# AMENDMENT
# TO
# DECLARATION OF COVENANT, CONDITIONS AND RESTRICTIONS OF
# MORNING SUN SUBDIVISION, PHASES 1-8

The covenants, conditions and restrictions as specified in recorded instrument No. 2003-000165 (Phase 1), No. 2004-008908 (Phase 2), No. 2005-005568 (Phase 3), No. 2005-005567 (Phase 4), No. 2005-024800 (Phase 5), No. 2006-022798 (Phase 6), No. 2009-021651 (Phase 7), No. TBA (Phase 8), OF MORNING SUN SUBDIVISION shall be amended as follows:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 20th day of October, 2014, by both the homeowners in the Morning Sun Subdivision, Phases 1-8, and by Morning Sun Homeowner's Association, Inc.(HOA), (hereinafter referred to as "Declarant" or "Declarants"). (*Amended*)

## RECITALS:

THIS DECLARATION IS MADE in contemplation and furtherance of the following facts and purposes:

A. Declarants are a combination of the HOA and the owners of certain real property located in the City of Twin Falls, Twin Falls County, State of Idaho, more particularly described on Exhibit "A" hereto (hereinafter referred to as the "Property").

B. It is the intent of the Declarants to amend the covenants, conditions and restrictions that apply to said real property which real property is located in the Morning Sun Subdivision, Phases 1-8. (*Amended*)

## DECLARATION

Declarants hereby declares that the Morning Sun Subdivision, Phases 1-8, and all real property, lots, residential units and common areas situated therein, shall be held, conveyed, encumbered, leased and used subject to these amended covenants, conditions, restrictions and equitable servitudes hereinafter set forth or provided for, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Subdivision, and which shall run with title to the land situated therein, and shall be binding upon, and benefit, all parties now or hereafter having or acquiring any right, title or interest therein, or to any part thereof.

Further, declarants state and acknowledge that pursuant to the currently existing Declarations of Covenants, Conditions and Restrictions of the respective Morning Sun Subdivision, that the covenants and conditions can be amended by an affirmative vote of 2/3rds of the members of the Morning Sun Homeowners Association. (*Amended*)

## ARTICLE I
## DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases When used herein shall have the following meaning:

1 Annexation. "Annexation" shall mean and refer to the act of the Declarant, or its successors, to place additional residential Subdivision of any portion of the Property described on Exhibit "A" hereto under and within the purview of this Declaration of Covenants, Conditions and Restrictions, in the manner herein provided for in Article III.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of Morning Sun Subdivision, Home Owner's Association, Inc., an Idaho Non-Profit Membership Corporation. (*Amended*)

1.3 Assessments. "Assessments" shall mean Assessments described in Article IV.

1.4 Association. "Association" shall mean and refer to Morning Sun Subdivision Homeowners Association, Inc., an Idaho non-profit membership corporation organized under the laws of the State of Idaho, its successors and assigns. (*Amended*)

1.5 Board of Directors. "Board of Directors" shall mean and refer to the Board of Directors of the Association, and the term may hereinafter be used interchangeably with the term "Board."

1.6 Common Area. "Common Area" shall mean and refer to all real property now or hereafter owned or leased by the Association or in which the Association has an easement including all property indicated as Common Area on the official plat of any residential subdivision hereafter placed, and specifically of Morning Sun Subdivision, Phases 1-8, under and within the purview of this Declaration in the manner herein provided for.

1.7 Lot. "Lot shall mean and refer to any Lot shown on the official plat of the Morning Sun Subdivision, Phases 1-8, or in the official plat of any other residential subdivision, which may be placed under and within the purview of this Declaration, in the manner hereinafter provided for. (*Amended*)

1.8 Member. "Member" shall mean and refer to a Member of the Association who shall be an Owner and shall qualify for membership in the Association in the manner herein set forth.

