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Pioneer Investments

DECLARATION OF PROTECTIVE RESTRICTIONS AND COVENANTS. DAVID NAVARRO
WELLSWOOD SUBDIVISION RECORDER

BY K. Larson
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I

KNOW ALL MEN BY THESE PRESENTS, That the undersigned does hereby certify and declare:

That Pioneer Investments, Inc., a corporation, is the owner in fee simple of the following described real property, located in Ada County, Idaho:

All of the lots in WELLSWOOD SUBDIVISION, according to the official plat thereof, on file in the office of the Recorder of Ada County, State of Idaho, as shown by Book 62 of Plats at Pages 6160 and 6161, records of Ada County, Idaho.

II

That all of the real property and all lots, parcels, or tracts thereof, and any conveyance describing all or any part thereof, either by reference to the official plat of said subdivision or by a number of designations therein, or otherwise, shall be subject to the restrictions, covenants, reservations, and conditions therein expressed and set forth, and that by the acceptance of such conveyance, assignment, or transfer of interest, the grantee or grantees and their heirs, executors, administrators, successors, and assigns, and each of them, agree with each other as to the property so described or conveyed in or by such conveyance, as follows:

- A. ASSOCIATION: Where "Association" is referred to in this document, it shall mean and refer to the WELLSWOOD SUBDIVISION HOME OWNER'S ASSOCIATION, INC., an Idaho non-profit corporation, its successors and assigns.
- B. BUILDING RESTRICTIONS: All lots in said subdivision shall be known and described as residential lots and be restricted to single family dwellings which shall include, but not be limited to, any dwelling in which eight (8) or fewer unrelated mentally and/or physically handicapped persons reside; and which is supervised by no more than two (2) of such resident staff residing in the dwelling at any one time, provided State of Idaho approval has been obtained. No structure shall be erected upon any residential building site other than residential dwellings and accessory buildings, none of which shall exceed two (2) stories in height.
- C. TYPE OF BUILDING: All buildings shall be of frame, stone, brick, concrete, or block construction and, if other than brick or stone, shall be finished and painted and kept in good repair, and said property shall be used in such manner as to be inoffensive to any other property owners thereof. All building plans shall be approved by the Architectural Control Committee.

- D. **MINIMUM BUILDING SIZE:** All residential buildings erected upon said property shall have a minimum floor area of not less than 1,250 square feet on the ground floor (exclusive of garages, carports, patios, breezeways, storage rooms, porches, and similar structures), except two-story houses shall have not less than 750 square feet on each floor, and a minimum of a double-car garage is mandatory for each single-family unit.
- E. **BUILDING LOCATION:** No dwelling house, garage, nor any part thereof, nor any other structures (exclusive of fences and similar structures) shall be placed nearer than twenty (20) feet to the front nor nearer than fifteen (15) feet to the rear of the building site on which it is located. No building foundation or wall shall be erected with less than a five (5) foot side yard on either side of the house; except, buildings on corner lots shall be at least twenty (20) feet from the side street.

For the purpose of this covenant, eaves, steps, and gutters shall not be considered as a part of the building; PROVIDED, HOWEVER, that this shall not be construed to permit any portion of a building or any site to encroach upon any other site. Where it is architecturally possible, it is recommended that all garages be incorporated in and made a part of the dwelling house.

- F. **BUILDING SITE:** A building site shall consist of a minimum of: 1) one (1) of the residence tracts as platted in said plat, and as described in a deed or conveyance; or 2) a parcel composed of portions of one (1) or more such residence tracts, the depth and frontage of said parcel shall equal or exceed the depth and frontage of platted residence tracts as platted in the same block, with the minimum dimensions and area being in conformance with the requirements of subdivision and zoning ordinances effective at that date.
- G. **MOVING OF BUILDINGS - CONSTRUCTION OF OUTBUILDINGS:** No building or structure shall be moved onto said real property from any land outside of said plat. No trailer houses shall be parked in any street or within building setback lines. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected on a tract shall be at any time used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted. No building of any kind shall be erected or maintained on a building site prior to the erection of the dwelling house thereon, except that a garage or other similar small building of permanent construction may be erected for the purpose of storing tools and other articles prior to the erection of a permanent dwelling.
- H. **PROSECUTION OF CONSTRUCTION WORK:** The construction of the dwelling and associated structures shall be prosecuted diligently and continuously from time of commencement thereof until such dwelling and associated structures are fully completed and painted. All structures shall be completed as to external appearance, including painting, within eight (8) months from the date of commencement of construction, unless prevented by causes beyond the control of the owner or builder and only for such time as that cause continues.

