

7-26-2010

Asbury Park, LLC v. Greenbriar Estate  
Homeowner's Ass'n, Inc. Clerk's Record v. 1 Dckt.  
37556

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/  
idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

**Recommended Citation**

"Asbury Park, LLC v. Greenbriar Estate Homeowner's Ass'n, Inc. Clerk's Record v. 1 Dckt. 37556" (2010). *Idaho Supreme Court Records & Briefs*. 2681.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/2681](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2681)

This Court Document is brought to you for free and open access by Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAW CLERK

14

(VOLUME 1)

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

---

**ASBURY PARK, LLC., an Idaho limited liability company; and JOHN ESPOSITO, an individual,**

**Plaintiffs-Counterdefendants-  
Respondents-Cross-Appellants,**

**-VS-**

**GREENBRIAR ESTATES HOMEOWNER'S ASSOCIATION, INC., an Idaho non-profit corporation,**

**Defendant-Counterclaimant-  
Appellant-Cross-Respondent,**

**And**

**DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY,**

**Defendant-Counterclaimants.**

---

Appealed from the District of the Third Judicial District for the State of Idaho, in and for Canyon County

Honorable THOMAS J. RYAN, District Judge

---

Michelle R. Points  
HAWLEY TROXELL ENNIS & HAWLEY, LLP.

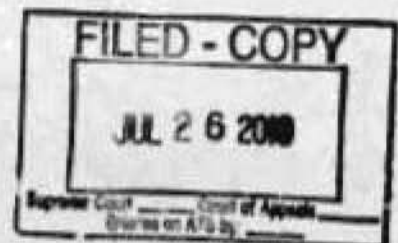
Attorney for Appellant

David M. Penny  
COSH O HUMPHREY, LLP.

Attorney for Respondents

---

37556





## TABLE OF CONTENTS

	Page No.	Vol. No.
Register of Actions	1 – 5	1
Complaint, filed 9-17-08	6 – 24	1
Answer, filed 10-7-08	25 – 34	1
Amended Answer, Counterclaim and Demand for Jury Trial, filed 6-2-09	35 – 53	1
Reply to Counterclaim, filed 6-9-09	54 – 62	1
Plaintiffs' Motion for Partial Summary Judgment, filed 6-19-09	63 – 65	1
Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment, filed 6-19-09	66 – 78	1
Statement of Undisputed Facts in Support of Plaintiffs' Motion for Partial Summary Judgment, filed 6-19-09	79 – 86	1
Affidavit of John Esposito in Support of Motion for Partial Summary Judgment, filed 6-19-09	87 – 136	1
Affidavit of Gregory G. Carter, filed 6-19-09	137 – 143	1
Affidavit of Jared Sherburne, filed 6-19-09	144 – 147	1
Affidavit of Mike E. Pearson, filed 6-19-09	148 – 151	1
Affidavit of Chandra Thornquest, filed 6-19-09	152 – 170	2
Defendants/Counterclaimants' Response to Plaintiffs/Counterdefendants' Motion for Partial Summary Judgment, filed 8-6-09	171 – 185	2
Affidavit of Debra Hobbs, filed 8-6-09	186 – 196	2
Affidavit of Sula Wasbrough, filed 8-6-09	197 – 204	2
Affidavit of Kathy Kinney, filed 8-6-09	205 – 212	2

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Affidavit of Michelle R. Points, filed 8-6-09	213 – 219	2
Affidavit of Aaron Randell, filed 8-6-09	220 – 223	2
Affidavit of Paul Pelletier, filed 8-6-09	224 – 230	2
Plaintiffs' Reply Memorandum in Support of Motion for Partial Summary Judgment, filed 8-13-09	231 – 241	2
Affidavit of John Esposito, filed 8-13-09	242 – 247	2
Plaintiffs' Motion to Strike Portions of the Affidavits filed By Defendants, filed 8-13-09	248 – 250	2
Plaintiffs' Memorandum in Support of Motion to Strike Portions of Affidavits, etc., filed 8-13-09	251 – 260	2
Opposition to Plaintiffs' Motion to Strike, filed 8-17-09	261 – 270	2
Plaintiffs' Reply Memorandum in Support of Motion to Strike Portions of Affidavits, etc., filed 8-18-09	271 – 275	2
Memorandum Decision on Plaintiffs' Motion for Partial Summary Judgment, filed 9-21-09	276 – 288	2
Motion for Reconsideration, filed 10-5-09	289 – 291	2
Memorandum in Support of Motion for Reconsideration, filed 10-5-09	292 – 305	2
Affidavit of Pam White, filed 10-5-09	306 – 309	2
Affidavit of Rodney Emery, filed 10-5-09	310 – 314	2
Affidavit of Norman Holm, filed 10-5-09	315 – 348	3
Affidavit of Sheila Keim, filed 10-5-09	349 – 360	3
Affidavit of John Priester, filed 10-5-09	361 – 364	3

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Affidavit of Chris Veloz, filed 10-5-09	365 – 369	3
Affidavit of Martin Thorne, filed 10-5-09	370 – 373	3
Affidavit of David M. Penny in Support of Entry of Order Granting Plaintiffs’ Motion for Partial Summary Judgment, filed 10-7-09	374 – 378	3
Plaintiffs’ Memorandum in Opposition of Defendant’s Motion for Reconsideration, filed 11-10-09	379 – 388	3
Defendant/Counterclaimant Memorandum in Reply to Plaintiffs’ Opposition to its Motion for Reconsideration, filed 11-17-09	389 – 398	3
Memorandum Decision upon Defendants’ Motion for Reconsideration, filed 12-4-09	399 – 410	3
Motion for Rule 54(b) Certificate, filed 1-11-10	411 – 413	3
Rule 54(b) Certificate, filed 1-11-10	414 – 416	3
Memorandum in Support of Motion for Rule 54(b) Certificate, filed 1-11-10	417 – 423	3
Order on Plaintiffs’ Motion for Summary Judgment, Filed 1-22-10	424 – 426	3
Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Rule 54(b) Certificate, filed 2-10-10	427 – 433	3
Reply to Plaintiffs’ Opposition to Greenbriar Homeowners’ Motion for Rule 54(b) Certificate, filed 2-16-10	434 – 440	3
Memorandum Decision upon Defendants’ Motion for 54(b) Certificate and Certification, filed 3-12-10	441 – 445	3
Memorandum Decision upon Plaintiffs’ Motion for Constructive Trust and Turnover Order, filed 3-12-10	446 – 450	3

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Final Judgment, filed 3-26-10	451 – 453	3
Amended Final Judgment, filed 3-31-10	454 – 456	3
Notice of Appeal, filed 3-31-10	457 – 462	3
Amended Notice of Appeal, filed 4-6-10	463 – 468	3
Notice of Cross-Appeal, filed 4-16-10	469 – 473	3
Certificate of Exhibit	474	3
Certificate of Clerk	475	3
Certificate of Service	476	3

## INDEX

	Page No.	Vol. No.
Affidavit of Aaron Randell, filed 8-6-09	220 – 223	2
Affidavit of Chandra Thornquest, filed 6-19-09	152 – 170	2
Affidavit of Chris Veloz, filed 10-5-09	365 – 369	3
Affidavit of David M. Penny in Support of Entry of Order Granting Plaintiffs' Motion for Partial Summary Judgment, filed 10-7-09	374 – 378	3
Affidavit of Debra Hobbs, filed 8-6-09	186 – 196	2
Affidavit of Gregory G. Carter, filed 6-19-09	137 – 143	1
Affidavit of Jared Sherburne, filed 6-19-09	144 – 147	1
Affidavit of John Esposito in Support of Motion for Partial Summary Judgment, filed 6-19-09	87 – 136	1
Affidavit of John Esposito, filed 8-13-09	242 – 247	2
Affidavit of John Priester, filed 10-5-09	361 – 364	3
Affidavit of Kathy Kinney, filed 8-6-09	205 – 212	2
Affidavit of Martin Thorne, filed 10-5-09	370 – 373	3
Affidavit of Michelle R. Points, filed 8-6-09	213 – 219	2
Affidavit of Mike E. Pearson, filed 6-19-09	148 – 151	1
Affidavit of Norman Holm, filed 10-5-09	315 – 348	3
Affidavit of Pam White, filed 10-5-09	306 – 309	2
Affidavit of Paul Pelletier, filed 8-6-09	224 – 230	2
Affidavit of Rodney Emery, filed 10-5-09	310 – 314	2
Affidavit of Sheila Keim, filed 10-5-09	349 – 360	3



INDEX, Continued

	Page No.	Vol. No.
Affidavit of Sula Wasbrough, filed 8-6-09	197 – 204	2
Amended Answer, Counterclaim and Demand for Jury Trial, filed 6-2-09	35 – 53	1
Amended Final Judgment, filed 3-31-10	454 – 456	3
Amended Notice of Appeal, filed 4-6-10	463 – 468	3
Answer, filed 10-7-08	25 – 34	1
Certificate of Clerk	475	3
Certificate of Exhibit	474	3
Certificate of Service	476	3
Complaint, filed 9-17-08	6 – 24	1
Defendant/Counterclaimant Memorandum in Reply to Plaintiffs' Opposition to its Motion for Reconsideration, filed 11-17-09	389 – 398	3
Defendants/Counterclaimants' Response to Plaintiffs/Counterdefendants' Motion for Partial Summary Judgment, filed 8-6-09	171 – 185	2
Final Judgment, filed 3-26-10	451 – 453	3
Memorandum Decision on Plaintiffs' Motion for Partial Summary Judgment, filed 9-21-09	276 – 288	2
Memorandum Decision upon Defendants' Motion for Reconsideration, filed 12-4-09	399 – 410	3
Memorandum Decision upon Defendants' Motion for 54(b) Certificate and Certification, filed 3-12-10	441 – 445	3
Memorandum Decision upon Plaintiffs' Motion for Constructive Trust and Turnover Order, filed 3-12-10	446 – 450	3

INDEX, Continued

	Page No.	Vol. No.
Memorandum in Support of Motion for Reconsideration, filed 10-5-09	292 – 305	2
Memorandum in Support of Motion for Rule 54(b) Certificate, filed 1-11-10	417 – 423	3
Motion for Reconsideration, filed 10-5-09	289 – 291	2
Motion for Rule 54(b) Certificate, filed 1-11-10	411 – 413	3
Notice of Appeal, filed 3-31-10	457 – 462	3
Notice of Cross-Appeal, filed 4-16-10	469 – 473	3
Opposition to Plaintiffs' Motion to Strike, filed 8-17-09	261 – 270	2
Order on Plaintiffs' Motion for Summary Judgment, Filed 1-22-10	424 – 426	3
Plaintiffs' Memorandum in Opposition of Defendant's Motion for Reconsideration, filed 11-10-09	379 – 388	3
Plaintiffs' Memorandum in Opposition to Defendants' Motion for Rule 54(b) Certificate, filed 2-10-10	427 – 433	3
Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment, filed 6-19-09	66 – 78	1
Plaintiffs' Memorandum in Support of Motion to Strike Portions of Affidavits, etc., filed 8-13-09	251 – 260	2
Plaintiffs' Motion for Partial Summary Judgment, filed 6-19-09	63 – 65	1
Plaintiffs' Motion to Strike Portions of the Affidavits filed By Defendants, filed 8-13-09	248 – 250	2
Plaintiffs' Reply Memorandum in Support of Motion for Partial Summary Judgment, filed 8-13-09	231 – 241	2

INDEX, Continued

	Page No.	Vol. No.
Plaintiffs' Reply Memorandum in Support of Motion to Strike Portions of Affidavits, etc., filed 8-18-09	271 – 275	2
Register of Actions	1 – 5	1
Reply to Counterclaim, filed 6-9-09	54 – 62	1
Reply to Plaintiffs' Opposition to Greenbriar Homeowners' Motion for Rule 54(b) Certificate, filed 2-16-10	434 – 440	3
Rule 54(b) Certificate, filed 1-11-10	414 – 416	3
Statement of Undisputed Facts in Support of Plaintiffs' Motion for Partial Summary Judgment, filed 6-19-09	79 – 86	1

Asbury Park Neighborhood Homeowners, etal. vs. Greenbriar Estates Homeowners Association, etal.

Asbury Park Neighborhood Homeowners, John Esposito vs. Greenbriar Estates Homeowners Association, Debra Hobbs, Action Association Management Company

## Other Claims

Date		Judge
9/17/2008	New Case Filed-Other Claims	Thomas J Ryan
	Summons Issued x 2	Thomas J Ryan
	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Penny, David M (attorney for Asbury Park Neighborhood Homeowners) Receipt number: 0338464 Dated: 9/17/2008 Amount: \$88.00 (Check) For: Asbury Park Neighborhood Homeowners (plaintiff)	Thomas J Ryan
9/30/2008	Affidavit Of Service (fax)	Thomas J Ryan
	Affidavit Of Service (fax)	Thomas J Ryan
10/7/2008	Answer	Thomas J Ryan
	Filing: 17 - All Other Cases Paid by: Points, Michelle R (attorney for Greenbriar Estates Homeowners Association) Receipt number: 0342844 Dated: 10/7/2008 Amount: \$58.00 (Check) For: Greenbriar Estates Homeowners Association (defendant)	Thomas J Ryan
10/14/2008	Request For Trial Setting (fax)	Thomas J Ryan
10/22/2008	Order to File Stipulated Trial Dates	Thomas J Ryan
10/27/2008	Notice Of Service (fax)	Thomas J Ryan
12/4/2008	Notice of compliance (fax)	Thomas J Ryan
2/4/2009	Notice Of Compliance (fax)	Thomas J Ryan
2/19/2009	Notice Of Taking Deposition Duces Tecum of Debbie Hobbs	Thomas J Ryan
	Notice Of Taking Deposition Duces Tecum	Thomas J Ryan
	Notice Of Taking Deposition Duces Tecum of Phil Brown	Thomas J Ryan
	Notice Of Taking Deposition Duces Tecum of Sula Wasbrough	Thomas J Ryan
3/20/2009	Notice Of Service (fax)	Thomas J Ryan
	Notice Of Service (fax)	Thomas J Ryan
4/6/2009	Motion for Leave to File Amended Answer and Counterclaim	Thomas J Ryan
	Memorandum in Support of Motion for Leave to File Amended Answer and Counterclaim	Thomas J Ryan
	Notice Of Hearing 5-14-09	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 05/14/2009 09:00 AM) to file amended answ and counterclaim	Thomas J Ryan
4/7/2009	Stipulated Trial Dates (fax)	Thomas J Ryan
4/10/2009	Hearing Scheduled (Pre Trial 08/19/2010 11:00 AM)	Thomas J Ryan
	Hearing Scheduled (Jury Trial 09/13/2010 09:00 AM) 10 day jury trial	Thomas J Ryan
	Order Setting Case	Thomas J Ryan
4/17/2009	Notice Of Service (fax)	Thomas J Ryan
4/28/2009	Notice Of Service (fax)	Thomas J Ryan
5/6/2009	Plt's Memorandum in opposition to def's motion for leave to file amended answer and counterclaim	Thomas J Ryan
5/11/2009	Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion for Leave to File Amended Answer and Counterclaim (fax)	Thomas J Ryan
5/15/2009	Order (from 5-14-09 hearing)	G.D. Carey
6/2/2009	Amended Answer, Counterclaim and Demand for Jury Trial	Thomas J Ryan

000001

Asbury Park Neighborhood Homeowners, etal. vs. Greenbriar Estates Homeowners Association, etal.  
 Asbury Park Neighborhood Homeowners, John Esposito vs. Greenbriar Estates Homeowners Association, Debra  
 Hobbs, Action Association Management Company