1.9 Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entitles, of a fee simple title to any Lot within the Morning Sun Subdivision, or any other residential subdivision hereafter placed under and within the purview of this Declaration in the manner hereinafter provided for; provided, however, that the term 'Owner" shall not include those having only a security interest in any Lot through a lien, encumbrance, deed of trust, mortgage, or similar security instrument.

## ARTICLE II
## COMMON AREA

2.1 Common Area. In conjunction with any subdivision situated on the Property, the Declarants, or their successors may tender Common Area to the Association, which shall be accepted by the Association provided it is for the common benefit of the Property, or the common use and enjoyment of the Owners and their respective family members, guests and invitees. All such Common Area conveyed in fee simple to the Association shall be free and clear of all liens and encumbrances, except easements, restrictions and reservations, which are by record and are approved.

## ARTICLE III
## ANNEXATION

3.1 Annexation. The Declarant or their successors may, at any time hereafter, by execution and recordation of an effective Declaration of Covenants, Conditions and Restrictions encumbering any residential subdivision owned by the Declarant or its successors, resulting from the Subdivision, re-subdivision or re-platting of any parcel within the Property described in Exhibit "A" hereto, place said residential subdivision under and within the purview the of this Declaration, and all of its covenants, restrictions and conditions. Upon the recordation of such a declaration, all Lots in said residential subdivision shall be deemed to be Lots hereunder, and all Owners thereof shall thereafter be owners and members of the Association for all purposes hereunder, in same manner, and subject to the same benefits and obligations as though said Lots were included in the Morning Sun Subdivision.

3.2 Common Area. Upon Annexation of any residential subdivision pursuant to this Article III, Declarant shall deed and convey all Common Area within said Subdivision to the Association in the manner provided for in Section 2.1 hereinabove.

3.3 Notice. In the event the Declarant shall intend to annex property as provided in this Article, written notice of such intent shall be given to the Association at least thirty (30) days prior to the recordation of the Declaration purporting to effectuate the annexation.

## ARTICLE IV
## ASSESSMENTS

4.1 Agreement to Pay Assessments. Declarant, for each Lot owned by the Declarant, hereby covenants, and each subsequent Owner of any Lot, by acceptance of a deed therefore, whether or not it is so expressed in said deed, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association the assessments provided for in this Declaration. In the case of joint or co-ownerships, this liability shall be joint and several. Such assessments shall be levied against Lots and collected from time to time in the manner provided in this Article IV.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to defray the costs and expenses incurred by the Association, and its subcommittees, and the performance of the duties and obligations imposed upon it by this Declaration.

4.3 Assessment Years. This first assessment year for the levying of the Association's annual assessments shall have commenced prior to the filing of this Amendment and any unpaid assessments, by any Owner, shall remain an obligation owed to the Association and may be collected in any manner that is allowed by law. Assessments, based on this Amended Declaration, will begin on the first day of January 2015. (*Amended*)

4.4 Annual Assessments. Annual Assessments against all Lots are hereby authorized which, unless otherwise specifically provided herein, shall be based upon advanced estimates of the cash required by the Association for each assessment year to provide payment for all expenses to be incurred in said assessment year in the conduct of the Association's affairs. Such expenses will include, but not necessarily limited to, the following: taxes, insurance, professional services, and maintenance of the Common Area.

4.5 Special Assessments. In addition to the annual assessments authorized hereinabove the Association may levy in any assessment year a special assessment payable over such time as the Association may determine for the purpose of defraying, in whole or in part, the unanticipated cost of any Association expense including construction, reconstruction, repair or replacement of Common Area improvements. This Section shall not be construed as an independent authority for the Association to incur expenses, but shall be construed to prescribe an alternative manner of assessing for expenses authorized in other sections hereof. The purpose

of this paragraph is to deal with extraordinary and unanticipated expenses that may arise through the course of any assessment year. (*Amended*)