- I. OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.
- J. EXCAVATION, DEFACING OF LANDSCAPE, DITCHES: No excavation for stone, sand, gravel, earth, or minerals shall be made upon a building site unless such excavation is necessary in connection with the erection of an improved structure thereon. No irrigation drain or waste water shall be permitted to flow in open ditches to or on any lot in said subdivision.
- K. REFUSE DISPOSAL - MATERIAL STORAGE: No machinery, appliance, structure or unsightly material, junked or dilapidated vehicles, or automobile parts may be stored upon any piece, parcel, or portion of said subdivision. No trash, garbage, ashes, or other refuse may be thrown, dumped, or otherwise disposed of upon the real property. No building materials shall be placed upon the building site until the Grantee or builder is ready and able to commence construction, and then such materials shall be placed within the property line of the building site upon which the structure is to be erected. The undersigned shall have the right to enter upon any vacant building site for the purpose of burning or removing weeds, brush, growth, or refuse.
- L. FENCES - HEDGES: No fence, hedge, berm, or boundary wall situated anywhere upon any building site shall have a height greater than that allowed by the local controlling ordinance, but in no event shall it be greater than six (6) feet in height, behind the building front or side street setback lines, above the finished graded surface on the street side sidewalks or the ground upon which such fence, hedge, berm, or wall is situated, except, if on a berm the height of the berm shall be deducted from the otherwise allowed height. No fence, hedge, berm, or wall shall be constructed in front of the front side street setback lines greater than four (4) feet in height if open chain link fence or three (3) feet in height if solid fence; except, if on a berm the height of the berm shall be deducted from the allowed height of the fence. No fence, berm, wall, hedge, or shrub planting which obstructs sight lines at elevations between three (3) and eight (8) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line within the edge of a driveway, or alley pavement. No tree shall be permitted to remain within such distances or such intersections unless the foliage line is maintained a sufficient height to prevent obstruction of such sight lines.
- M. NOXIOUS USE OF PROPERTY - SPITE FENCES: No portion of the real property nor of a building site nor any structure thereon shall be used for the conduct of any trade, business, or professional activities. Noxious or undesirable acts, or undesirable use of any portion of the real property is prohibited and shall not be permitted or maintained. The determination of the undersigned owner that any activity or use is undesirable or noxious shall be conclusive upon all parties.

The construction or maintenance of a spite fence or spite tree shall be prohibited upon any building site. The determination by the undersigned owner that any wall, fence, hedge, or tree falls within the latter category shall be conclusive upon all parties.

- N. GENERAL APPEARANCE AND NEATNESS OF PROPERTY: No recreational vehicles nor other vehicles larger than a three-quarter-ton pickup shall be parked on any lot in WELLSWOOD SUBDIVISION nearer the street than the front line of the dwelling, or in the street right-of-way. For the purposes of the Protective Restrictions and Covenants, recreational vehicles shall include, but not be limited to: boats, campers, motor homes, snowmobiles, motorcycles, and race cars. All maintenance work performed on the above vehicles or personal automobiles shall be done inside the garage with the doors closed. No vehicle shall be parked in the street for a period of time exceeding twenty-four (24) hours at time.

All Grantees in WELLSWOOD SUBDIVISION shall maintain their property in a neat and orderly fashion. A front yard light and landscaping must be installed within thirty (30) days from the time the dwelling is occupied, unless weather does not allow for installation, and must be maintained and watered. It shall be the responsibility of the house builder to install the front yard light and landscaping. All Grantees shall maintain the dwelling in good repair and appearance and shall not allow the buildings, fences, landscaping, or any other part of the property to have a shoddy appearance.