## Other Claims

Date		Judge
6/9/2009	Reply to Counterclaim (fax)	Thomas J Ryan
6/19/2009	Plt Motion for Partial Summary Judgment	Thomas J Ryan
	Plt Memorandum of Costs and Fees in support of Mo for Partial Sum Judgment	Thomas J Ryan
	Statement of Undsputed Facts in Support of Plt mo for Partial Sum Judgment	Thomas J Ryan
	Affidavit of John Esposito in support of Mo for Partial Sum Judgment	Thomas J Ryan
	Affidavit of Gregory G Carter	Thomas J Ryan
	Affidavit of JAred Sherburne	Thomas J Ryan
	Affidavit of MIke E Pearson	Thomas J Ryan
	Affidavit of Chandra Thornquist	Thomas J Ryan
	Notice Of Hearing on Plt mo for Partial Sum judgment 8-20-09 9:00	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 08/20/2009 09:00 AM) Partial Sum Judgment	Thomas J Ryan
7/23/2009	Amended Notice Of Hearing 8-20-09 2:30pm	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 08/20/2009 02:30 PM) Partial Sum Judgment	Thomas J Ryan
8/6/2009	Defendant's/Counterclaimants Response to Plaintiff's/Counterdefendant's Motion for Partial Summary Judgment	Thomas J Ryan
	Affidavit of Aaron Randell	Thomas J Ryan
	Affidavit of Paul Pelletier	Thomas J Ryan
	Affidavit of Michelle R. Points	Thomas J Ryan
	Affidavit of Kathy Kinney	Thomas J Ryan
	Affidavit of Sula Wasbrough	Thomas J Ryan
	Affidavit of Debra Hobbs	Thomas J Ryan
8/13/2009	Plnt's Reply Memorandum in Suppt of Motn for Partial Summary Jdmt	Thomas J Ryan
	Affidavit of John Esposito	Thomas J Ryan
	Plnt's Motion to Strike Portions of the Affidavits Filed By Defn	Thomas J Ryan
	Plnt's Memorandum in Suppt of Motn to Strike Portions of Affidavits Filed by Defn Pursuant	Thomas J Ryan
	Notice Of Hearing 8-20-09 2:30 pm Motn to Strike Portions of Affd and Motn to Short Time	Thomas J Ryan
	Motion to Shorten Time for Hearing on Plnt's Motn to Strike	Thomas J Ryan
	Affidavit of David M Penny in Suppt of Mont to Shorten Time for hearing on Plnt's Motn to Strike	Thomas J Ryan
8/17/2009	Opposition to pltf's motion to strike (fax)	Thomas J Ryan
8/18/2009	Plaintiffs' Reply Memorandum in Support of Motion to Strike Portions of Affidavits Filed by Defendants (fax)	Thomas J Ryan
8/20/2009	Hearing result for Motion Hearing held on 08/20/2009 02:30 PM: Hearing Held Partial Sum Judgment / Motn to Strike Portions of Affd and Motn to Shorten Time - under advisement	Thomas J Ryan

Asbury Park Neighborhood Homeowners, etal. vs. Greenbriar Estates Homeowners Association, etal.

Asbury Park Neighborhood Homeowners, John Esposito vs. Greenbriar Estates Homeowners Association, Debra Hobbs, Action Association Management Company

## Other Claims

Date		Judge
8/20/2009	Hearing result for Motion Hearing held on 08/20/2009 02:30 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
9/21/2009	Memorandum Decision on Plaintiffs Mo for Partial Summary Judgment Order Referring Case for Mediation	Thomas J Ryan Thomas J Ryan
10/5/2009	Motion for Reconsideration Memorandum in support of Motion for Reconsideration Affidavit of Pam White Affidavit of Rodney Emery Affidavit of Norman Holm Affidavit of Sheila Keim Affidavit of John Priester Affidavit of Chris Veloz Affidavit of Martin Thorne	Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan
10/7/2009	Hearing Scheduled (Motion Hearing 11/19/2009 09:00 AM) for reconsideration Notice Of Hearing 11/19/2009 (fax) Affidavit david penny (fax)	Thomas J Ryan Thomas J Ryan Thomas J Ryan
10/22/2009	Response to Order Referring Case to Mediation (fax)	Thomas J Ryan
11/10/2009	Plaintiff's Memorandum in opposition to defendant's motion for reconsideration	Thomas J Ryan
11/17/2009	Defendant/Counterclaimant Greenbriar Estates Homeowners' Association Inc.'s Memorandum in Reply to Plaintiffs' Opposition to Its Motion for Reconsideration (fax)	Thomas J Ryan
11/19/2009	Hearing result for Motion Hearing held on 11/19/2009 09:00 AM: Hearing Held - under advisement Hearing result for Motion Hearing held on 11/19/2009 09:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan Thomas J Ryan
12/4/2009	Memorandum Decision Upon Defendants' Motion for Reconsideration-DENIED	Thomas J Ryan
12/9/2009	Mediation Case Status Report	Thomas J Ryan
1/11/2010	Motion for Rule 54(b) Certificate (fax) Rule 54(b) Certificate (fax) Notice Of Hearing 2/18/10 9:00am (fax) Memorandum in Suppt of Motn for Rule 54(b) Certificate (fax) Hearing Scheduled (Motion Hearing 02/18/2010 09:00 AM) motn for Rule 54(b) Certificate	Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan
1/22/2010	Order on Plaintiffs Motion for Summary Judgment	Thomas J Ryan
2/3/2010	Plaintiff's Motion for constructive trust and turnover order Memorandum in support of motion	Thomas J Ryan Thomas J Ryan

000003

Asbury Park Neighborhood Homeowners, etal. vs. Greenbriar Estates Homeowners Association, etal.

Asbury Park Neighborhood Homeowners, John Esposito vs. Greenbriar Estates Homeowners Association, Debra Hobbs, Action Association Management Company

## Other Claims

Date		Judge
2/3/2010	Affidavit of john esposito	Thomas J Ryan
	Affidavit of david penny	Thomas J Ryan
	Notice Of Hearing 2/18/2010	Thomas J Ryan
2/10/2010	Plnt's Memorandum Opposition to Defn's Motn for Rule 54(b) Certificate	Thomas J Ryan
2/16/2010	Reply to Plaintiffs' Opposition to Greenbriar Homeowners' Motion for Rule 54(b) Certificate (fax)	Thomas J Ryan
	Greenbriar Homeowners' Opposition to Plaintiffs' Motion for Constructive Trust and Turnover Order (fax)	Thomas J Ryan
2/18/2010	Hearing result for Motion Hearing held on 02/18/2010 09:00 AM: Hearing Held D'S MOTN FOR 54(B)/ pltf motn constructive trust - under advisement	Thomas J Ryan
	Hearing result for Motion Hearing held on 02/18/2010 09:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
3/12/2010	Memorandum Decision Upon Defendants Motion for 54 (b) Certificate and Certification	Thomas J Ryan
	Memorandum Decision Upon Plt Motion for Constructive Trust and Turnover Order	Thomas J Ryan
3/15/2010	Notice Of Service	Thomas J Ryan
3/26/2010	Final Judgment	Thomas J Ryan
	Hearing result for Jury Trial held on 09/13/2010 09:00 AM: Hearing Vacated 10 day jury trial	Thomas J Ryan
	Hearing result for Pre Trial held on 08/19/2010 11:00 AM: Hearing Vacated	Thomas J Ryan
	Civil Disposition entered for: Greenbriar Estates Homeowners Association, Defendant; Asbury Park Neighborhood Homeowners, Plaintiff. Filing date: 3/26/2010	Thomas J Ryan
3/29/2010	Pltf's Motion for leave to file amended complaint	Thomas J Ryan
	Memorandum in support of motion	Thomas J Ryan
	Notice Of Hearing 4/15/2010	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 04/15/2010 09:00 AM) pltf motn amend complaint	Thomas J Ryan
	Case Status Changed: Closed pending clerk action	Thomas J Ryan
3/31/2010	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Points, Michelle R (attorney for Greenbriar Estates Homeowners Association) Receipt number: 0021866 Dated: 3/31/2010 Amount: \$101.00 (Check) For: Greenbriar Estates Homeowners Association (defendant)	Thomas J Ryan
	Notice of Appeal	Thomas J Ryan
	Appealed To The Supreme Court	Thomas J Ryan
	Bond Posted - Cash (Receipt 21868 Dated 3/31/2010 for 300.00) \$100 for clerks record \$200 for reporters transcript	Thomas J Ryan
	Amended Final Judgment	Thomas J Ryan
4/5/2010	Order Vacating Hearing	Thomas J Ryan

000004

Asbury Park Neighborhood Homeowners, etal. vs. Greenbriar Estates Homeowners Association, etal.

Asbury Park Neighborhood Homeowners, John Esposito vs. Greenbriar Estates Homeowners Association, Debra Hobbs, Action Association Management Company

## Other Claims

Date		Judge
4/5/2010	Hearing result for Motion Hearing held on 04/15/2010 09:00 AM: Hearing Vacated pitf motn amend complaint	Thomas J Ryan
4/6/2010	Amended Notice of Appeal	Thomas J Ryan
4/8/2010	Affidavit of David M. Penny in Support of Plaintiffs' Motion for Award of Attorney's Fees and Costs	Thomas J Ryan
	Plaintiffs' Memorandum in Support of Motion for Award of Attorney's Fees and Costs	Thomas J Ryan
	Plaintiffs' Motion for Award of Attorney's Fees and Costs	Thomas J Ryan
4/16/2010	Notice of Cross-Appeal-Asbury Park and John Esposito	Thomas J Ryan
	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Penny, David M (attorney for Asbury Park Neighborhood Homeowners) Receipt number: 0025467 Dated: 4/16/2010 Amount: \$101.00 (Check) For: Asbury Park Neighborhood Homeowners (plaintiff) and Esposito, John (plaintiff)	Thomas J Ryan
	Bond Posted - Cash (Receipt 25468 Dated 4/16/2010 for 100.00) Clerks Record	Thomas J Ryan
	Bond Posted - Cash (Receipt 25472 Dated 4/16/2010 for 200.00) Reporters Transcript	Thomas J Ryan
4/20/2010	Defn's Opposition and Objection to Pnt's Motn for Costs and Attorney Fees (fax)	Thomas J Ryan
4/21/2010	Memorandum in support of motion	Thomas J Ryan
4/28/2010	Memorandum of the court Re: Plaintiffs' motion for award of attorney's fees and costs (postpone ruling until appeal is done.	Thomas J Ryan
5/24/2010	Bond Posted - Cash (Receipt 33476 Dated 5/24/2010 for 34.00)	Thomas J Ryan
	Bond Converted (Transaction number 2274 dated 5/24/2010 amount 200.00)	Thomas J Ryan
	Bond Converted (Transaction number 2276 dated 5/24/2010 amount 34.00)	Thomas J Ryan
5/25/2010	Bond Converted (Transaction number 2279 dated 5/25/2010 amount 113.75)	Thomas J Ryan

000005



Ryan

**F I L E D**  
A.M. *JW* P.M.

SEP 17 2008

CANYON COUNTY CLERK  
C. DOCKINS, DEPUTY

**DAVID M. PENNY ISB #3631**  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiff,

v.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY.

Defendant.

Case No. *CV08-9740*

**COMPLAINT**

Fee Category: A  
Fee: \$88.00

COMES NOW the Plaintiffs, Asbury Park, LLC and John Esposito, to allege as follows:

1.

Asbury Park, LLC is an Idaho limited liability company with its principal place of business in Eagle, Idaho. Asbury Park, LLC (hereinafter "Asbury Park") is the developer of Greenbriar Estates Subdivision in Nampa, Canyon County, Idaho.

2.

John Esposito is an individual residing in Eagle, Ada County, Idaho, and is the sole member and managing member of Asbury Park.

3.

Greenbriar Estates Homeowners' Association, Inc. (hereinafter "HOA") is an Idaho non-profit corporation with its principal place of business in the City of Nampa, Canyon County, Idaho.

4.

Debra Hobbs is an individual residing in Canyon County and is doing business under the assumed business name of Action Association Management Company (hereinafter "Action Association Management"), with a principal place of business in Nampa, Canyon County, Idaho. Action Association Management is engaged in the management of homeowners associations, including the management of HOA.

5.

Beginning in 2005, John Esposito and Asbury Park were engaged in the development of Greenbriar Estates Subdivision (hereinafter "Greenbriar Estates"). On October 4, 2005, Covenants, Conditions and Restrictions for Greenbriar Estates were recorded with the Canyon County Recorder's Office.

6.

On October 5, 2005 Articles of Incorporation were filed with the Idaho Secretary of State's Office for the HOA.

7.

Greenbriar Estates included a privately owned storage facility owned by Asbury Park with ninety-four (94) storage units for use by each of the residential units in Greenbriar Estates.

8.

This Court has jurisdiction pursuant to Idaho Code § 1-705 and the amount in controversy exceeds the minimum jurisdictional requirements of this Court. Venue is proper before this Court because one or more of the Defendants are domiciled in Canyon County, Idaho. Venue is also proper before this Court pursuant to Idaho Code § 5-401(1) as an action to determine rights or interests to real property.

COUNT 1 – BREACH OF CONTRACT AGAINST HOA

9.

Plaintiffs reallege the allegations set forth in Paragraphs 1 through 8 as if set forth in full.

10.

Article IV, Section 4 of the HOA CC&Rs states in relevant part:

“The Community Storage Facility shall be privately owned and operated. ... The Community Storage Facility shall only be available for use by Owners and Residents. Every Owner shall be entitled to use one storage unit within the Community Storage Facility. The rental rate for the use of these storage units shall be included in each Owner’s Regular Assessments. Non-use by an Owner of a storage unit will not preclude him/her/them from paying Assessments associated with their storage unit.”

11.

Article III, Section 14 of the Declaration defines an "Owner" as "each record owner, other than Declarant, whether one or more Persons, of fee simple title to a Single Family Lot...."

The definition is inclusive of any builder purchasing a Single Family Lot.

12.

Article VII, Section 3 of the Greenbriar Estates CC&Rs states in relevant part:

"Regular and Special Assessments should be fixed at a uniform rate; provided, however, that 1) Regular Assessments for Owners shall include the rental rates associated with the use of one storage unit within the Community Storage Facility...."

13.

Article VII, Section 4 of the Greenbriar Estates CC&Rs states in relevant part:

"The Assessments provided for herein shall commence as to all Owners and the Assisted Living Facility owner on the first day of the month following the closing of the sale of a Single Family Lot or the Assisted Living Facility. The first annual assessment shall be pro-rated according to the number of months remaining in the calendar year."

14.

Prior to the sale of any Single Family Lot, John Esposito and Debbie Hobbs created the initial budget for the HOA's Regular Assessments. Debbie Hobbs, as the individual managing the HOA, had been involved in the drafting and editing of the Greenbriar Estates CC&Rs. This budget consisted of \$75/month/Single Family Lot sold to a builder or end consumer. Of this \$75/month, \$35/month was allocated to the rental rate for the storage units and \$40/month was allocated to the maintenance and repair responsibilities of the HOA.

15.

Commencing in 2005, Asbury Park began to sell Single Family Lots to builders and Debbie Hobbs immediately began to collect the \$75/month. However, none of the storage units were completed until September 2006 when Asbury Park completed the first twenty-five (25) 10x10 storage units. At this time, Asbury Park invoiced the HOA and Debbie Hobbs paid the monies due and owing for these units from September 2006 through January 1, 2008.

16.

In November and December, 2006, Asbury Park completed all ninety-four (94) units, eighty-six (86) of which are 10x10 and eight (8) of which are 15x15. During this period, Asbury Park was invoicing and Debbie Hobbs was paying for these storage units on behalf of HOA.

17.

In February of 2007, Debbie Hobbs requested that Asbury Park directly bill and collect the incremental difference of \$15/month from the owners using the eight 15x15 storage units. Asbury Park agreed and has been doing so ever since.

18.