4.6 Apportionment of Assessments. Assessments will be payable annually unless the Association allows a different method of payment. The Association will have the right to allow any annual and/or special assessments to be payable monthly, or at such other intervals as the Board of Directors of the Association may establish. The total of any such installment of annual or special assessment shall be apportioned equally among, and be payable by, the Owners of the respective Lots in all of the Subdivision. (*Amended*)

4.7 Due Dates for Assessment Payments. Unless otherwise determined by the Board, the annual or monthly assessments and any special assessments, which are to be paid, shall be due and owing and must be paid within 30 days of the time the invoice is mailed to the Owner. If any such assessment shall not be paid within thirty (30) days after it shall have become due and payable, then the Board may assess a "late charge" thereon in an amount of Twenty-Five Dollars ($25.00) which amount may be increased by the Board from time to time to cover the extra expenses involved in handling delinquent assessment payments. If any legal action is necessary, including the sending of letters, consultations or collection activity, to collect the amounts owed then the respective lot Owner will also be responsible for any such charges. All payments of assessments shall be made to the Treasurer of the Association and the Treasurer shall be responsible for maintaining appropriate accounts and records of all payments received, etc. (*amended*)

4.8 Liens for Assessments. The annual and special assessments, including any associated fees or costs, provided for in this Article IV, and any and all default assessments arising hereunder (together with any and all interest, costs, late charges, expenses, and reasonable attorney's fees which may arise under this Article), shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Lot to which such assessments apply.

To evidence and perfect such lien upon a specific Lot, the Board shall prepare a written lien notice setting forth the description of the Lot, the amount of assessments thereon which are unpaid as of the date of such lien notice, the name of the Owner thereof, and any and all other information that the Board may deem proper.

The lien notice shall be signed by the President or a Vice-President of the Association or such other person as may be so authorized by the Board whose signature shall be attested by the Secretary or an Assistant Secretary of the Association, and shall be recorded in the office of the Clerk and Recorder of Twin Falls County, Idaho.

Such liens may be foreclosed in the same manner as mortgages in the

State of Idaho. The recording of a lien, however, will not bar the Association from using any other legal procedure, to collect the amounts owed, that might be available under Idaho law. (*Amended*)

4.9 Successors' Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Lot to pay all assessments thereon and notwithstanding the Association's perpetual lien upon a Lot for such assessments, all successors in interest to the fee simple title of a Lot shall be jointly and severally liable with the prior Owner thereof for any and all unpaid assessments, interest, late charges, costs, expenses and attorney's fees against such Lot, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor; provided, however, that a successor in interest to the fee simple title of a specific Lot shall be entitled to rely upon the existence and status, or absence thereof, of unpaid assessments, interest, late charges, costs, expenses, and attorney's fees as shown upon any certificate issued by the Association to such named successor in interest.

## ARTICLE V
## INSURANCE

5.1 Public Liability and Additional Insurance Coverage. To the extent it deems appropriate, the Association may obtain a broad form public liability insurance policy covering the Common Area and the acts of the Association and its agents, and the Association may maintain any and all-other insurance coverage as the Board may deem advisable.

5.2 Damage or Losses from Association's Insured Hazards. In the event of loss, damage, or destruction by fire or other casualty to any Common Area covered by insurance written in the name of the Association or for which the Association is named as c-insured, whether in its own name or as trustee, the Board shall, upon receipt of the insurance proceeds, contract to repair, reconstruct, or rebuild any damaged or destroyed portions of the Common Area to as good a condition as formerly existed.