- O. BILLBOARDS - SIGNS: No sign of any kind shall be displayed to the public view on any residential building site except 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.
- P. ANIMALS: No livestock, excepting dogs and cats, shall be permitted at any time upon the real property of the subdivision. Dogs and cats are permitted only as pets, and no boarding or commercial enterprises will be permitted where such animals exceed in number that listed in the Boise City Ordinance.

III

That no building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee, hereinafter designated, as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevations. No fence or wall shall be erected, placed, or altered on any lot nearer to any street than the minimum building setback line unless similarly approved, as provided in Paragraph IV hereof.

As to all improvements, construction, and alterations upon building sites, the Architectural Control Committee shall have the right to refuse to approve any design, plan, floor area, or color for such improvements, construction, or alterations which is not suitable or desirable in the opinion of a majority of said Committee, for any reason, aesthetic or otherwise, and in so

passing upon such designs the Committee shall have the right to take under consideration the suitability of the proposed building or other structures, and the material of which it is to be built and to the exterior color scheme, to the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the building or other structure or alterations therein as planned on the outlook of the adjacent or neighboring property, and the effect or impairment that said structures will have on the view on surrounding building sites, and any and all factors which in the opinion of a majority of the Committee shall affect the desirability or suitability of such proposed structure, improvement or alteration. Actual construction shall comply with the plans and specifications as approved and shall not commence prior to the receipt of the written approval or expiration of the time period provided herein for the granting of such approval by the Architectural Control Committee.

IV

The Architectural Control Committee is composed of Chuck Hensen, 326 N. Orchard Street, Boise, Idaho 83706; Win Kirby, 11801 Florida Drive, Boise, Idaho 83709; and Chuck H. Watts, 326 N. Orchard Street, Boise, Idaho 83706. A majority of the Committee may designate a representative to act for it. In the event of the 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. At the time one-hundred (100) percent of the building tracts or lots in WELLSWOOD SUBDIVISION have been initially occupied, the then owners of the building tracts or lots shall elect resident property owners as the members of the Architectural Control Committee to replace those persons, or their replacements, named above. Such election may be by a general meeting or a written ballot circulated to all residents, with the three persons receiving the most votes deemed elected. A written instrument setting forth the results of the election shall be duly recorded in the office of the Recorder of Ada County, Idaho. At any time thereafter, the then record owners of a majority of the lots as shown on the plat of the subdivision shall have the power, through a duly recorded instrument, to change the membership of, or to withdraw from, the Committee or restore to it any of its powers and duties. No member of this Committee duly appointed or elected shall incur liability by reason of any act or omission in exercising the duties herein established for such Committee.

V

That the Architectural Control Committee's approval as required in these covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, approval will not be required of such Committee and the related covenants shall be deemed to have been fully complied with.

VI

That the owner of said real property, hereinabove described, reserves unto itself, its successors and assigns, or for public dedication by the owner, its successors and assigns, a ten (10) foot right-of-way across and along the street lines of all lots and a ten (10) foot right-of-way along the rear lot lines of each said lots for the purpose of constructing water mains, electric distribution lines, irrigation ditches, sewer lines, gas pipelines, and such other public utilities as shall be necessary, convenient, and desirable for the Grantees and owners of said lots and parcels henceforth; this reservation being intended to provide an easement twenty (20) feet wide centering on the rear lot line of each lot. The easement area for 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. No structure, planting, or other material shall be placed or permitted to remain within these easements which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of water through drainage channels in the easements.