In October 2007, HOA stopped paying the full obligation to Asbury Park. In February 2008, HOA stopped making any of the required assessment rental payments to Asbury Park. HOA has breached the terms of the Greenbriar Estates CC&Rs and the HOA's contract with Asbury Park by failing to timely collect and remit payments for the storage units. The accounting for unpaid rental payments is as follows:

October 1, 2007	\$ 3,290.00
Received check #1096	<u>-\$ 1,120.00</u> (for 32 units)
	\$2,170.00
November 1, 2007	\$ 3,290.00
Received check #1102	<u>-\$ 1,120.00</u> (for 32 units)
	\$2,170.00
December 1, 2007	\$ 3,290.00
Received check #1106	<u>-\$ 1,155.00</u> (for 32 units)
	\$2,135.00
January 1, 2007	\$ 3,290.00
Received check #1109	<u>-\$ 1,155.00</u> (for 32 units)
	\$2,135.00
February 1, 2008	\$ 3,290.00
March 1, 2008	\$ 3,290.00
April 1, 2008	\$ 3,290.00
May 1, 2008	\$ 3,290.00
June 1, 2008	\$ 3,290.00
July 1, 2008	\$ 3,290.00
August 1, 2008	\$ 3,290.00
September 1, 2008	<u>\$ 3,290.00</u>
<b>Total Due as of September 1, 2008</b>	<b>\$34,930.00</b>

With the rental obligation of the HOA accruing at the rate of \$3,290.00 thereafter.

19.

On information and belief, Plaintiffs allege that HOA has collected and has possession of some or all of the fees due Plaintiffs, but has refused to pay those to Plaintiffs.

20.

Plaintiff Asbury Park has been damaged in the amount alleged herein and is entitled to recover prejudgment interest on all sums from the date due until payment or the entry of judgment.

COUNT II – FRAUD IN THE INDUCEMENT AGAINST HOA AND DEBBIE HOBBS

21.

Plaintiffs reallege the allegations set forth in Paragraphs 1 through 20 as if set forth in full.

22.

In early 2007, John Esposito decided that the proposed one hundred-twenty (120) room Assisted Living Facility would not be feasible given the changing economic climate. Based upon this decision, Mr. Esposito reasoned that converting the Assisted Living Facility lot into seventeen Single Family Lots and providing a smaller forty-five (45) room assisted living facility on property he owns adjacent to Greenbriar Estates would be in the best interest of Greenbriar Estates.

23.

In late August 2007, the HOA held a duly called meeting to discuss an amendment to the Greenbriar Estates CC&Rs whereby the contemplated Assisted Living Facility lot would be changed to allow seventeen (17) Single Family Lots. The change was to be memorialized with a document known as the First Supplement to the Greenbriar Estates CC&Rs. At this meeting, the HOA agreed to approve and sign the First Supplement in return for Plaintiffs relinquishing control of the HOA to the owners.

24.

An agreement was reached between Plaintiffs and the HOA, that Asbury Park as the developer and declarant with control of the HOA would relinquish that control to the other HOA

members, and in return the HOA would approve and execute the First Supplement to the Greenbriar Estates CC&Rs.

25.

With control of the HOA, Plaintiffs, as the declarant to the CC&Rs, had the opportunity to change the Greenbriar Estates CC&Rs sufficient to allow the re-plat of the Assisted Living Facility lot into seventeen (17) Single Family Lots, however Plaintiffs preferred to accomplish this change through cooperation with members of the HOA Board and members.

26.

The board members of the HOA and Defendant Debbie Hobbs knew that if Plaintiffs relinquished control of the HOA without obtaining the HOA's approval of the First Supplement to the Greenbriar Estates CC&Rs, the HOA could then refuse to cooperate and further the efforts to prevent the development of the Assisted Living Facility lot into the seventeen (17) Single Family Lots.

27.

Consistent with the agreement, Mr. Esposito executed the annual report form for the HOA relinquishing control of the HOA. He provided the form to Debbie Hobbs with instructions that the form be filed once he had received the executed First Supplement from the HOA.

28.

Without Mr. Esposito's knowledge or consent, Debbie Hobbs filed the annual report form for the HOA with the Idaho Secretary of State's Office relinquishing Plaintiff's control of the



HOA yet Debbie Hobbs failed to first obtain the First Supplement from HOA.

29.

In August 2007, the HOA falsely represented that the HOA approved and would execute the First Supplement in order to induce Plaintiff's to relinquish control of the HOA.

30.

In reliance upon the promises and representations of the HOA, Plaintiffs executed and delivered the HOA annual report form.

31.

The representation by the HOA was false, intended to induce reliance, and did in fact induce reliance on the part of the Plaintiffs.

32.

As a result of fraud by the HOA and Hobbs, control of the HOA was taken from the Plaintiffs, however the HOA then refused to execute and deliver the First Supplement as promised, agreed and represented.

33.

As a result of the fraud perpetrated by the HOA and Hobbs, Plaintiffs are entitled to rescind the act by which control of the HOA was relinquished and control of the HOA must be returned to Plaintiffs.

34.

In the alternative, the HOA should not be allowed to benefit from this fraud and the Court should order compliance of the terms of the First Supplement to the Greenbriar Estates CC&Rs as previously represented and promised by the HOA.

35.

As a result of the conduct by the HOA, Plaintiffs have been damaged in an amount to be proven at the time of trial.

COUNT III – BREACH OF CONTRACT BY HOA REGARDING FIRST SUPPLEMENT

36.

Plaintiffs reallege the allegations set forth in Paragraphs 1 through 36 as if set forth in full.

37.

A binding contract was entered into between Plaintiffs and the HOA whereby the Plaintiffs would relinquish control of the HOA and in return receive the signed First Supplement to the Greenbriar Estates CC&Rs that would allow the converting of the Assisted Living Facility into seventeen (17) Single Family Lots.

38.

The HOA breached the agreement by taking the consideration offered by the Plaintiffs yet failing and refusing to execute and deliver the First Supplement.

39.

Plaintiffs are entitled to an order of the Court for specific performance of the contract requiring the HOA to execute and deliver the First Supplement to the Greenbriar Estates CC&Rs.

40.

The breach of contract by the HOA has caused damages to the Plaintiffs in an amount to be proven at the time of trial.

COUNT IV – QUIET TITLE ACTION AGAINST HOA

41.

Plaintiffs reallege the allegations set forth in Paragraphs 1 through 41 as though set forth in full.

42.

The legal description of the real property known as Greenbriar Estates No. 2 is attached hereto as Exhibit “A” and incorporated as though fully set forth herein.

43.

In 2006, Plaintiffs applied for plat approval for Greenbriar Estates Nos. 2 and 3. Greenbriar Estates No. 2 is the subdivision for the seventeen (17) Single Family Lots at the location where the Assisted Living Facility had originally been contemplated for development.

44.

At the Nampa City Planning & Zoning Commission regular public meeting on January 23, 2007, the Commission voted to recommend to the City Council the approval of the final plat

for Greenbriar Estates No. 2. On February 5, the Nampa City Council voted to approve the final plat for Greenbriar Estates No. 2.

45.

As required by the applicable notice laws, the owners of properties within the original Greenbriar Estates that comprised the members of the HOA were provided with notice of the Plaintiffs' applications before the Nampa City Planning & Zoning Commission and Nampa City Council for approval of the final plat for Greenbriar Estates No. 2 and did not present any opposition to Plaintiffs' request before the City of Nampa.

46.

On February 26, 2008, the HOA recorded a letter that the then acting Board President had written to Plaintiff John Esposito on February 24, 2008. The letter was recorded in the records of Canyon County as Instrument No. 200801005.

47.

The recorded letter makes false statements regarding road access to the lots in Greenbriar Estates No. 2 for the purpose of clouding the Plaintiffs' title to Greenbriar Estates No. 2.

48.

The purpose of the HOA recording the letter was to interfere with Plaintiffs' attempt to successfully develop and construct Greenbriar Estates No. 2 as approved by the City of Nampa.

49.

On September 11, 2008, Plaintiffs made demand on the HOA to release and nullify the letter recorded against Greenbriar Estates No. 2. The HOA failed to comply with that request.

In fact, the HOA intentionally and maliciously took steps to further cloud Plaintiffs' title by drafting and recording a new document titled "Title Company/Prospective Buyer Notice" dated September 10, 2008 which contained false statements for the purpose of preventing and interfering with the Plaintiffs' ability to sell the property.

50.

Plaintiffs are a party to a Real Estate Purchase and Sale Agreement for the sale of Lot 111 of Greenbriar Estates No. 2 with a scheduled closing date of September 19, 2008. However, the letter recorded by HOA in the records of Canyon County appears as a cloud on the Plaintiffs' title to that lot and the title company will not issue a title commitment ensuring against the HOA's allegations in the letter. As a result of the cloud on title, the sale of Lot 111 will be lost to Plaintiffs and Plaintiffs shall be damaged thereby unless the Court enters an order removing the cloud on title created by the HOA.

51.

Plaintiffs are entitled to an order of the Court removing the cloud on title created by the letter recorded by the HOA.

COUNT V – SLANDER OF TITLE ACTION AGAINST HOA

52.

Plaintiffs reallege the allegations in Paragraphs 1 through 52 as if set forth in full.

53.

The statements contained in the letter recorded by the HOA in the records of Canyon County on February 26, 2008 as Instrument No. 200810015 were false, and the HOA representatives acting at that time knew the allegations were false.

54.

The HOA recorded the letter on February 26, 2008 with malice and with purpose of causing interference with Plaintiffs' rights regarding the development of Greenbriar Estates No. 2 and for the purpose of causing Plaintiffs damage and loss. Demand was made upon the HOA to release and nullify the letter that it had recorded, however the HOA failed and refused to do so. Instead, the HOA recorded another document titled "Title Company/Prospective Buyer Notice" dated September 10, 2008. The recording of that document was intentional and malicious, contained false statements and was intended by the HOA to cause damage and loss to the Plaintiffs.

55.

Plaintiffs have entered into a Real Estate Purchase and Sale Agreement for the sale of Lot 111 with a closing date of September 19, 2008. Due to the HOA's slander of title, the title company will not issue a title commitment that ensures the potential buyer of Lot 111 against the matters asserted by the HOA in the recorded letter. As a result of the conduct of the HOA, Plaintiffs will lose the pending sale resulting in damage and loss recoverable in this lawsuit.

56.

That as a result of the conduct by the HOA alleged herein, Plaintiffs have been damaged in an amount to be proven at the time of trial.

COUNT V – DEFAMATION OF PLAINTIFFS BY HOA AND HOBBS

Plaintiffs reallege the allegations set forth in Paragraphs 1 through 57 as if set forth in full.

57.

In 2007, Plaintiffs applied for approval of the construction of an Assisted Living Facility on land owned by Plaintiffs adjacent to Greenbriar Estates.

58.

On October 23, 2007, Plaintiffs went before the Nampa City Planning & Zoning Commission seeking the Commission's recommendation of approval to the Nampa City Council for the proposed forty-five (45) room Assisted Living Facility adjacent to Greenbriar Estates. The Commission unanimously recommended approval of the Assisted Living Facility.

59.

The HOA submitted a letter to the Nampa City Council signed by Debra Hobbs dated November 12, 2007 addressed to the Nampa Mayor and Nampa City Council members which contained numerous untrue and defamatory statements for the purposes of damaging the reputation of Mr. Esposito, calling into question his livelihood in property development and the Assisted Living Facility project that was the subject of the hearing before the City of Nampa.

60.

One of the defamatory statements contained in the November 12<sup>th</sup> letter is as follows:

“When Mr. Esposito presented the subdivision plat to the City Council members, he presented it as having among other things, a storage facility, an R.V. parking area as well as a business park. Our understanding is that he did not disclose the fact that the storage area and R.V. storage area would be privately owned by him, and, therefore, not an amenity of the subdivision as presented. He also did not disclose that he would be collecting rent on the storage units, regardless of whether they are being used/occupied or not and those rental fees would come out of the homeowners’ assessments (dues).

In other words, every owner purchasing a lot in Greenbriar Estates would automatically have access to a storage unit and that storage rental fees would have to be paid on ‘their’ storage unit whether it is being used/occupied or not and regardless of whether their home has been built yet or not.”

61.

The foregoing statement is untrue because the CC&Rs for Greenbriar Estates state that the community storage facility and R.V. storage facility would be privately owned and that the Owners of properties within Greenbriar Estates would incur assessments upon the sale of single family lots.

62.

The November 12, 2007 letter contains the statement: “Mr. Esposito also tried to use the association common area as collateral for a loan.”

63.

The foregoing statement is untrue because at no time did Mr. Esposito attempt to use the Association’s common area as collateral for a loan.



64.

On November 19, 2007, the request by Plaintiffs for approval of the adjacent Assisted Living Facility came before the Nampa City Council for hearing.

65.

The Nampa City Council denied the Plaintiffs' Assisted Living Facility project due to the defamatory statements made by the HOA and Defendant Hobbs.

66.

Plaintiffs have been damaged as a result of the defamatory statements in an amount to be proven at the time of trial.

ATTORNEY'S FEES AND COSTS

Plaintiffs have been required to retain the law firm of Cosho Humphrey, LLP to bring this lawsuit and should be awarded his reasonable attorney's fees pursuant to Idaho Code §§ 12-121 and 12-120, and his costs incurred pursuant to Idaho Rule of Civil Procedure 54(d). In the event of Defendant's default, Plaintiffs should be awarded reasonable attorney's fees in the amount of \$3,500.00 and costs incurred.

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a judgment against Greenbriar Estates Homeowners' Association, Inc. for all rental payments due for the rental of storage units.
2. For an order rescinding the transaction by which Plaintiffs relinquished control of the HOA and restoring to Plaintiffs the status that the Plaintiffs held prior to the transaction taking place.

3. For an order of the Court requiring that Greenbriar Estates Homeowners' Association, Inc. specifically perform its agreement with Plaintiffs and execute the First Supplement to the Greenbriar Estates CC&Rs.

4. For an order of the Court quieting title of the real property comprising Greenbriar Estates No. 2 and nullifying any effect of the letter recorded in the records of Canyon County as Instrument No. 2008010015.

5. For an award of damages against Defendants as prayed for in the Complaint in an amount to be proven at the time of trial.

6. For an award of attorney's fees and costs as prayed for in the Complaint.

7. For such other and further relief as the Court deems just and proper.

Dated this 17 day of September, 2008.

COSHO HUMPHREY, LLP



DAVID M. PENNY  
Attorneys for Plaintiffs

**VERIFICATION**

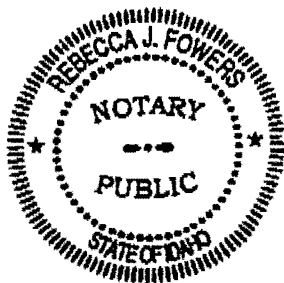
STATE OF IDAHO            )  
  ) ss.  
County of Ada             )

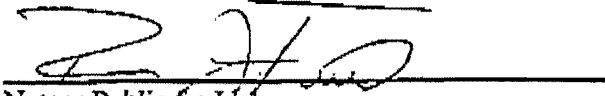
JOHN ESPOSITO, after first being duly sworn upon his oath, deposes and says as follows:

That he is the managing member of Asbury Park, LLC, and one of the Plaintiffs in the above-entitled action; that he has read the within and foregoing Complaint, knows the contents thereof, and that the facts therein stated are true as he verily believes.

  
\_\_\_\_\_  
JOHN ESPOSITO

SUBSCRIBED AND SWORN To before me this 16<sup>th</sup> day of September, 2008.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Boise, Idaho  
Commission expires: 9/12/09

FILED  
A.M. 4:30 P.M.

OCT - 7 2008

CANYON COUNTY CLERK  
DEPUTY

Michelle R. Points, ISB No. 6224  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
Email: mpoi@hteh.com

Attorneys for Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiff,

vs.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY,

Defendants.