## ARTICLE VI
## ARCHITECTURAL CONTROL

6.1 Architectural Controls. In order to maintain the architectural aesthetics of any portions of the Property within the purview of this Declaration no improvements, building, fences or other structures, shall be commenced, constructed, erected, altered, remodeled, or maintained upon a Lot, until the plans and specifications accurately showing the dimensions, windows, exterior materials, color and location of the same shall have been submitted to, and approved in writing as to harmony of external design

and location in relation to surrounding structures by the Architectural Review Committee ("ARC") composed of one or more representatives appointed by the Board. In the event the Board, or the Architectural Review Committee, if one then exists, fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been submitted, then such plans and specifications shall be deemed to have been approved as submitted. Any Owner submitting any plans or proposals to the ARC must follow the checklist customarily used by the ARC. (*Amended*)

6.2 Submittal. To obtain consideration of any proposed construction, the Owner proposing the same, shall submit one complete set of plans therefore to the ARC at P.O. Box 2164, Twin Falls, Idaho 83303, together with a design review fee to be established by the Board. Submittals should be mailed or delivered to then serving Morning Sun Home Owners Association, ARC President, and an approval obtained, prior to any construction. (*Amended*)

6.3 Non-Liability for Actions. Neither Declarant, the Board, nor the ARC nor their respective successors or assigns, shall be liable in damages to anyone submitting plans to the ARC for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every Owner or other person who submits plans to the ARC for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Board or the ARC or the Declarant to recover any such damages. Approval by the ARC shall not be deemed to constitute compliance with the requirements of any local building codes, which shall be the sole responsibility of the Owner.

## ARTICLE VII
## MAINTENANCE BY THE ASSOCIATION

7.1 Common Area. The Association shall, as authorized and directed by the Board, have full responsibility for and control over: all maintenance, repairing and replacing of the Common Area, specifically including, without limiting the generality of the foregoing, the installation, maintenance and irrigation of grass, trees, shrubbery, flowers, fencing and similar landscape items, and the installation and maintenance of a sprinkling or other irrigation system.

## ARTICLE VIII
## USE RESTRICTIONS

8.1 Land Use and Building Type. No lot shall be used except for residential purposes, and no prefabricated, modular, manufactured or existing homes may be moved upon any Lot. No duplexes or attached multi-family structures will be allowed.

8.2 Size of Residential Structure. Unless otherwise approved by the ARC the ground floor foot print of the residential structure, exclusive of porches and garages shall not be less than 1,400 S.F. or 15 percent of the lot area whichever is greater; Single family homes with at least a three-car garage. The ground level of multilevel structures, exclusive of garages and porches shall not be less than 1,200 S.F.

8.3 Minimum Exterior Requirements. Unless otherwise approved by the ARC, all Residential Structures shall have a roof pitch which is not less than a 5/12 pitch, and at least twenty percent (20%) of the front elevation shall be of rock, brick, synthetic stucco or other masonry product approved by the ARC. The 20 percent masonry requirement shall apply to all street frontages for lots with frontage on more than one street. Roof planes shall be broken with hips, dormers or other similar features. The exterior finish of any outbuildings must be compatible with that on the main residential exterior structure, and bright, bold or very dark hued colors are discouraged for exterior application. The brick, stone synthetic stucco or other approved masonry product shall be located in a manner that aesthetically enhances the appearance of the structure. The ARC may, at its sole discretion, require additional brick, stone, synthetic stucco or other masonry product to achieve an appearance that is acceptable to the ARC. Fences may be constructed on any Lot, subject to review and approval of the ARC. The fence review will include materials, height, location on the lot and other issues impacting neighboring lots and/or the Morning Sun Subdivision. Unless otherwise approved by the Morning Sun Homeowners Association all fencing shall be white vinyl unless otherwise approved by the ARC. An exception to this will be that on some lots in Phase 7 approval has heretofore been given to allow fences that have a different color than white to be constructed. These fences will be allowed to remain but if these fences are hereafter replaced then said fences shall be white, consistent with the other lots in the Subdivision. (*Amended*)

8.4 Compliance with City Requirements. All improvements must conform to the applicable laws, rules and regulations of the City of Twin Falls, including, but not necessarily limited to, applicable zoning ordinance provisions, building codes, electrical codes and plumbing codes. All permits required in connection with any construction on any Lot shall be the obligation of the Lot Owner and/or the party proposing said improvements. In the event any lot should be outside the city limits of the

City of Twin Falls then this same requirement will apply in regard to the rules, regulations and ordinances of the County of Twin Falls.