An easement is hereby granted to the Idaho Power Company, a corporation, its licensees, successors and assigns, a permanent and perpetual easement and right-of-way, sufficient in width to install and maintain an underground electric power line, including the perpetual right to enter upon the real estate hereinafter described, at all reasonable times to construct, maintain, and repair underground power lines through, under, and across said lands, together with the right, at the sole expense of the Idaho Power Company, to excavate and refill ditches and trenches for the location of said power line, and the further right to remove trees, bushes, sod, flowers, shrubbery, and other obstructions and improvements interfering with the location, construction, and maintenance of said power lines on and across the following premises belonging to the said owner in Ada County, State of Idaho, in the following location, to wit:

In WELLSWOOD SUBDIVISION, Ada County, Idaho, a strip of land ten (10) feet wide, five (5) feet on each side of the boundary line of the actual building site, running from the street right-of-way or utility easements as shown on the plat to a point or points on said boundary line which are directly opposite from the electrical service entrance facilities on the buildings constructed on the building sites on each side of the boundary line; thence, strips of land each ten (10) feet wide, one (1) on each building site running directly from said point or points on the boundary line to the corresponding opposite electrical service entrance facilities on the buildings constructed on said building sites. The actual building site may be a lot as shown on WELLSWOOD SUBDIVISION plat or a combination of portions of lots intended to comprise a building site.

The Architectural Control Committee, hereinabove designated, shall constitute a committee, subject to the aforementioned ordinances and rules and regulations of the various Planning and Zoning Commissions having jurisdiction, to determine and designate the location upon such easements of all irrigation ditches, pole lines, sewer lines, and other public utilities distribution lines, which designation shall be effective to vest the right to utilize such easement areas. This Committee shall exist in perpetuity, and in the event of vacancy by resignation or death, the remaining members of the Committee shall fill such vacancy by appointment of an owner of property within this subdivision to such Committee.

VII

WELLSWOOD SUBDIVISION HOME OWNER'S ASSOCIATION, INC.: The Association is formed to provide for ownership, management, maintenance, and operation of the surface drainage disposal system as shown on the official Plats and construction drawings of WELLSWOOD SUBDIVISION. The Association has duties and obligations not covered in this Declaration, and are set forth in the Articles and By-Laws of the Association recorded in the office of the Recorder of Ada County, Idaho, which by reference herein become part of this Declaration. The Association has the authority to assess the lots for the operation and maintenance of the above mentioned systems; however, the Association does not have any powers to assess the residential lots of the Subdivision for any other purpose whatsoever.

VIII

That these Protective Restrictions and Covenants shall run with the land described herein and shall be binding upon the parties hereto and all successors in title or interest to said real property or any part thereof for a period of twenty (20) years from the date this document is recorded, at which time said Protective Restrictions and Covenants shall be automatically extended for successive periods of ten (10) years unless the owner or owners of the legal title to not less and two-thirds ($\frac{2}{3}$) of the platted residence tracts or platted lots, by an instrument or instruments in writing, duly signed and acknowledged by them, shall then terminate or amend said Protective Restrictions and Covenants, and such termination or amendment shall become effective upon the filing of such instrument or instruments for record in the office of the Recorder of Ada County, Idaho. Such instrument or instruments shall contain proper references by volume and page numbers to the record of the plat and the record of the Declaration in which these Protective Restrictions and Covenants are set forth and all amendments hereof.

IX

That should any Grantee violate or attempt to violate any of the provisions of these Protective Restrictions and Covenants, the WELLSWOOD SUBDIVISION HOME OWNER'S ASSOCIATION, INC., or any other person or persons owning any real property embraced in the said subdivision plat, shall have full power and authority to prosecute any proceedings at law or equity against the person or persons violating or attempting to violate any of the said Protective Restrictions and Covenants, and either to prevent him, or her, or them from so doing or to recover damages sustained by reason of such violation.

X

That the invalidation of any provision, sentence, or paragraph contained in these Protective Restrictions and Covenants by judgment or court order shall in no way affect or invalidate any of the other provisions, sentences, or paragraphs of said Protective Restrictions and Covenants, but the same shall be and remain in full force and effect.

**DECLARATION OF SOLAR COVENANTS,
CONDITIONS, AND RESTRICTIONS**

WHEREAS, the Boise City Code requires that private restrictions be recorded with subdivision plats which provide the same level of solar access protection as required under the City's solar setback and new development solar access design ordinances.