Case No. CV 08-9740

ANSWER

COMES NOW Defendants Greenbriar Estates Homeowners' Association, and Debra Hobbs d/b/a Action Association Management Company and, (collectively "Defendants"), by and through their counsel of record Hawley Troxell Ennis & Hawley LLP, and by way of answer to

the Complaint filed by Plaintiffs Asbury Park, LLC and John Esposito (collectively "Plaintiffs"), admit, deny and allege as follows:

**I.**

**ADMISSIONS AND DENIALS**

1. Defendants deny all allegations not specifically admitted herein.
2. Based on information and belief, Defendants admit the allegations set forth in paragraphs 1 and 2 of Plaintiffs' Complaint.
3. Defendants admit the allegations set forth in paragraphs 3, 4, 5 and 6 of Plaintiffs' Complaint.
4. Defendants deny the allegations set forth in paragraph 7 of the Complaint as stated as the official plat approved by and recorded in Canyon County for Greenbriar Estates Subdivision (hereinafter Greenbriar No. 1) provided that the storage facilities were to be owned and maintained by the Home Owner's Association (hereinafter "HOA").
5. Defendants admit the allegations set forth in paragraph 8 of Plaintiffs' Complaint.
6. Defendants deny the allegations set forth in paragraphs 10, 12 and 13 of Plaintiffs' Complaint as the referenced document speaks for itself.
7. Defendants deny the allegations set forth in paragraph 11 of Plaintiffs' Complaint and as the referenced documents speaks for itself and deny the remaining allegations as those allegations set forth a legal conclusion to which no response is required.
8. Defendants deny the allegations in paragraph 14 of the Complaint as stated. Ms. Hobbs drafted a budget at the request of Mr. Esposito based on the assessments set forth in the CC&Rs. Ms. Hobbs had no authority to approve a budget. Ms. Hobbs had no involvement in

drafting or editing of the referenced CC&Rs. Defendants admit the remaining allegations pertaining to dollar amounts set forth in the draft budget.

9. Defendants admit the allegations set forth in the second sentence of paragraph 15 of Plaintiffs' Complaint, but deny the remaining allegations as stated. Ms. Hobbs collected assessments on behalf of the Greenbriar No. 1, and cut a check to Mr. Esposito, at his direction, for that portion of the HOA assessment Mr. Esposito claimed was due to him for storage rental charges.

10. Defendants deny the allegations set forth in paragraph 16 of Plaintiffs' Complaint as stated. In November of 2006, Ms. Hobbs on behalf of the HOA, and at the direction and request of Mr. Esposito, paid Asbury Park the purported rental assessment for approximately 32 units, and in December of 2006, for 33 units.

11. Defendants deny the allegations set forth in paragraph 17 of Plaintiffs' Complaint as stated. Because the referenced assessment was not provided for in the CC&Rs, a separate bill was necessary.

12. Defendants deny the allegations set forth in paragraph 18 of Plaintiffs' Complaint. Defendants first learned that Plaintiffs did not have a certificate of occupancy for certain storage units and later learned that Defendant wrongfully deviated from the plat for Greenbriar No. 1, which was approved by the City of Nampa and filed in Canyon County regarding the nature and ownership of the subject storage units and justifiably ceased remitting payment to Mr. Esposito for the same. The storage units were to be owned and maintained by the HOA.

13. Defendants deny the allegations set forth in paragraphs 19 and 20 of Plaintiff's Complaint.

14. Defendants deny the allegations set forth in paragraph 22 of Plaintiffs' Complaint based upon a lack of knowledge.

15. Defendants deny the allegations set forth in paragraphs 23, 24, 25 and 26 of Plaintiffs' Complaint. Mr. Esposito turned over Greenbriar No. 1 to the HOA in July of 2007. The referenced First Supplement was drafted by Mr. Esposito's attorney and distributed to the Board of Directors of the HOA. There was no "agreement" as contemplated in the referenced paragraphs.

16. Defendants deny the allegations set forth in paragraphs 27 and 28 of the Complaint. Ms. Hobbs received the referenced form from the Idaho Secretary of State as the agent of the HOA, and accurately completed the form and requested a homeowner Board Member to submit the report to the Idaho Secretary of State.

17. Defendants deny the allegations set forth in paragraphs 29, 30, 31, 32, 33, 34, 35, 37, 38, 39 and 40 of Plaintiffs' Complaint.

18. Defendants deny the allegations set forth in paragraph 42 of Plaintiffs' Complaint as no "Exhibit A" was served on Defendants.

19. Based on information and belief, Defendants admit the allegations set forth in paragraphs 43 and 44 of Plaintiffs' Complaint.

20. Defendants deny the allegation set forth in paragraph 45 of Plaintiffs' Complaint, as per the City of Nampa's determination, no hearing was required or convened.

21. Defendants admit the allegations set forth in paragraph 46 of the Plaintiffs' Complaint.

22. Defendants deny the allegations set forth in paragraphs 47 and 48 of Plaintiffs' Complaint.

23. Defendants admit the allegations set forth in paragraph 49 of Plaintiffs' Complaint to the extent that the HOA received a letter from Mr. Esposito's counsel containing a demand, and that the HOA filed the referenced document dated September 10, 2008, recorded on September 11, 2008, but deny the remaining allegations set forth therein.

24. Defendants deny the allegations set forth in paragraph 50 of Plaintiffs' Complaint based upon a lack of knowledge.

25. Defendants deny the allegations set forth in paragraph 51 of Plaintiffs' Complaint.

26. Defendants deny the allegations set forth in paragraph 53 of Plaintiffs' Complaint.

27. Defendants admit the allegations set forth in paragraph 54 of Plaintiffs' Complaint to the extent that the HOA received a letter from Mr. Esposito's counsel containing a demand, and that the HOA filed the referenced document dated September 10, 2008, but deny the remaining allegations set forth therein.

28. Defendants deny the allegations set forth in paragraph 55 of Plaintiffs' Complaint based upon a lack of knowledge and/or their belief that those allegations are not true.

29. Defendants deny the allegations set forth in paragraph 56 of Plaintiffs' Complaint.

30. Based on information and belief, Defendants admit the allegations set forth in paragraphs 57 and 58 of Plaintiffs' Complaint.

31. Defendants admit the allegations set forth in paragraph 59 of Plaintiffs' Complaint to the extent that Ms. Hobbs sent the referenced letter to the Nampa City Council, but denies the remaining allegations set forth therein.

32. Defendants deny the allegations set forth in paragraph 60 of Plaintiffs' Complaint on the basis that the referenced document speaks for itself, and further denies that the statements set forth herein are defamatory.



33. Defendants deny the allegations set forth in paragraph 61 of Plaintiffs' Complaint.

34. Defendants deny the allegations set forth in paragraph 62 of Plaintiffs' Complaint as the referenced document speaks for itself.

35. Defendants deny the allegations set forth in paragraph 63 of Plaintiffs' Complaint.

36. Defendants admit the allegations set forth in paragraph 64 of Plaintiffs' Complaint.

37. Defendants deny the allegations set forth in paragraph 65 of Plaintiffs' Complaint to the extent that any statement made by Defendants was defamatory.

38. Defendants deny the allegations set forth in paragraph 66 of Plaintiffs' Complaint.

39. Defendants deny that Plaintiffs are entitled to any of the relief requested, including any claim for attorney fees and costs.

## II.

### AFFIRMATIVE DEFENSES

Plaintiffs' Complaint fails to state a claim against Defendants upon which relief should be granted. The following defenses are not stated separately as to each claim for relief or allegation of Plaintiffs. Nevertheless, the following defenses are applicable, where appropriate, to any and all of Plaintiffs' claims for relief. In addition, Defendants, in asserting the following defenses, do not admit that the burden of proving the allegations or denials set forth in the defenses is upon Defendants but, to the contrary, asserts that by reason of denials and/or by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and/or the burden of proving the inverse of the allegations set forth in many of the defenses are upon Plaintiffs. Moreover, Defendants do not admit, in asserting any

defense, any responsibility or liability of Defendants but, to the contrary, specifically deny any and all allegations of responsibility and liability in the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because Plaintiffs, by failing to act reasonably, have failed to mitigate the damages to which Plaintiffs may be entitled.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because several of Defendants' actions of which Plaintiffs' complain were taken with Plaintiffs consent.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' recovery in this action, if any, should be reduced in accordance with the doctrine of avoidable consequences.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because evidence of an oral contract, if any, upon which a portion of this action is based is inadmissible under the parole evidence rule.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because Plaintiffs committed acts of fraud. Plaintiffs represented to Canyon County Commissioners/Nampa City Council and were granted permission of the original plat for Greenbriar No. 1, on their representation on the plat that the storage facilities in the subdivision would be owned and maintained by the HOA. Plaintiffs then drafted CC&Rs that provided for privately owned storage facility, which Plaintiffs intended to own and operate for their own benefit and profit,

contrary to Plaintiffs earlier representations to governmental entities and potential buyers via the plat. Plaintiffs later took steps to “ratify” their wrongful acts by recording a “correction” to the Greenbriar Estates Subdivision plat to include reference to a privately owned storage facility in the place of a HOA owned storage facility. Plaintiffs also amended the Greenbriar No.1, by changing the original assisted living lot into 17 residential building lots and one common lot, known as Greenbriar Estates Subdivision No. 2, and then proposed another proposed public assisted living facility outside of Greenbriar No. 1, to be accessed through Greenbriar No. 1, which Plaintiffs intended to own for their own benefit and profit, at the expense of homeowners in the HOA, contrary to representations and warranties contained in the subject plat and CC&Rs, and representations and advertisements made to homeowners that Greenbriar No. 1 was to be a private, gated community.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining Counts I, II, and III of the Complaint based on the doctrines of waiver and estoppel.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because Defendants’ acts were justified.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs should be denied relief on the ground of unclean hands.

### **III.**

#### **RULE 11 STATEMENT**

Defendants have considered and believe that it may have additional defenses, but do not have enough information at this time to assert such additional defenses under Rule 11 of the

Idaho Rules of Civil Procedure. Defendants do not intend to waive any such defenses and specifically assert their intention to amend this answer if, pending research and after discovery, facts come to light giving rise to such additional defenses.

**IV.**

**DEMAND FOR JURY TRIAL**

Defendants hereby demand a trial by jury as to all issues so triable, and will not stipulate to a jury of less than twelve (12) jurors.

**V.**

**PRAYER FOR RELIEF**

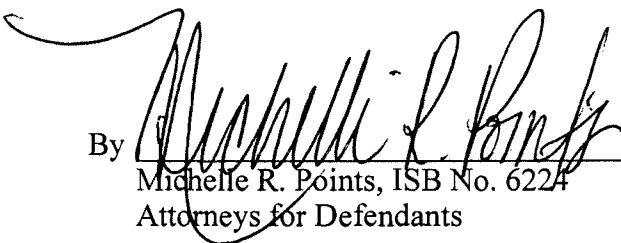
WHEREFORE, Defendants pray for entry of judgment, as follows:

1. That Plaintiffs' Complaint be dismissed and Plaintiffs take nothing thereby;
2. That Defendants be awarded reasonable attorney fees and costs necessarily incurred in defending this action; and
3. For such other and further relief as the Court deems just and proper.

DATED THIS 7<sup>th</sup> day of October, 2008.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By

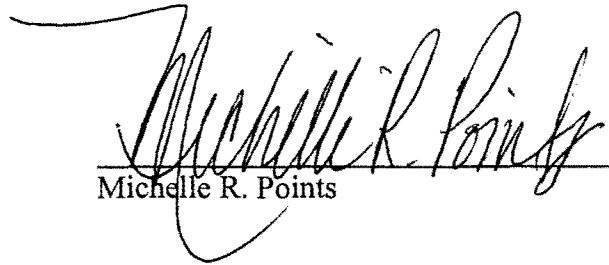
  
Michelle R. Points, ISB No. 6224  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of October, 2008, I caused to be served a true copy of the foregoing ANSWER by the method indicated below, and addressed to each of the following:

David M. Penny  
COSHO HUMPHREY, LLP  
800 Park Blvd., Suite 790  
Boise, ID 83712  
[Attorneys for Plaintiff]

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- E-mail
- Telecopy

  
\_\_\_\_\_  
Michelle R. Points

**F I L E D**  
A.M. 1205 P.M.

**JUN 02 2009**

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

Michelle R. Points, ISB No. 6224  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: 208.344.6000  
Facsimile: 208.954.5252  
Email: mpoints@hawleytroxell.com

Attorneys for Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiffs,

vs.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY,

Defendants.

Case No. CV 08-9740

AMENDED ANSWER,  
COUNTERCLAIM AND DEMAND FOR  
JURY TRIAL

COMES NOW Defendants Greenbriar Estates Homeowners' Association and Debra Hobbs d/b/a Action Association Management Company (hereinafter collectively referred to as "Defendants"), by and through their counsel of record Hawley Troxell Ennis & Hawley LLP, and by way of answer to the Complaint filed by Plaintiffs Asbury Park, LLC and John Esposito (hereinafter collectively referred to as "Plaintiffs"), admit, deny and allege as follows:

I.

**ADMISSIONS AND DENIALS**

1. Defendants deny all allegations not specifically admitted herein.
2. Based on information and belief, Defendants admit the allegations set forth in paragraphs 1 and 2 of Plaintiffs' Complaint.
3. Defendants admit the allegations set forth in paragraphs 3, 4, 5 and 6 of Plaintiffs' Complaint.
4. Defendants deny the allegations set forth in paragraph 7 of the Complaint as stated as the official plat approved by and recorded in Canyon County for Greenbriar Estates Subdivision (hereinafter Greenbriar No. 1) provided that the storage facilities were to be owned and maintained by the Home Owner's Association (hereinafter "HOA").
5. Defendants admit the allegations set forth in paragraph 8 of Plaintiffs' Complaint.
6. With respect to the allegations contained in paragraph 9 of the Complaint, Defendants reassert all admissions and denials previously set forth.
7. Defendants deny the allegations set forth in paragraphs 10, 12 and 13 of Plaintiffs' Complaint as the referenced document speaks for itself.
8. Defendants deny the allegations set forth in paragraph 11 of Plaintiffs' Complaint and as the referenced documents speaks for itself and deny the remaining allegations as those allegations set forth a legal conclusion to which no response is required.
9. Defendants deny the allegations in paragraph 14 of the Complaint as stated. Ms. Hobbs drafted a budget at the request of Mr. Esposito and based only on the assessments set forth in the CC&Rs. Ms. Hobbs had no authority to approve a budget. Ms. Hobbs had no

involvement in drafting or editing of the referenced CC&Rs. Defendants admit the remaining allegations pertaining to dollar amounts set forth in the draft budget.

10. Defendants admit the allegations set forth in the second sentence of paragraph 15 of Plaintiffs' Complaint, but deny the remaining allegations as stated. Ms. Hobbs collected assessments on behalf of the HOA, and cut a check to Mr. Esposito, at his direction, for that portion of the HOA assessment Mr. Esposito claimed was due to him for storage rental charges.

11. Defendants deny the allegations set forth in paragraph 16 of Plaintiffs' Complaint as stated. In November of 2006, Ms. Hobbs on behalf of the HOA, and at the direction and request of Mr. Esposito, paid Asbury Park the purported rental assessment for approximately 32 units, and in December of 2006, for 33 units.

12. Defendants deny the allegations set forth in paragraph 17 of Plaintiffs' Complaint as stated. Because the referenced assessment was not provided for in the CC&Rs, a separate bill was prepared.

13. Defendants deny the allegations set forth in paragraph 18 of Plaintiffs' Complaint. Defendants learned that Plaintiffs did not have a certificate of occupancy for certain storage units and later learned that Defendant wrongfully deviated from the plat for Greenbriar No. 1, which was approved by the City of Nampa and filed in Canyon County regarding the nature and ownership of the subject storage units and justifiably ceased remitting payment to Mr. Esposito for the same. The storage units were to be owned and maintained by the HOA.

14. Defendants deny the allegations set forth in paragraphs 19 and 20 of Plaintiff's Complaint.

15. With respect to the allegations contained in paragraph 21 of the Complaint, Defendants reassert all admissions and denials previously set forth.