8.5 Signage. No signs shall be permitted which advertise any home occupation or other business activity; provided, however, that the provisions of this section shall not prevent the installation and maintenance of a sign advertising the premises for sale, provided it is of a type and size customarily used by professional realtors in the City of Twin Falls, and conforms to all applicable City regulations. "For Rent" or "For Lease", or similar signs are prohibited. (*Amended*)

8.6 Off Street Parking. Each Lot, when improved with a Residential Structure, shall have a finished, hard surface driveway with sufficient space thereon to park at least two automobiles without encroaching into the adjoining street right-of-way. In addition, every Residential Unit constructed on a Lot shall have not less than a three-car garage.

8.7 Recreational Vehicles. Recreational vehicles, including, but not necessarily limited to, boats, mobile homes, trailers, campers, and snow mobiles, shall be permitted on any Lot, provided, they are parked and/or stored behind the front yard setback area and are screened from the street and adjacent residential lots. The screening shall be a minimum of 6 feet in height. Screening location and material must be approved by the ARC.

If any lot owner is found to be in violation of this provision the Association will give said Owner a 30 day notice requesting that said situation be corrected. If the Owner fails to correct the situation within the 30 day period then the Association will have the right to assess a $100 fine against the Owner, and if the situation is not remedied within 10 days after notice of said fine is given to the Owner, to assess an additional penalty against the Owner of $10.00 per day until the violation is corrected.

Any such fine or penalties shall be considered as a special assessment against the Owner and collected in accordance with Article IV of this document. (*Amended*)

8.8 Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot; provided, however, that dogs, cats of otherwise household pets are allowed provided they are not kept, bred or maintained for commercial purposes.

8.9 Trees. No cottonwood trees, Chinese elm trees, or other similar species subject to pest infestation shall be planted on any Lot.

8.10 Antennae. Installation of any exterior protrusions, including, but not limited to, satellite dishes, antennae, or solar collectors shall not be installed on any Lot or attached to any structure, without the prior approval of the ARC.

8.11 Landscaping. Landscaping of all lots shall be completed within 120 days of occupancy. The months of December, January and February shall not be counted in calculation of the 120 days. Landscaping adjacent to Hankins Road and Filer Avenue East shall conform to the project streetscape-landscaping plan.

Lots adjacent to Hankins Road and Filer Avenue East shall not install fences between the public sidewalk and the street curb nor shall any lot owner modify the landscaping between the street curb and the public sidewalk. All landscaping between the street curb and the public sidewalk of Hankins Road and Filer Avenue East is located within the public right-of-way and will be maintained by the Morning Sun Home Owners Association. The lot owners will be responsible for installing and maintaining the landscaping behind the street curb on all lots adjacent to all other streets. (*Amended*)

8.12 Lot Maintenance. Each owner will be required to maintain their landscaping, to water their grass, flowers and shrubbery and to insure that their lot appears maintained and cared for at all times. In the event homeowners, or their successors in interest, fail to do this then the Association will give a 15 day written notice of any such deficiencies to the Owner and the Owner will have the 15 day period to correct the problem or to make arrangements with the Association to take care of the problems.

If the Owner fails to make the necessary corrections to the lot then the Association will have the right to enter onto the property to correct any landscaping deficiencies.

If the Association takes any such action then the Owner will be subject to a special assessment for the labor, water and/or material costs of any such action and said assessment will collected in accordance with Article IV. (*Amended*)

8.13 Construction Site. Construction scrap and debris shall be confined to owner's lot (including concrete truck cleanup and excess soil from excavation. Owner is responsible for all construction personnel and must control their equipment, vehicles and demeanor to minimize inconvenience to subdivision residents and/or other owner's contractors.