NOW THEREFORE, in recognition of the economic and environmental benefits of solar energy use, Declarant desires to provide for the preservation of solar access in the subdivision, and to that end desires to impose, in the form of covenants, conditions, and restrictions running with the land, a general scheme of solar access protection upon the ownership, use, and occupation of all lots therein which shall be binding on all parties having any right, title, or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

**I
SOLAR ACCESS DEFINITIONS**

- A. **EXEMPT TREE:** Any preexisting vegetation as defined in Article II, Section B or any vegetation included on the list of "solar friendly" vegetation on file with the Boise City Public Works and the Community Planning and Development Departments.
- B. **FRONT LOT LINE:** The line represented by the connection of the most distant corners of a lot, including flag lots, where said corners are in common with the boundary of a public or private road. For corner lots, the front lot line is designated on the plat.
- C. **NORTH SLOPE:** The gradient, in percent slope, from the average finished grade of the front lot line of the shade restricted lot to the average finished grade of the solar lot line of a solar lot. The slope must be downward or decreasing in elevation from south to north.
- D. **RESTRICTED VEGETATION:** A tree or other vegetation which is either evergreen, or if deciduous, tends to retain its leaves late in the fall and/or drop them late in the spring, or has a dense branching pattern which generally tends to block a high level of the sun's rays during the heating season. Refer to the list of "solar friendly" trees on file with the Boise City Public Works and the Community Planning and Development Departments.
- E. **SHADE:** That portion of the shadow cast by the shade point of a structure or vegetation which exceeds the eleven and one half (11½) feet fence at the solar line at solar noon, January 21.
- F. **SHADE POINT:** That part of a structure, tree or other object on a shade restricted lot which casts the longest shadow (the most northern shadow) when the sun is due south

- on January 21st at an altitude of twenty-six (26) degrees above the horizon, except for a shadow caused by a narrow object such as a chimney, antenna, utility pole, wire, etc.
- G. SHADE POINT HEIGHT: The vertical distance measured from the average elevation at the solar lot line to the shade point. If the shade point is located at the north end of a ridge line of a structure oriented within forty-five (45) degrees of a geodetic north-south line, the shade point height computed according to the preceding sentence may be reduced by three (3) feet. If a structure has a roof oriented with forty-five (45) degrees of a geodetic east-west line with a pitch which is flatter than six (6) feet (vertical) in twelve (12) feet (horizontal), the shade point will be the eave of the roof. If such a roof has a pitch which is six (6) feet in twelve (12) feet or steeper, the shade point will be the peak of the roof.
- H. SHADE RESTRICTED LOT: Any lot within the subdivision that is southerly of and adjacent to a solar lot. These lots have some restriction on vegetation types and structure heights.
- I. SOLAR FRIENDLY VEGETATION: A tree or other vegetation which is included on the list of "solar friendly" vegetation on file with the Boise City Public Works and Community Planning and Development Departments.
- J. SOLAR LOT: A lot which has the following characteristics:
1. The front line is oriented within thirty (30) degrees of a geodetic east-west line;
 2. The lot to the immediate south of said lot has a north slope of ten (10) percent or less;
 3. Is intended for the construction of an above ground inhabited structure.
- K. SOLAR LOT LINE: The most southerly boundary of a solar lot, said line being created by connecting the most distant southerly corners of the solar lot.
- L. SOLAR SETBACKS: The minimum distance, measured perpendicular in a southerly direction, from the center of the solar lot line to the shade point of a structure, or to restricted vegetation based upon its height at maturity of the shade restricted lot.

II SOLAR ACCESS COVENANTS, CONDITIONS AND RESTRICTIONS

- A. SHADE RESTRICTION: Each lot within the subdivision which is classified as a Shade Restricted Lot shall have the following restriction: Any structure or restricted vegetation ("solar unfriendly") cannot cast a shadow higher than an imaginary fence eleven and one half (11½) feet above the solar lot line on solar noon of January 21st when the sun is at an angle of twenty-six (26) degrees above the horizon. This sun angle at noon of January 21st causes structures, vegetation, and other objects to cast a shadow twice as long as their height. The height of the shade point of a structure on the Shade Restricted Lot is limited to nineteen (19) feet at the fifteen (15) foot rear yard zoning setback in

order that the eleven and one half (11½) feet high "solar fence" at the north property line of the Shade Restricted Lot is not exceeded. These standards assure that a structure built to the fifteen (15) foot rear yard setback of the Solar Lot located to the north will not be shaded more than four (4) feet above grade on its south wall on January 21st at solar noon.