16. Defendants deny the allegations set forth in paragraph 22 of Plaintiffs' Complaint based upon a lack of knowledge.

17. Defendants deny the allegations set forth in paragraphs 23, 24, 25 and 26 of Plaintiffs' Complaint. Mr. Esposito turned over Greenbriar No. 1 to the HOA in July of 2007. The referenced First Supplement was drafted by Mr. Esposito's attorney and distributed to the Board of Directors of the HOA. There was no "agreement" as contemplated in the referenced paragraphs.

18. Defendants deny the allegations set forth in paragraphs 27 and 28 of the Complaint. Ms. Hobbs received the referenced form from the Idaho Secretary of State as the agent of the HOA, and accurately completed the form, and requested a homeowner Board Member to submit the report to the Idaho Secretary of State.

19. Defendants deny the allegations set forth in paragraphs 29, 30, 31, 32, 33, 34, 35, 37, 38, 39 and 40 of Plaintiffs' Complaint.

20. With respect to the allegations contained in paragraphs 36 and 41 of the Complaint, Defendants reassert all admissions and denials previously set forth.

21. Defendants deny the allegations set forth in paragraph 42 of Plaintiffs' Complaint as no "Exhibit A" was served on Defendants.

22. Based on information and belief, Defendants admit the allegations set forth in paragraphs 43 and 44 of Plaintiffs' Complaint.

23. Defendants deny the allegations set forth in paragraph 45 of Plaintiffs' Complaint, as per the City of Nampa's determination, no hearing was required or convened.

24. Defendants admit the allegations set forth in paragraph 46 of the Plaintiffs' Complaint.

25. Defendants deny the allegations set forth in paragraphs 47 and 48 of Plaintiffs' Complaint.

26. Defendants admit the allegations set forth in paragraph 49 of Plaintiffs' Complaint to the extent that the HOA received a letter from Mr. Esposito's counsel containing a demand, and that the HOA filed the referenced document dated September 10, 2008, recorded on September 11, 2008, but deny the remaining allegations set forth therein.

27. Defendants deny the allegations set forth in paragraph 50 of Plaintiffs' Complaint based upon a lack of knowledge.

28. Defendants deny the allegations set forth in paragraph 51 of Plaintiffs' Complaint.

29. With respect to the allegations contained in paragraph 52 of the Complaint, Defendants reassert all admissions and denials previously set forth.

30. Defendants deny the allegations set forth in paragraph 53 of Plaintiffs' Complaint.

31. Defendants admit the allegations set forth in paragraph 54 of Plaintiffs' Complaint to the extent that the HOA received a letter from Mr. Esposito's counsel containing a demand, and that the HOA filed the referenced document dated September 10, 2008, but deny the remaining allegations set forth therein.

32. Defendants deny the allegations set forth in paragraph 55 of Plaintiffs' Complaint based upon a lack of knowledge and/or their belief that those allegations are not true.

33. Defendants deny the allegations set forth in paragraph 56 of Plaintiffs' Complaint.

34. Based on information and belief, Defendants admit the allegations set forth in paragraphs 57 and 58 of Plaintiffs' Complaint.

35. Defendants admit the allegations set forth in paragraph 59 of Plaintiffs' Complaint to the extent that Ms. Hobbs sent the referenced letter to the Nampa City Council, but denies the remaining allegations set forth therein.

36. Defendants deny the allegations set forth in paragraph 60 of Plaintiffs' Complaint on the basis that the referenced document speaks for itself, and further denies that the statements set forth therein were defamatory.

37. Defendants deny the allegations set forth in paragraph 61 of Plaintiffs' Complaint.

38. Defendants deny the allegations set forth in paragraph 62 of Plaintiffs' Complaint as the referenced document speaks for itself.

39. Defendants deny the allegations set forth in paragraph 63 of Plaintiffs' Complaint.

40. Defendants admit the allegations set forth in paragraph 64 of Plaintiffs' Complaint.

41. Defendants deny the allegations set forth in paragraph 65 of Plaintiffs' Complaint to the extent that any statement made by Defendants was defamatory.

42. Defendants deny the allegations set forth in paragraph 66 of Plaintiffs' Complaint.

43. Defendants deny that Plaintiffs are entitled to any of the relief requested, including any claim for attorney fees and costs.

## II.

### AFFIRMATIVE DEFENSES

The following defenses are not stated separately as to each claim for relief or allegation of Plaintiffs. Nevertheless, the following defenses are applicable, where appropriate, to any and all of Plaintiffs' claims for relief. In addition, Defendants, in asserting the following defenses, do not admit that the burden of proving the allegations or denials set forth in the defenses is upon

Defendants but, to the contrary, asserts that by reason of denials and/or by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and/or the burden of proving the inverse of the allegations set forth in many of the defenses are upon Plaintiffs. Moreover, Defendants do not admit, in asserting any defense, any responsibility or liability of Defendants but, to the contrary, specifically deny any and all allegations of responsibility and liability in the Complaint.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails to state a claim against Defendants upon which relief should be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because Plaintiffs, by failing to act reasonably, have failed to mitigate the damages to which Plaintiffs may be entitled.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because several of Defendants' actions of which Plaintiffs' complain were taken with Plaintiffs consent and at the direction of Plaintiff.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action because there is no privity of contract between Plaintiffs and Defendants.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action because Plaintiffs' Complaint fails to state a claim against Defendants in that it fails to allege that Plaintiffs have complied with all the terms and conditions of the contract upon which the action is based.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because evidence of the oral agreement upon which a portion of this action is based is inadmissible under the parole evidence rule.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because the contract upon which the action is based is void or voidable since homeowners (members of the HOA) entered into the contract as a result of mutual or unilateral mistake of fact that the HOA, not Plaintiffs, was the owner of Lot 39, Block 1, according to the official plat recorded in Canyon County.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' recovery in this action, if any, should be reduced in accordance with the doctrine of avoidable consequences.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining Counts I, II, and III of the Complaint based on the doctrines of waiver and estoppel.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because Defendants' acts were justified.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because the lot owners (members of the HOA) who signed the contract upon which this action is based is void or voidable because they entered into the contract as a result of duress.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because the lot owners (members of the HOA) who signed the contract upon which this action is based is void or voidable because they entered into the contract as a result of undue influence.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because the contract upon which the action is based is unconscionable.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because Plaintiffs actions, and the contract (CC&Rs) which Plaintiffs drafted, on which they now assert a claim of breach, are in violation of public policy.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants on the ground that the contract at issue provides that the owner of Lot 39, Block 1, cannot be a member of the HOA, and Plaintiffs are members of the HOA.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because the lot owners (members of the HOA) who signed the contract upon which this action contained a unilateral mistake.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs should be denied relief on the ground that the contract at issue contains inconsistent and contrary, and the contract should be reformed.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs should be denied relief on the ground of unclean hands.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from maintaining this action against Defendants because Plaintiffs committed acts of fraud. Plaintiffs represented to Nampa City Planning and Zoning and were granted permission to record the original plat for Greenbriar No. 1 and proceed with the development of the same based on their representation in the plat that Lot 39, Block 1 (the storage facilities) would be owned and maintained by the HOA. Plaintiffs then drafted CC&Rs that provided for a privately owned storage facility, which Plaintiffs intended to own and operate for their own benefit and profit, contrary to Plaintiffs' earlier representations to governmental entities and potential buyers via the plat and marketing materials. Plaintiffs later took steps to "ratify" their wrongful acts by recording a "correction" to the Greenbriar Estates Subdivision plat to include reference to a privately owned storage facility in the place of a HOA owned storage facility. Plaintiffs also amended Greenbriar No. 1, by changing the original assisted living lot into 17 residential building lots and one common lot, known as Greenbriar Estates Subdivision No. 2, and then proposed another public assisted living facility outside of Greenbriar No. 1, to be accessed through Greenbriar No. 1, which Plaintiffs intended to own for their own benefit and profit, at the expense of homeowners in the HOA, contrary to representations and warranties contained in the subject plat and CC&Rs, and representations and advertisements

made to homeowners and potential homeowners that Greenbriar No. 1 was to be a private, gated community.

Plaintiffs' representation in the CC&Rs that the storage facility was privately owned was false. This representation was material to members of the HOA purchasing lots subject to the CC&Rs and paying Plaintiffs purported "rent" through assessments for a period of time. Plaintiffs knew the statement pertaining to ownership was false. Plaintiffs intended to induce reliance of the members of the HOA, and said members were ignorant of the falsity of the statement. Defendants relied on the false statement regarding ownership of the storage facility, and had a right to rely on said statement. Defendants were consequently and proximately injured by Plaintiffs' fraud.

### **III.**

#### **RULE 11 STATEMENT**

Defendants have considered and believe that it may have additional defenses, but do not have enough information at this time to assert such additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. Defendants do not intend to waive any such defenses and specifically assert their intention to amend this answer if, pending research and after discovery, facts come to light giving rise to such additional defenses.

### **IV.**

#### **DEMAND FOR JURY TRIAL**

Defendants hereby demand a trial by jury as to all issues so triable, and will not stipulate to a jury of less than twelve (12) jurors.



V.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants pray for entry of judgment, as follows:

1. That Plaintiffs' Complaint be dismissed and Plaintiffs take nothing thereby;
2. That the subject contract (CC&Rs) be reformed or, alternatively, that certain provisions be declared void;
3. That Defendants be awarded reasonable attorney fees and costs necessarily incurred in defending this action; and
4. For such other and further relief as the Court deems just and proper.

**COUNTERCLAIM**

COMES NOW Defendants/Counterclaimants Greenbriar Estates Homeowners' Association (hereinafter referred to as "Greenbriar"), by and through its counsel of record, Hawley Troxell Ennis & Hawley LLP, and pursuant to Rule 13(a) of the Idaho Rules of Civil Procedure, allege the following Counterclaim against Plaintiffs/Counterdefendants Asbury Park, LLC and John Esposito (hereinafter collectively referred to as "Esposito").

1. Beginning in 2005, Esposito was engaged in the development of the Greenbriar Estates Subdivision Phase One ("Greenbriar Estates").
2. During this "development," Esposito had numerous meetings and exchanged voluminous correspondence with the City of Nampa Planning and Zoning Division ("City of Nampa") to obtain approval for the final plat (the "Plat") for Greenbriar Estates.

3. During those meetings and in its correspondence to Esposito, Esposito was required to designate in the Plat “who will own and maintain common, landscape and storm water retention lots with reference to the restrictive covenants as necessary.”

4. On every occasion that Esposito submitted a proposed revised plat, and the final plat, Esposito represented Lot 39, Block 1 (the storage units), as a parcel that “shall be owned” by the HOA “as established in the subdivision covenants.”

5. On September 23, 2005, Esposito recorded the Plat, based on the City of Nampa’s approval of the Plat as represented by Esposito. There was nothing in the Plat indicating that Lot 39, Block 1 would be owned by Plaintiffs.

6. On October 4, 2005, Esposito recorded the Covenants, Conditions and Restrictions (CC&Rs) for Greenbriar Estates.

7. The CC&Rs were not consistent with either the Plat or the approvals by the City of Nampa, as they provided that the storage facility (Lot 39, Block 1) was to be privately owned and operated, and that the owner will not be a member of the HOA.

8. The Articles of Incorporation for Greenbriar HOA (“Articles”) were recorded on October 5, 2005, which provide that the HOA will provide maintenance to all common areas. The only lot excluded from property owned by the HOA was Lot 49, Block 1 (the medical-professional lot). Lot 39, Block 1, was represented as a common area pursuant to the Plat.

9. Esposito recorded a Correction to Plat (by affidavit) on July 31, 2007, and provides that the storage facility on Lot 39, Block 1, should not have been designated as common area.

10. Through agents working on his behalf, Esposito marketed Greenbriar Estates as having a “community storage facility” as an amenity and that the storage facility was onsite “with homeowners owning one unit.”

11. Esposito did not obtain a Certificate of Occupancy for the storage units until November 1, 2007.

12. Twenty-five (25) of the storage facility units were claimed by Esposito to have been completed in September 2006. Asbury received “payments” in the form of rent for these units from September of 2006 through January of 2008.

13. In November and December of 2006, Esposito completed all ninety-four (94) units, and from that time until January of 2008, Esposito received “payments” from the HOA for purported rent.

14. Of the \$75 per month assessment to each lot owner, \$35 a month was designated in the CC&Rs, drafted by Esposito to be purported “rent”, in the form of a \$3,290 monthly payment, “paid” by the HOA to Esposito.

15. Esposito turned over Greenbriar Estates Subdivision to the HOA on July 5, 2007, with the exception of Lot 39, Block 1, which he had a duty to transfer to the HOA.

16. In the Fall of 2007, Greenbriar discovered that Esposito had failed to obtain a certificate of occupancy for the storage units.

17. Upon further investigation by Greenbriar, it was discovered that Esposito had represented to the City of Nampa, in order to obtain approval of the Plat, that the HOA was to own and maintain the storage facility.

18. In order to purchase a lot in Greenbriar Estates, the respective buyers had to agree to be subject to the CC&Rs they were provided upon closing, which were drafted by Esposito, which CC&Rs misrepresented that Lot 39, Block 1 was owned by Esposito.

**COUNT ONE**

(Quiet Title based upon Fraudulent Misrepresentation)

19. Greenbriar incorporates and realleges paragraphs 1 through 18 of this Counterclaim as if set forth fully herein.

20. Esposito's actions were wrongful and oppressive.

21. Esposito represented to the City of Nampa, on numerous occasions, including via the Plat, which he presented through the surveyor he employed, that Lot 39, Block 1 was owned by the HOA.

22. Esposito, as the owner of Lot 39, Block 1, offered and intended to dedicate Lot 39, Block 1 to the HOA pursuant to the Plat, which he signed and recorded with the Canyon County Recorder.

23. Through agents acting on his behalf, Esposito represented to potential buyers of lots in Greenbriar Estates that the "Community Storage Facility" was an amenity of Greenbriar Estates and that each homeowner "owned one unit."

24. Esposito fraudulently misrepresented in the CC&Rs that Lot 39, Block 1 was not owned by the HOA, but was privately owned.

25. Esposito dedicated Lot 39, Block 1 to the HOA, and Greenbriar has a legally enforceable interest in the common area, Lot 39, Block 1.

26. Title to Lot 39, Block 1 should be quieted to the HOA.

**COUNT TWO**  
(Reformation of Contract)

27. Greenbriar incorporates and realleges paragraphs 1 through 26 of this Counterclaim as if set forth fully herein.

28. Article III, section 7 of the CC&Rs provides that the “Community Storage Facility” shall mean that certain community storage facility located on Lot 39, Block 1 of the Plat.

29. Exhibit C to the CC&Rs contains the Greenbriar Estates Subdivision Plat, which states that Lot 39, Block 1 (among other lots) is designated as a common area lot and “shall be owned and maintained by the homeowner’s association as established by the subdivision covenants.”

30. Article III, Section 21 of the CC&Rs defines “regular assessment” as the portion of the cost of maintaining, improving, repairing, managing and operating the common area including the rents associated with the use of the Community Storage Facility.

31. Lot 39, Block 1, pursuant to the CC&Rs (drafted by Esposito) is not a common area. Esposito simply “carved” out that portion of the regular assessment it deemed a profitable rental rate, despite the fact that the subject lot, per Esposito in the CC&Rs, is not a common area — contrary to the Plat and Exhibit C to the CC&Rs.

32. Article IV, Section 3 of the CC&Rs provides that the Assisted Living Facility Owner (Esposito) shall be a member of the HOA.

33. Article IV, Section 4 of the CC&Rs provides that the Community Storage Facility Owner will not be a member of the HOA and shall not be required to pay assessments.

34. The CC&Rs contain inconsistent provisions and those provisions should be construed to give effect to the intention of the parties and the facts surrounding the formation of

the contract, including Esposito's affirmation in the Plat that Lot 39, Block 1 "shall" be owned by the HOA.

