recorded property owners.

The construction of all residences, when commenced, shall be completed with reasonable promptness not to exceed one (1) year, and an unfinished building shall not be left on the property. No construction or placement of a residence is permitted if the total property (including the land), when completed, should appraise at less than **\$ 175,000.00** at values prevailing on the date these covenants are recorded in Jefferson County, Idaho. All dwellings shall be of good quality workmanship and materials and substantially the same or better than that which can be produced on the date these covenants are recorded; moreover, all residences must have at least 20% hard material in front only. Also all residences shall be in compliance with applicable building codes and have appropriate and lawful sanitation facilities.

**3.3 Residence Size/ Garage:** For a single story residence (with or without a basement), exclusive of open porches and garages, the ground floor shall be not less than **1400 square feet**. For a split level residence, the combined area of the top and nest to the top level, exclusive of open porches and garages, shall be not less than **1400 square feet**. For two story residence, the area of the ground floor shall be not less than **1200 square feet**, exclusive of open porches and garages. It is further required that no residence, whatsoever, shall be constructed or placed on any lot without at least an attached two car garage. The design of the garages and accessory buildings shall be in harmony and compliance with the theme of the residence as determined by the Committee or the Association.

IN WITNESS of the above amendments, the undersigned has hereunto set its hand in agreement to said "Amendment to the Protective covenants For The sunny Heights Subdivision".

\_\_\_\_\_  
LandMark Development Properties, LLC  
Jim Bernard, Manager

State of Idaho  
County of Jefferson )

On this 4 day of November, 2007, before me the undersigned, A Notary Public in and for the State, personally appeared Jim Bernard, known to me to be the person whose name is subscribed to the within instrument as the Manager of LandMark development Properties, LLC and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written

SEAL      \_\_\_\_\_  
Notary Public  
Residing at Jefferson Co., Idaho  
Commission Expires: 1-26-13