- B. **PRE-EXISTING VEGETATION:** Restricted vegetation ("solar unfriendly") which existed when the subdivision was platted is exempt from the provisions of these covenants, conditions and restrictions. Any lot which would be shaded beyond the allowed shade limit by such vegetation shall not be classified as a Solar Lot.
- C. **SLOPE EXEMPTION:** Any lot with an average finished grade slope along the north-south lot dimension greater than ten (10) percent shall be exempt from the terms and conditions of these covenants, conditions, and restrictions.
- D. **SOLAR SETBACKS:** Each separate structure and item of restricted vegetation ("solar unfriendly") shall have a solar setback dependent on and calculated by its shade point height. All shade restricted lots shall have the following solar setback:

$$\text{Solar Setback (in feet)} = [\text{Shade Point Height (in feet)} - 11\frac{1}{2} \text{ feet}] \times 2.$$

Table 1 below shows a few examples of solar setbacks for given shade point heights:

TABLE 1

SOLAR SETBACKS REQUIRED FOR A GIVEN SHADE POINT HEIGHT

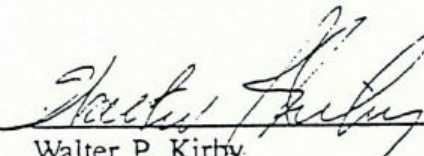
<u>Shade Point Height (feet)</u>	<u>Solar Setback (Feet)</u>
10	0
15	7
20	17
25	27
30	37

- E. **SOLAR FRIENDLY VEGETATION:** Certain vegetation is considered "solar friendly" and is not restricted in regards to location on individual lots. Such vegetation is deciduous, dropping its leaves during early fall and regaining them during late spring. Such vegetation also has sparse branching which allows a high level of sunlight to penetrate through. This growth cycle produces shading during the summer but allows sun to penetrate during the winter. A list of acceptable solar friendly trees is on file with the Boise City Public Works and Community Planning and Development Departments.

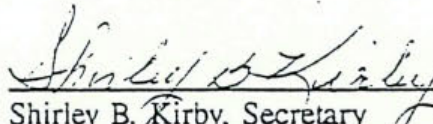
ARTICLE III
SOLAR ACCESS RIGHTS, DUTIES,
AND RESPONSIBILITIES

- A. SOLAR ACCESS RIGHTS: The owner(s) of solar lots shall have a right to unobstructed solar access in accordance with these covenants, conditions, and restrictions.
- B. SOLAR ACCESS DUTIES: The owner(s) of any lot shall not build, install, or otherwise allow a structure or restricted vegetation (solar unfriendly) on that lot to cast more shade at their solar lot line than permitted under these solar access covenants, restrictions, and conditions.

IN WITNESS WHEREOF, the undersigned have hereunto caused their names to be subscribed this 20th day of Nov., 1992.



 Walter P. Kirby
 President - Pioneer Investment, Inc.

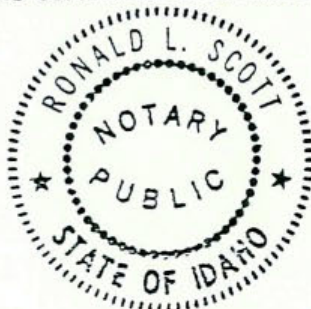



 Shirley B. Kirby, Secretary
 Secretary - Pioneer Investment, Inc.

STATE OF IDAHO)
)
 County of Ada)

On this 20th day of Nov., 1992, before me, the undersigned Notary Public in and for the State of Idaho, personally appeared Walter P. Kirby and Shirley B. Kirby, known to me to be the President and Secretary, respectively, of Pioneer Investment, Inc., whose names are subscribed to the within document, and acknowledged to me that said corporation executed the same.

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





 Notary Public for Idaho
 Residing at Boise, Idaho
 My Commission Expires 12-93