**COUNT THREE**  
(Restitution)

35. Greenbriar incorporates and realleges paragraphs 1 through 34 of this Counterclaim as if set forth fully herein.

36. The HOA is the owner of Lot 39, Block 1 based on the theory of common law dedication.

37. Alternatively, pursuant to the CC&Rs, drafted by Esposito, the "Community Storage Facility" owner will not be a member of the HOA, and Esposito is a member of the HOA through Esposito's ownership of lots within Greenbriar.

38. Alternatively, Esposito did not have a Certificate of Occupancy for the storage units until November 2007.

39. The provision of the CC&Rs which provides that homeowners are to pay assessment in the form of rents to the owner is based on the false assertion that Esposito is the owner.

40. Esposito's misrepresentation in the CC&Rs that Esposito was the owner of Lot 39, Block 1 induced the homeowners purchase their lots with the CC&Rs as written, and also induced them to pay Esposito purported rents based on the CC&Rs.

41. Esposito wrongfully collected HOA assessments in the amount of \$39,647.58.

42. Esposito should be ordered to pay the HOA \$39,647.58 in the form of restitution, plus interest from the date each respective purported "payment" was made to Esposito.

**ATTORNEY FEES AND COSTS**

Greenbriar has been required to retain the services of Hawley Troxell Ennis & Hawley LLP. Greenbriar is entitled to recover all attorney fees and costs incurred in bringing this Counterclaim pursuant to the CC&Rs and other applicable law.

**DEMAND FOR JURY TRIAL**

Greenbriar hereby demand a trial by jury as to all issues so triable, and will not stipulate to a jury of less than twelve (12) jurors.

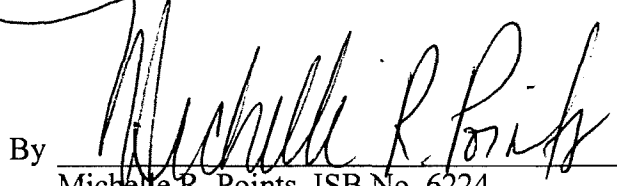
**PRAYER FOR RELIEF**

WHEREFORE, Counterclaimants pray for entry of judgment, as follows:

- 1. That the Court quiet title in and to Lot 39, Block 1 of Greenbriar Estates to the HOA;
- 2. For a declaration and judgment that Esposito has no interest in Lot 39, Block 1;
- 3. That the Court reform the contract to reflect that Lot 39, Block 1 is to be owned by the HOA;
- 4. That Esposito is to pay the HOA restitution in the amount of \$39,647.58;
- 5. For an award of reasonable attorney fees and costs against Esposito; and
- 5. For such other relief as the Court deems just and proper.

DATED THIS 1st day of June 2009.

HAWLEY TROXELL ENNIS & HAWLEY LLP


By   
 Michelle R. Points, ISB No. 6224  
 Attorneys for Defendants/Counterclaimants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June, 2009, I caused to be served a true copy of the foregoing AMENDED ANSWER, COUNTERCLAIM AND DEMAND FOR JURY TRIAL by the method indicated below, and addressed to each of the following:

David M. Penny  
COSHO HUMPHREY, LLP  
800 Park Blvd., Suite 790  
Boise, ID 83712  
[Attorneys for Plaintiff]

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- E-mail
- Telecopy

  
\_\_\_\_\_  
Michelle R. Points



**FILED**  
11:55 A.M. P.M.

**JUN 09 2009**

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

**DAVID M. PENNY ISB #3631**  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiffs,

v.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY.

Defendants.

Case No. CV 08-9740\*C

**REPLY TO COUNTERCLAIM**

COMES NOW Asbury Park, LLC and John Esposito (sometimes collectively referred to as Counterdefendants) to reply to the Counterclaim as follows:

FIRST DEFENSE

1. The Counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. Counterdefendants deny each and every allegation set forth in the Counterclaim unless specifically admitted herein.

THIRD DEFENSE

3. Counterdefendants admit the allegations set forth in Paragraphs 6 and 11.

4. Counterdefendants deny the allegations set forth in Paragraphs 7, 10, 15, 16, 17, 20, 22, 23, 24, 25, 26, 31, 34, 36, 39, 40, 41, and 42.

5. In reply to Paragraph 1, Counterdefendants admit that Asbury Park, LLC developed Greenbriar Estates Subdivision and deny the remaining allegations set forth therein.

6. In reply to Paragraph 2, Counterdefendants admit that during the development of Greenbriar Estate Subdivision, Counterdefendants had meetings and exchanged correspondence with the City of Nampa Planning & Zoning Division and deny the remaining allegations set forth therein.

7. In reply to Paragraph 3, Counterdefendants admit that Asbury Park, LLC was required to satisfy the requirements of the City of Nampa for a subdivision plat, which requirements speak for themselves, and deny the remaining allegations set forth therein.

8. In reply to Paragraph 4, Counterdefendants state that the documents referenced therein speak for themselves as to the content thereof, and therefore Counterclaimant's representation of the content of the documents is denied.

9. In reply to Paragraph 5, Counterdefendants admit that the plat of Greenbriar Estate Subdivision was recorded on September 23, 2005, and deny the remaining allegations set forth therein.

10. In reply to Paragraph 8, Counterdefendants admit that the Articles of Incorporation for Greenbriar Estates Homeowners' Association (hereinafter "Greenbriar HOA") were recorded on October 5, 2005, and admit that the Articles speak for themselves as to the content thereof, and therefore Counterclaimant's representation of the content of the documents is denied.

11. In reply to Paragraph 9, Counterdefendants admit that a Correction to Plat was recorded on July 31, 2007, and that the Correction to Plat speaks for itself as to the content thereof, and therefore Counterclaimant's representation of the content of the document is denied.

12. In reply to Paragraph 12, Counterdefendants admit that some storage unit facilities were completed by Asbury Park, LLC as of September 2006 and that rent was received for some of those units between September 2006 and January 2008.

13. In reply to Paragraph 13, Counterdefendants admit that as of December 2006, Asbury Park, LLC had completed ninety-four (94) storage units and received some payments of rent for those units, but deny that the Greenbriar HOA has paid over all rent collected for those units.

14. In reply to Paragraph 14, Counterdefendants admit that the Greenbriar Estates CC&Rs speak for themselves as to the content thereof, and therefore Counterclaimant's representation of the content of the documents is denied.

15. In reply to Paragraph 18, Counterdefendants state that the purchase agreements of the buyers of lots in the Greenbriar Estates speak for themselves as to the content thereof, and therefore Counterclaimant's representation of the content of the documents is denied.

16. In reply to Paragraph 21, Counterdefendants state that the plat speaks for itself as to the content thereof, and therefore Counterclaimant's representation of the content of the document is denied.

17. In reply to Paragraphs 28, 29, 30, 32, 33, and 37, Counterdefendants state that the Greenbriar Estates CC&Rs speak for themselves as to the content thereof, and therefore Counterclaimant's representation of the content of the documents is denied.

18. In reply to Paragraph 38, Counterdefendants admit that a Certificate of Occupancy for the storage units was obtained November 1, 2007, but Counterdefendants deny that a Certificate of Occupancy was required in order to receive the payment of rent.

19. In reply to Paragraphs 19, 27 and 35, Counterdefendants incorporate and reallege their responses to the paragraphs referenced in the Counterclaim.

FIRST AFFIRMATIVE DEFENSE

20. Counterclaimant lack standing to bring the claims alleged in the Counterclaim.

SECOND AFFIRMATIVE DEFENSE

21. Counterclaimant are not the real party in interest.

THIRD AFFIRMATIVE DEFENSE

22. John Esposito has no liability to Counterclaimant because at all times he acted within the course and scope of Asbury Park, LLC.

FOURTH AFFIRMATIVE DEFENSE

23. Counterdefendants are not in privity of contract with Counterclaimant Greenbriar HOA or its members.

FIFTH AFFIRMATIVE DEFENSE

24. Block 1, Lot 39 is a parcel of land, not storage units.

SIXTH AFFIRMATIVE DEFENSE

25. The members of Greenbriar HOA purchased their lots from third parties, not the Counterdefendants.

SEVENTH AFFIRMATIVE DEFENSE

26. The Greenbriar HOA cannot prosecute a claim based upon alleged misrepresentations to the City of Nampa when the Greenbriar Estates plat was approved because the Greenbriar HOA did not exist at that time.

EIGHTH AFFIRMATIVE DEFENSE

27. The members of Greenbriar HOA cannot prosecute a claim based upon alleged misrepresentations to the City of Nampa when the Greenbriar Estates plat was approved because they were not owners of lots in Greenbriar Estates at that time.

NINTH AFFIRMATIVE DEFENSE

28. The Greenbriar HOA and its members of the Greenbriar HOA acquired their respective lots subject to the CC&Rs recorded October 4, 2005.

TENTH AFFIRMATIVE DEFENSE

29. If the Greenbriar HOA and its members have been damaged at all, those damages are the result of the conduct of third parties such as Debra Hobbs and Action Association Management Company, and not the conduct of Counterdefendants.

ELEVENTH AFFIRMATIVE DEFENSE

30. The Greenbriar HOA and its members are estopped and/or have waived the right to assert their claims due to their own conduct, actions, or lack of action and omissions.

TWELFTH AFFIRMATIVE DEFENSE

31. The claims of the Greenbriar HOA and its members are barred by the doctrine of laches and unclean hands.

THIRTEEN AFFIRMATIVE DEFENSE

32. Some or all of the Counterclaimant's claim for monies paid is barred by Idaho Code § 5-218 as the applicable statute of limitations.

FOURTEENTH AFFIRMATIVE DEFENSE

33. To the extent that Counterclaimant's claims are based upon allegations of fraud, those claims are barred pursuant to Idaho Code § 5-218 as the applicable statute of limitations.

FIFTEENTH AFFIRMATIVE DEFENSE

34. The plat recorded for Greenbriar Estates contained a mistake.

SIXTEENTH AFFIRMATIVE DEFENSE

35. Counterdefendants have not been able to engage in full discovery of the facts relevant to this case and therefore Counterdefendants are unable to fully state in complete detail all of the affirmative defenses that may exist with respect to the Counterclaim. Pursuant to Rule 11 of the Idaho Rules of Civil Procedure, Counterdefendants have asserted the affirmative defenses that are presently known to them and believe to be applicable, but Counterdefendants expressly reserve the right to assert additional affirmative defenses by amendment to its reply.

ATTORNEY'S FEES

36. Counterdefendants have been required to retain the services of Cosho Humphrey, LLP to defend its interest against the Counterclaim in this matter and are entitled to recover their reasonable attorney's fees and litigation costs associated with defending this action pursuant to Idaho Code §§ 12-120, 12-121, and Rule 54 of Idaho Rules of Civil Procedure.

DEMAND FOR JURY TRIAL

37. Counterdefendants demand a trial by jury, composed of no less than twelve (12) persons, on all issues, claims, and defenses triable to a jury, pursuant to the constitutions and laws of the United States, the State of Idaho, and the Idaho Rules of Civil Procedure 38(b)

PRAYER FOR RELIEF

WHEREFORE, Counterdefendants pray as follows:

1. That the Counterclaim be dismissed with prejudice and Counterclaimant take nothing thereby.
2. For an award of attorney's fees and costs as prayed for in this Reply.
3. For a jury trial on all issues as requested in this Counterclaim.
4. For such other and further relief as the Court deems just and proper.

DATED this 9 day of June, 2009.

COSHO HUMPHREY, LLP

By 

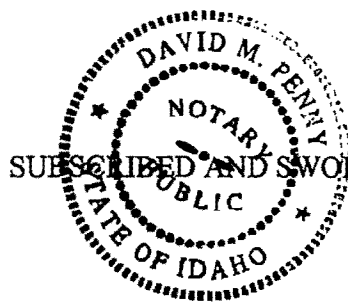
David M. Penny

VERIFICATION

STATE OF IDAHO )  
 ) ss.  
County of Ada )

JOHN ESPOSITO, being first duly sworn, deposes and says:

That he is a Plaintiff in the above-entitled action; that he has read the within and foregoing Reply to Counterclaim, knows the contents thereof, and that the facts therein stated are true as he verily believes.



*John A. Esposito*  
\_\_\_\_\_  
JOHN ESPOSITO

SUBSCRIBED AND SWORN To before me this 9 day of June, 2009.

*David M. Penny*  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at *Boise*, Idaho  
Commission expires *7/14/2012*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 9 day of June, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Renae Points  
Hawley Troxell Ennis & Hawley, LLP  
P. O. Box 1617  
Boise, ID 83701-1617  
Served by: Facsimile (208) 342-3829



DAVID M. PENNY

**DAVID M. PENNY ISB #3631**  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290

**F I L E D**  
A.M. 11:05 P.M.

**JUN 19 2009**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiffs,

v.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY.

Defendant.

Case No. CV 08-9740\*C

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW the above-named Plaintiffs, and move this Court pursuant to Idaho Rule of Civil Procedure 56(c) for partial summary judgment dismissing the Counterclaim filed in this case and granting Plaintiff Asbury Park, LLC judgment on Count 1 of the Complaint.

This Motion is brought on the grounds that Asbury Park, LLC is the owner of the disputed Lot 39, Block 1 of Greenbriar Estates Subdivision and that the Defendant's theory of

RECEIVED

common law dedication cannot be established as a matter of law and cannot change the ownership of the lot in question.

This Motion is based upon the memorandum filed concurrently herewith, together with Plaintiffs' Statement of Undisputed Facts, the Affidavits of John Esposito, Gregory G. Carter, Jared Sherburne, Mike E. Pearson, and Chandra Thornquest.

Oral Argument is requested on this motion.

DATED this 19 day of June, 2009.

COSHO HUMPHREY, LLP

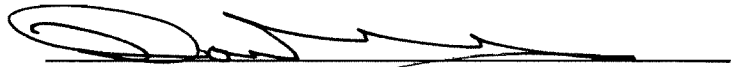


DAVID M. PENNY  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 14 day of June, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Renae Points  
Hawley Troxell Ennis & Hawley, LLP  
P. O. Box 1617  
Boise, ID 83701-1617  
**Served by: U.S. Mail**

  
\_\_\_\_\_  
DAVID M. PENNY

**F I L E D**  
A.M. 11:10 P.M.

JUN 19 2009

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

DAVID M. PENNY ISB #3631  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiffs,

v.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY.

Defendant.

Case No. CV 08-9740\*C

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

**I. INTRODUCTION**

This motion for partial summary judgment is brought by Plaintiffs to obtain judgment dismissing the Counterclaim filed by Greenbriar Estates Homeowners' Association, Inc. (hereinafter "Greenbriar HOA") and judgment in favor of Plaintiff Asbury Park, LLC (hereinafter "Asbury Park") on Count One of the Plaintiffs' Complaint. The pivotal issue to all of these claims is the ownership of Lot 39, Block 1 of the Greenbriar Estates Subdivision.

Regardless of the theories advanced by the Greenbriar HOA, Asbury Park is and has always been the owner of Lot 39, Block 1 and therefore is entitled to summary judgment.

## II. STATEMENT OF FACTS

Filed concurrently with this memorandum is a Statement of Undisputed Facts which supports Plaintiffs' motion for summary judgment. The Statement of Undisputed Facts is supported by citation to the affidavits of surveyor Gregory G. Carter, Rocky Ridge Homes' owners, Jared Sherburne and Mike E. Pearson, the affidavit of Chandra Thornquest, a representative of Stewart Title of Boise, and the Affidavit of John Esposito, as well as the documents attached thereto as exhibits, all filed concurrently herewith.

## III. ARGUMENT

### A. The Rules Applicable to Summary Judgment Proceedings and Applicable Case Law Require that the Court Grant Plaintiffs' Motion.

Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits on file show there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); *Northwest Bec-Corp v. Home Living Serv.*, 136 Idaho 835, 838, 41 P.3d 263, 266 (2002); *City of Idaho Falls v. Home Indemnity Co.*, 126 Idaho 604, 606, 888 P.2d 383, 386 (1995). Through the summary judgment technique, then, courts view all facts and inferences from the record in favor of the non-moving party. *Read v. Harvey*, 141 Idaho 497, 499, 112 P.3d 785, 787 (2005), *reh'g denied*. This means the moving party has the burden of proving the absence of a genuine issue of material fact. I.R.C.P. 56(e); *Orthman v. Idaho Power*, 130 Idaho 597, 600, 944 P.2d 1360, 1363 (1997). *See also, G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991).