The developer will designate an on-project site for the stockpiling of surplus excavation. This site shall not be used for rock. Dust control is the responsibility of the owner.

As per City Code, broken sidewalks must be replaced by the owner; protect your sidewalks from heavy equipment. Construction dumpsters must be sited to minimize inconvenience to other lot owners and must not impede normal traffic flow.

Temporary sanitary facilities must be sited on owner's lot as soon as excavation begins and in such location as to insure the privacy of the adjacent lot owners and construction personnel. At all times during construction the Owner shall be responsible for keeping a clean orderly construction site. Construction debris must be removed and/or deposited in an on-site dumpster on a daily basis.

## ARTICLE IX
## THE ASSOCIATION

9.1 Association. As defined in Article I hereinabove, the Association shall mean and refer to the Morning Sun Homeowners Association, Inc., an Idaho non-profit membership corporation, vested with the duties and obligations herein imposed upon it.

9.2 Membership. Every Owner of a Lot within any subdivision which is under and within the purview of this Declaration shall be a member of the Association. If title to a Lot is held by more than one person, the membership related to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. There shall be only one membership appurtenant to each Lot, and every Owner shall be entitled to one membership for each Lot owned.

9.3 Voting Rights. Each membership shall be entitled to cast one vote in all elections or other actions in which the members are required or permitted to vote pursuant to the Articles of Incorporation and By-Laws of the Association. All voting rights shall be subject to the provisions of the by-laws of Morning Sun Subdivision Homeowner's Association, Inc.

## ARTICLE X
## GENERAL PROVISIONS

10.1 Enforcement. The Association, and all Owners, shall have the right to enforce, by proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed pursuant to the provisions of this Declaration. Failure by any Owner to enforce any covenant, conditions or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

If the Association is required to pursue any legal action of any sort, in order to enforce the provisions of this agreement, based on a homeowners violation of this agreement then, in such event, the Association will be entitled to an award of attorney fees and costs. (*Amended*)

10.2 Severability. Invalidation of any one of the covenants, conditions or restrictions herein contained by court order or judgment shall in no way

effect the validity or effectiveness of any other provisions.

10.3 Amendment. The covenants, conditions and restrictions of these Declarations shall encumber, and run with the title to, all real property now or hereinafter made subject hereto, from and after the date this Declaration is recorded in the official records of Twin Falls County, Idaho.

This Declaration, or any provision hereof, may be amended at any time by an instrument signed by the Owners of not less than 66 2/3% of the total number of Lots within the purview of this Declaration. Any such amendment must be recorded in the official records of Twin Falls County, Idaho, to be effective.

10.4 By-Laws. The corporate by-laws of the corporation are, by this reference, incorporated as part of this document and, in the event of any conflict between the provisions of this document and the by-laws, then the bylaw provisions shall control. (*Amended*)

APPROVED this 20th day of October, 2014.

MORNING SUN SUBDIVISION
HOMEOWNERS' ASSOCIATION, INC.

By: _____

By: _____

By: _____

By: _____

STATE OF IDAHO )
)ss.
County of Twin Falls )

On this 20th day of October, 2014, before me, the undersigned, a Notary Public in and for said County and State, personally appeared STANLEY VISSER, STUART FRIEDMAN, BERTIE MARVEL, KYMBERLY LOTT, DEBBIE LASH and JIM MASON known by me or proven upon satisfactory evidence to me to be the persons whose names are subscribed hereto and verified that they signed the same as Directors and Members of the homeowner association board, of the MORNING SUN SUBDIVISION HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit Corporation, whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of MORNING SUN SUBDIVISION HOMEOWNERS' ASSOCIATION, INC.

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

SALLY KENYON NOTARY PUBLIC STATE OF IDAHO

Sally Kenyon
Notary Public for Idaho
Residence: Twin Falls
Commission Expires: 11-18-16