Nevertheless, while the court must liberally construe the facts and inferences contained in the existing record in favor of the party opposing the motion, still, to withstand a motion for summary judgment, the non-moving party must anchor its case in something beyond speculation. A mere scintilla of evidence does not create a genuine issue. *Samuel v. Hepworth, Nungester, & Lezamiz, Inc., supra; Edwards v. Conchemco Inc.*, 111 Idaho 851, 853, 727 P.2d 1279, 1281 (Ct. App. 1986). Accordingly, the party opposing the motion for summary judgment may not simply rest on allegations contained in the pleadings; rather, the non-moving party must produce evidence by way of affidavit or deposition in order to contradict the assertions of the moving party. *Herman Ex. Rel. Herman v. Herman*, 136 Idaho 781, 784, 41 P.3d 209, 212 (2002); *D.A.R. Inc. v. Sheffer*, 134 Idaho 141, 144, 997 P.2d 602, 605 (2000); *Ambrose v. Buhl School Dist. #412*, 126 Idaho 581, 584, 887 P.2d 1088, 1091 (Ct. App. 1994). "Bare assertions that an issue of fact exists, in the face of particular facts alleged by a movant, are not sufficient to create a genuine issue of fact." *Cates v. Albertson's Inc.*, 126 Idaho 1030, 1033, 895 P.2d 1223, 1226 (1995); *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 274, 869 P.2d 1365, 1369 (1994). In other words, the nonmovant's response "must set forth specific facts showing there is a genuine issue for trial." *Id.*

**B. There is No Viable Legal Theory to Support the Claim by Greenbriar HOA that it is the Owner of Lot 39, Block 1.**

The heart of the Counterclaim by Greenbriar HOA is the allegation that John Esposito (hereinafter "Esposito") misrepresented that Asbury Park was the owner of Lot 39, Block 1. Greenbriar HOA contends this was a misrepresentation because it claims to be the rightful owner of that lot.

In Paragraph 18 of the Counterclaim, the Greenbriar HOA alleges:

18. In order to purchase a lot in Greenbriar Estates, the respective buyers had to agree to be subject to the CC&Rs they were provided upon closing, which were drafted by Esposito, which CC&Rs misrepresented that Lot 39, Block 1 was owned by Esposito.

Count One of the Counterclaim is titled "Quiet Title based upon Fraudulent Misrepresentation". Under that count, Paragraph 24 alleges:

24. Esposito fraudulently misrepresented in the CC&Rs that Lot 39, Block 1 was not owned by the HOA, but was privately owned.

In Count Three of the Counterclaim, the Greenbriar HOA seeks restitution of storage fee rent paid by the owners based upon an allegation of misrepresentation. Under that count, Paragraph 40 states:

40. Esposito's misrepresentation in the CC&Rs that Esposito was the owner of Lot 39, Block 1 induced the homeowners purchase their lots with the CC&Rs as written, and also induced them to pay Esposito purported rents based on the CC&Rs.

There can be no factual dispute that Asbury Park has held legal title to Lot 39, Block 1 from before the development of Greenbriar Estates to the present. (See Paragraph 4 of the Affidavit of John Esposito, and Warranty Deed, Exhibit "1" thereto.) Asbury Park purchased the land, developed it, sold the building lots, and has at all times retained ownership of Lot 39, Block 1.

The only theory advanced by Greenbriar HOA to explain their claim that Asbury does not own Lot 39, Block 1 is the theory of common law dedication (Counterclaim, Count Three, Paragraph 36). Under Idaho law, common law dedication, even if applicable, could not result in a change in the ownership of Lot 39, Block 1 from Asbury Park to the Greenbriar HOA.



Without exception, under Idaho law, “Common law dedication does not grant ownership of the parcel in another, but a limited right to use the land for a specific purpose. The law of dedication clearly states that dedication is not a transfer of title in the land, but the grant of an easement.” *Saddlehorn Ranch Landowner’s, Inc. v. Dyer*, 2009-ID-0122.184 (Id. S.Ct. January 1, 2009).

From the foregoing analysis, it is clear that Asbury Park and Esposito, by representing that Asbury Park owned Lot 39, Block 1, could not and did not make an untrue statement and therefore the Plaintiffs are entitled to summary judgment as to any claim of misrepresentation or fraud as alleged in Paragraphs 18 and 24 of Count One, and Paragraphs 39 and 40 of Count Three. Since the statement that Asbury Park owned Lot 39, Block 1 was true, Counts One and Three of the Counterclaim must be dismissed. Absent a sustainable claim for common law dedication, the entire Counterclaim must be dismissed with prejudice.

**C. Greenbriar HOA Cannot Establish the Elements of Common Law Dedication.**

The entirety of the Greenbriar HOA’s Counterclaim and its defense against the Plaintiffs’ suit to recover unpaid rent is based upon the premise that the surveyor’s error in Paragraph 8 to the plat notes was actually a common law dedication of that lot to the Homeowners’ Association. (See affidavit of surveyor Gregory G. Carter.) As explained in this Memorandum, the Greenbriar CC&Rs, language in the deeds, and the undisputed circumstances soundly refute that position.

Idaho Appellate Courts have had ample opportunity to fully develop the elements for common law dedication and what the party asserting common law dedication must prove. In the case of *Saddlehorn Ranch Landowner’s, Inc. v. Dyer, supra*, the court succinctly stated the law:

The elements of public and private common law dedication are the same, requiring “(1) an offer by the owner clearly and unequivocally indicating an intent to dedicate the land and (2) an acceptance of the offer.” *Ponderosa Homesite Lot Owners v. Garfield Bay Resort, Inc.*, 143 Idaho 407, 409, 146 P.3d 673, 675 (2006) (quoting *Armand v. Opportunity Mgmt. Co.*, 141 Idaho 709, 714, 117 P.3d 123, 128 (2005)). “When an owner of land plats the land, files the plat for record, and sells lots by reference to the recorded plat, a dedication of public areas indicated by the plat is accomplished.” *Monaco v. Bennion*, 99 Idaho 529, 533, 585 P.2d 608, 612 (1978) (quoting *Smylie v. Pearsall*, 93 Idaho 188, 191, 457 P.2d 427, 430 (1969)). This doctrine protects the interest of purchasers who rely on the value of these public areas. *Id.*

The offer for dedication must be clear and unequivocal, thereby indicating the owner’s intent to dedicate the land. *Ponderosa Homesite Lot Owners*, 143 Idaho at 409, 146 P.3d at 675 (quoting *Sun Valley Land & Minerals, Inc. v. Hawkes*, 138 Idaho 543, 548, 66 P.3d 798, 803 (2003)). The burden of proof is on the party alleging that the land owner’s act or omission manifested an intent to dedicate the land for public use. *State ex rel. Haman v. Fox*, Idaho 140, 146, 594 P.2d 1093, 1099 (1979). “The intent of the owner to dedicate his land to public use must be clearly and unequivocally shown and must never be presumed.” *Id.* at 147, 594 P.2d at 1100.

“[U]nder Idaho law a dedication, whether express or common law, creates an easement. Moreover, an easement does not divest the servient estate owner of title. [citations omitted] . . . Nor does the creation of an easement divest the servient estate owner of the ability to transfer title.” *Ponderosa Homesite Lot Owners*, 143 Idaho at 410, 146 P.3d at 676.

“In determining the intent to dedicate, ‘the court must examine the plat, as well as ‘the surrounding circumstances and conditions of development and sale of lots’” *West Wood Investments, Inc. v. Acord*, 141 Idaho 75, 87 106 P.3d 401, 413 (2005) (quoting *Sun Valley Land and Minerals, Inc. v. Hawkes*, 138 Idaho 543, 548, 66 P.3d 798, 803 (2003)).

Emphasis added.

*Saddlehorn Ranch Landowner’s Inc. v. Dyer*, at Page 7.

The Greenbriar HOA cannot meet its burden for multiple reasons shown by the undisputed facts of this case.

**1. Asbury Did Not Sell Lots to the Homeowners and Therefore Made No Offer to Them.**

One fatal flaw to the claims of Greenbriar HOA is that Asbury Park did not sell the lots to the homeowners in Greenbriar Estates. There was never an “offer” for dedication by Asbury Park to the Greenbriar HOA or its members. Asbury Park sold the lots to Rocky Ridge Homes. The homeowners then purchased lots from Rocky Ridge Homes and other builders that purchased lots from Rocky Ridge Homes.<sup>1</sup> (See Affidavits of Mike E. Pearson and Jared Sherburne filed concurrently herewith.)

Jared Sherburne and Mike Pearson were the principals of Rocky Ridge at the time that Rocky Ridge purchased all of the building lots from Asbury Park. Their affidavits are submitted in support of this motion for partial summary judgment. Both Mr. Pearson and Mr. Sherburne confirm that prior to the purchase of the lots, they knew that the storage facility on Lot 39, Block 1 was to be privately owned by Asbury Park, that each lot in the subdivision would have a storage unit, and each lot owner would be charged a mandatory rental fee to be collected by Greenbriar HOA and paid to Asbury Park as the developer. Jared Sherburne states in his affidavit that he had reviewed the CC&Rs for Greenbriar Estates prior to the purchase of the ninety-four (94) lots and understood that Asbury Park would be the owner of the storage facility and that the storage facility lot would not be owned by the subdivision association. (Affidavit of Jared Sherburne, Paragraphs 4-6.)

---

<sup>1</sup> The ninety-four (94) building lots in Greenbriar Estates were sold to Rocky Ridge and Rocky Ridge then closed on the purchase of the lots over a period of time. Rocky Ridge sold some lots directly to Prestige Homes and therefore some deeds are directly from Asbury Park to Prestige Homes.

Regardless of the plat, the purchasers from Asbury Park knew that Asbury Park was not making an offer to dedicate Lot 39, Block 1. They clearly and unequivocally understood the opposite, i.e. that Asbury Park was retaining ownership both from conversation with Esposito and the CC&Rs. Finally, the deeds by which Asbury Park conveyed the lots clearly state that the conveyances were subject to “restrictions, reservations, provisions of record, and assessments,” which would include the CC&Rs recorded before any conveyance of the lots. (See Paragraphs 12 and 13 of the Affidavit of John Esposito, and see example deeds executed by Asbury Park to convey the lots attached to the Affidavit of John Esposito collectively as Exhibit “4”.) Since the conveyance was subject to the CC&Rs which clearly state in Article IV, Section 4 that the community storage area was to remain privately owned, the initial buyers from Asbury Park took subject to the terms of the CC&Rs.

**2. The CC&Rs for Greenbriar Estates show that Asbury Park Did Not Intend to Dedicate the Land.**

The CC&Rs for Greenbriar Estates were recorded with the Canyon County Recorder on October 4, 2005 and have not been modified since that time. Both the builders who purchased directly from Asbury Park and the subsequent homeowners purchased the lots subject to the CC&Rs. (See Paragraphs 11, 12 and 13 to the Affidavit of John Esposito, and the Greenbriar CC&Rs attached thereto as Exhibit “3”). The CC&Rs provide notice to all purchasers that the land they are buying is subject to certain covenants, conditions, and restrictions. *Miller v. Simonson*, 140 Idaho 287, 92 P.3d 537 (2004). Idaho Code § 55-811 states the effect of a recorded document:

Every conveyance of real property acknowledged or proved,  
and certified, and recorded as prescribed by law, from the time

it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

The CC&Rs are Exhibit "3" to the Affidavit of John Esposito. Article III of the CC&Rs provides the definitions. Section 7 under Article III defines "Community Storage Facility" as "shall mean that certain community storage facility located on Lot 39, Block 1 of the Plat." Article IV of the CC&Rs at Section 4 discusses the community storage facility. The very first sentence states, "The Community Storage Facility shall be privately owned and operated." The paragraph goes on to describe how the private owner of the storage facility will be entitled to receive rent subject to certain limitations and that the private owner shall be responsible for the operation and maintenance costs of the storage facility.

In light of the language in the CC&Rs of record for each lot, there is no way that Greenbriar HOA can satisfy its burden of proving that at the time of the purchase of the lots by anyone, Asbury Park had made a "clear and unequivocal" offer to dedicate the land.

**3. The Warranty Deeds from the Builders to the Homeowners Expressly Make the Conveyance "Subject to" the CC&Rs.**

Attached to the Affidavit of Chandra Thornquest as Exhibit "A" are a sampling of the warranty deeds used by the builders and the title companies to convey ownership of Greenbriar Estate lots to the homeowners. Each deed shows that the lot purchased by the homeowners from the builders was subject to the terms of the Greenbriar CC&Rs of record at the time of the conveyance. Each of the deeds contains an exception to the warranty of title contained therein. Each deed contains similar language stating that it is subject to "reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record...". (See LandAmerica Transnation Warranty Deed attached to the Affidavit of Chandra Thornquest.)

The Pioneer Title Company Warranty Deed specifically states that the conveyance is subject to “current year taxes, irrigation district assessment, public utility easements, subdivision restrictions, U.S. patent reservations, easements of record and easements visible upon the said premises.” (See Pioneer Corporate Warranty Deed attached to the Affidavit of Chandra Thornquest.) Since the CC&Rs were a matter of record prior to any conveyance of the lots, the lot owners received their lots subject to the CC&Rs. Since the CC&Rs state that Lot 39, Block 1 is the storage facility and that the storage facility shall be privately owned and operated, they cannot now claim that a common law dedication occurred. Under the facts of this case, there can be no clear and unequivocal expression of intent to dedicate Lot 39, Block 1 and no acceptance of that offer except as expressed in the deeds which make the conveyance to the members subject to the CC&Rs.

**4. Application of the Law of Common Law Dedication to the Facts Shows that a Common Law Dedication Did Not Occur.**

The mistaken identification of Lot 39, Block 1 as a common area in the plat recorded for Greenbriar Estates is of no legal effect unless the Greenbriar HOA can establish the elements of common law dedication. The evidence before this Court strongly refutes any contention that Asbury Park made a clear and unequivocal offer expressing an intent to dedicate the lot. To the contrary, the purchasers from Asbury Park knew that Lot 39, Block 1 as the storage facility would not be dedicated to the Association and the conveyance of the lots from Asbury Park to its immediate buyers were expressly subject to the CC&Rs. The Greenbriar HOA has no claim because it did not purchase the lots from Asbury Park and therefore was not the recipient of an offer of any kind. Any offer would have also been subject to the CC&Rs.

The deeds from the builders to the homeowners expressly made the conveyance subject to the CC&Rs as a matter of record.

Finally, in this particular case, there is no public policy reason for common law dedication to apply. Common law dedication is for the purpose of protecting those who purchase solely upon what is of record in the plat. In this case, the existence of CC&Rs showing that Lot 39, Block 1 would be owned by Asbury Park as the developer cannot be ignored. Just as the plat was of record, the CC&Rs were of record. Further, Paragraph 8 of the plat notes specifically states that the common areas would be “maintained by the Homeowner’s Association as established in the subdivision covenants.” Even the provision in the plat was qualified by the language of the CC&Rs.

**D. The Granting of Asbury Park’s Motion for Partial Summary Judgment Will Require that the Counterclaim be Dismissed and that Judgment be Entered for Plaintiff on Count 1 of the Complaint.**

Once the Court determines that Asbury Park is the owner of Lot 39, Block 1 and that the Greenbriar HOA has no viable claim for common law dedication, the Counterclaim must be dismissed. Count Two of the Counterclaim seeks reformation of the terms of the CC&Rs, however, since the Greenbriar HOA has no claim to ownership of Lot 39, Block 1, there is nothing to reform. Count Three seeks to recover for the Greenbriar HOA payments that the Association had made to Asbury Park before the Greenbriar HOA ceased payment and tried to take advantage of the error in the plat. Since the Greenbriar HOA has no viable theory to claim ownership of Lot 39, Block 1, and since Asbury Park claiming that it owned Lot 39, Block 1 was in fact true, the Greenbriar HOA has no basis to claim repayment of those funds. In fact, the opposite is true.

Count 1 of Asbury Park's Complaint seeks to recover the storage unit rental payments collected by the Greenbriar HOA from the members but not paid by the Greenbriar HOA to Asbury Park as required Article IV, Section 4 of the CC&Rs. Since the Greenbriar HOA has no basis to avoid that obligation, the Court should enter judgment for Asbury Park for the unpaid rent as set forth in Exhibit "7" to the Affidavit of John Esposito in the amount of \$64,540.00, plus any unpaid rent that accrues up to the time of the grant of summary judgment at the rate of \$3,290.00 per month.

#### **IV. CONCLUSION**

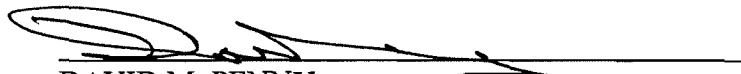
The claim to ownership of Lot 39, Block 1 by the Greenbriar HOA is unsupported by facts or legal theory. There can be no factual dispute that Asbury Park is the legal titled owner of that parcel of land. The claim to ownership by virtue of the doctrine of common law dedication is incorrect since common law dedication does not affect ownership, and as a matter of law, the elements of common law dedication do not exist in this case.

The CC&Rs were of record prior to any transfer of ownership of building lots, and all deeds expressly state that the conveyance is subject to the covenants of record for the various lots. Asbury Park is entitled to judgment against Greenbriar HOA for the unpaid rent that is due in accordance with the terms of the CC&Rs.



DATED this 19 day of June, 2009.


COSHO HUMPHREY, LLP

  
DAVID M. PENNY  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 19 day of June, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Renae Points  
Hawley Troxell Ennis & Hawley, LLP  
P. O. Box 1617  
Boise, ID 83701-1617  
**Served by U.S. Mail**

  
DAVID M. PENNY

DAVID M. PENNY ISB #3631  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiffs,

v.

GREENBRIAR ESTATES  
HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY.

Defendant.

Case No. CV 08-9740\*C

**STATEMENT OF UNDISPUTED  
FACTS IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

1. Asbury Park, LLC (hereinafter "Asbury Park") purchased the land that would eventually be developed in the Greenbriar Estates Subdivision. Asbury Park purchased the land on May 5, 2005, and received a deed from the seller to Asbury Park, which was recorded in the records of Canyon County on May 9, 2005 (See Paragraph 4 to the Affidavit of John Esposito and the deed to Asbury Park attached to his affidavit as Exhibit "1".)

**F I L E D**  
A.M. | 10 | P.M.

JUN 19 2009

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

2. Asbury Park obtained approval of the subdivision from the City of Nampa. The final plat for Greenbriar Estate Subdivision was recorded on September 23, 2005. (See Paragraphs 5 and 6 to the Affidavit of John Esposito, and the final plat attached thereto as Exhibit "2".)

3. The plan for Greenbriar Estates Subdivision was to build a community for residents over the age of fifty-five (55). Since that type of subdivision typically has smaller homes, it was planned for Asbury Park to create a storage facility within the subdivision that would provide one (1) storage unit per resident lot for a monthly rental fee. In return for the rental fee, Asbury Park would be responsible for all the costs and maintenance of the storage facility. (See Paragraph 3 to the Affidavit of John Esposito.)

4. At the time the final plat was recorded, it contained an error based upon a mistake made by the surveyor. The notes to the final plat for Greenbriar Estates Subdivision mistakenly included Lot 39 of Block 1 in the list of common are lots. (See Affidavit of Gregory G. Carter, and Paragraph 11 to the Affidavit of John Esposito and the final plat attached thereto as Exhibit "2").

5. Paragraph 8 of the notes to the plat states:

8. Lots 2, 8, 20, 32, 39, 50, 51 and 53, Block 1 are designated as common lots and shall be owned and maintained by the Homeowner's Association as established in the subdivision covenants. Said lots are subject to public utility easements."

6. Greenbriar Estates consists of ninety-four (94) residential lots. Prior to closing on the sale of any lots, Asbury Park recorded Covenants, Conditions and Restrictions (hereinafter

“Greenbriar CC&Rs”) on October 4, 2005. (See Paragraphs 6 and 11 to the Affidavit of John Esposito, and the Greenbriar CC&Rs attached thereto as Exhibit “3”.)

7. Article III, Section 7 of the Greenbriar CC&Rs states:

Section 7. “Community Storage Facility” shall mean that certain community storage facility located on Lot 39, Block 1 of the Plat.

Greenbriar CC&Rs, Page 2, Article III, Section 7.

8. Article IV, Section 4 of the Greenbriar CC&Rs is titled , “Community Storage Facility,” and states, “The Community Storage Facility shall be privately owned and operated.” Section 4 states as follows:

Section 4. Community Storage Facility. The Community Storage Facility shall be privately owned and operated. The Community Storage Facility owner will not be a Member in the Association and shall not be required to pay Assessments. The Community Storage Facility owner will be entitled to a fair market value rental rate, as determined in its sole and absolute discretion, for the use of storage units within the Community Storage Facility; provided however, that such rental rate may not be increased by more than five percent (5%) during any twelve (12) month period. The Community Storage Facility owner shall be solely responsible for the operation and maintenance of the Community Storage Facility.

The Community Storage Facility shall only be available for use by Owners and Residents. Every Owner shall be entitled to use one storage unit within the Community Storage Facility. The rental rate for the use of these storage units shall be included in each Owner’s Regular Assessments. Non-use by an Owner of a storage unit will not preclude him/her/them from paying Assessments associated with their storage unit. Subject to availability, Owners may lease additional storage units and the rent associated therewith may be included in their Assessments or billed separately. Subject to availability, Residents may also lease storage units within the Community Storage Facility.

Greenbriar CC&Rs, Page 5, Article IV, Section 4. (Also see Paragraphs 9 and 10 to the Affidavit of John Esposito.)

9. On July 19, 2005, Asbury Park entered into a contract with Rocky Ridge Homes to sell Rocky Ridge all of the ninety-four (94) building lots in Greenbriar Estates Subdivision. Pursuant to that agreement, Rocky Ridge would “take down” blocks of lots at a time so that the closing on the sale of the lots did not all occur at once. Rocky Ridge in turn sold some of the lots to Prestige Homes, and therefore some of the lots were deeded directly from Asbury Park, LLC to Prestige Homes. All closings for all building lots occurred after the Greenbriar CC&Rs were recorded. (See Paragraph 12 to the Affidavit of John Esposito, the Affidavit of Jared Sherburne, and the Affidavit of Mike E. Pearson.)

10. Jared Sherburne and Mike Pearson were the owners and operators of the Rocky Ridge entities that purchased the ninety-four (94) building lots. Prior to the purchase of the lots, Mike Pearson clearly understood that the storage facility within Greenbriar Estates Subdivision was to be owned by Asbury Park as the developer and not by the Greenbriar HOA. He understood that each owner of a lot in Greenbriar Estates would have a storage unit assigned and would be charged a mandatory rental fee that would be collected by the Greenbriar HOA and paid to Asbury Park as the developer. He knew that the obligation to pay the rental fees would commence upon the purchase of the lots from Asbury Park. It was clear to him that the storage facility would not be owned by the subdivision association. (See Paragraph 4 to the Affidavit of Mike E. Pearson.)

11. Jared Sherburne had the same understanding as Mike Pearson. In addition, Jared Sherburne had actually reviewed the Greenbriar CC&Rs prior to the purchase of the building lots. From reviewing the CC&Rs, he understood that Asbury Park as the developer would own

the storage facility, not the subdivision association. He understood that each purchaser of a lot would be assigned a storage unit for which they would pay a mandatory rental fee to be collected by the Greenbriar HOA and then paid to Asbury Park. (See Paragraphs 4 and 5 to the Affidavit of Jared Sherburne.)

12. As Rocky Ridge would “take down” lots and close on the purchase, Asbury Park would execute a deed. All deeds executed by Asbury Park for the sale of lots in Greenbriar Estates Subdivision were identical except for identifying the grantee and specific lot, and each deed specifically stated that the sale was subject to “easements, restrictions, reservations, provisions, provisions of record and assessments...” at the time of the conveyance, and therefore each sale was subject to the terms of the recorded CC&Rs. (See Paragraphs 12 and 13 to the Affidavit of John Esposito and the sample deeds from Asbury Park conveying the lots attached thereto collectively as Exhibit “4”.)

13. As the lots were sold by Asbury Park, Rocky Ridge would begin the payment of storage fees to the Greenbriar HOA as required by the CC&Rs. On Lot 39, Block 1 of the subdivision, Asbury Park began construction of the storage facilities on June 15, 2006 at a cost of \$183,300.90, all of which was paid by Asbury Park. (See Paragraphs 7, 8, and 17 to the Affidavit of John Esposito.)

14. Originally, the Greenbriar Homeowner’s Association complied with the Greenbriar CC&Rs by collecting the rental payment as part of the subdivision assessments and paying the rental fee to Asbury Park. (See Paragraphs 17 and 18 to the Affidavit of John Esposito.)

15. In July 2007, Asbury Park began the process of starting to turn over the Homeowners' Association to the members. As part of that process, Asbury Park and the new replacement board of directors signed a document titled, "Action Without a Meeting", agreeing to the terms of that document as the foundation for the turnover of the Greenbriar HOA from Asbury Park as the developer to the members. The document identifies the common areas to be turned over by Asbury Park to the Greenbriar HOA and does not include Lot 39, Block 1 in the common area list. In fact, the document specifically excludes from the common areas "the privately owned storage unit(s) property (identified as Lot 39, Block 1 of the subdivision)." (See Paragraph 15 to the Affidavit of John Esposito and the "Action Without a Meeting" attached thereto as Exhibit "5".)

16. On August 9, 2007, Asbury Park executed a deed conveying the common areas to the Homeowner's Association consistent with the terms of the "Action Without a Meeting". The deed did not include Lot 39, Block 1. (See Paragraphs 15 and 16 to the Affidavit of John Esposito and the deed conveying the common areas to the Homeowners' Association attached thereto as Exhibit "6".)

17. Asbury Park has never deeded or conveyed away its ownership of Lot 39, Block 1 of Greenbriar Estates Subdivision and has owned that property since the land was originally acquired by Asbury Park. (See Paragraph 4 to the Affidavit of John Esposito and the deed for the land to Asbury Park attached thereto as Exhibit "1".)

18. Beginning in October 2007, the Greenbriar HOA unilaterally decided to only send Asbury Park rental payments for the storage units occupied by its members, even though the

\$3,290.00 per month. Exhibit "7" to the Affidavit of John Esposito is a correct accounting of the rent not paid by the Greenbriar HOA to Asbury Park from October 1, 2007 through June 1, 2009 in the amount of \$64,540.00. (See Paragraphs 17 and 18 to the Affidavit of John Esposito and Exhibit "7" attached thereto.)

20. The Greenbriar HOA stopped paying the rent over to Asbury Park in February 2008 based upon its contention that the error in the plat made the Greenbriar HOA the owner of Lot 39, Block 1. (See Greenbriar HOA Counterclaim.)

21. When Rocky Ridge or Prestige Homes sold lots to their customers, they used warranty deeds which expressly make the conveyance and warranty of title subject to restrictions, covenants, and matters of record. The CC&Rs for Greenbriar Estates were matters of record at the time of each of the conveyances by Rocky Ridge or Prestige Homes to their customers. (See Affidavit of Chandra Thornquest and the warranty deeds attached thereto as Exhibit "A".)

DATED this 1<sup>st</sup> day of June, 2009.

COSHO HUMPHREY, LLP



DAVID M. PENNY  
Attorneys for Plaintiff



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 19 day of June, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Renae Points  
Hawley Troxell Ennis & Hawley, LLP  
P. O. Box 1617  
Boise, ID 83701-1617  
**Served by: U.S. Mail**

  
DAVID M. PENNY

DAVID M. PENNY ISB #3631  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290

**FILED**  
A.M. 1 P.M.

JUN 19 2009

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited  
liability company; and JOHN ESPOSITO,  
an individual,

Plaintiffs,

v.

GREENBRIAR ESTATES  
HOMEOWNERS' ASSOCIATION, INC.,  
an Idaho non-profit corporation; DEBRA  
HOBBS a/k/a DEBBIE HOBBS, an  
individual d/b/a ACTION ASSOCIATION  
MANAGEMENT COMPANY.

Defendant.

Case No. CV 08-9740

**AFFIDAVIT OF JOHN ESPOSITO IN  
SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

STATE OF IDAHO )  
                  )ss.  
County of Ada    )

JOHN ESPOSITO, being first duly sworn upon oath, states as follows:

1. I am a Plaintiff in the above-captioned matter. I am an individual over the age of eighteen (18) and I make this affidavit of my own personal knowledge.

2. Asbury Park, LLC is an Idaho limited liability company that I formed with me as the sole member. I operate Asbury Park to engage in the business of subdivision development.

3. In 2004, Asbury Park began the process of creating a subdivision for residents over the age of fifty-five (55). On September 20, 2004, the Nampa City Council voted to approve the annexation and re-zone of the land that would become Greenbriar Estates Subdivision No. 1. This type of subdivision typically has smaller homes, and therefore, I planned for Asbury Park to create a storage facility within the subdivision that would provide one (1) storage unit per residential lot for a monthly rental fee. In return for the monthly rental fee, Asbury Park would be responsible for all costs of maintenance and operation of the storage facility.

4. Asbury Park purchased the land for the subdivision on May 5, 2005 and received a deed from the seller to Asbury Park, LLC which was recorded in the records of Canyon County on May 9, 2005. A true and correct copy of the deed to Asbury Park is attached to my affidavit as Exhibit "1". The land that was purchased became Greenbriar Estates Subdivision which was platted into lots. No deed or conveyance has been executed by Asbury Park conveying Lot 39, Block 1 so it is still owned by Asbury Park.

5. I followed the steps required by the City of Nampa to obtain approval of the Greenbriar Estates Subdivision. This included obtaining the annexation of the property into the city, a re-zone of that property, and approval of the subdivision. These steps were completed on February 22, 2005 when the final plat was approved by the Nampa City Council. A true and correct copy of the final plat is attached to my affidavit as Exhibit "2".

6. I believe that it would be helpful for an understanding of the development of Asbury Park to provide a timeline. The final plat for Greenbriar Estates Subdivision, Exhibit "2", was recorded September 23, 2005. Thereafter, the Covenants, Conditions and Restrictions (hereinafter "Greenbriar CC&Rs") were recorded on October 4, 2005. The Greenbriar Estates Homeowners' Association Articles of Incorporation were filed with the Idaho Secretary of State's Office on October 5, 2005. The closing on the sale of all lots in Greenbriar Estates occurred after October 25, 2005.

7. In June 2005, I began the physical construction of the subdivision infrastructure which required surveying of the land and the construction and placement of utilities, roads, sidewalks, and other amenities. The subdivision infrastructure was completed at the end of September 2005.

8. On Lot 39, Block 1 of the subdivision, Asbury Park began construction of the storage facilities on June 15, 2006. The storage facilities are constructed of a poured concrete slab, wood and vinyl walls, with a thirty (30) year composite roof. Each unit has a garage-type door. As of the end of December 2006, I had constructed a total of one hundred eight (108) storage units. Ninety-four (94) of the units were for the ninety-four lots in Greenbriar Estates Subdivision No. 1. The total construction costs for the payment of subcontractors and material suppliers was \$183,390.00, all of which was paid by Asbury Park.

9. In order to describe how the storage units would be operated for use by the Greenbriar residents, I had the Covenants, Conditions and Restrictions of Greenbriar Estates drafted and recorded before any sales closed. A true and correct copy of the Greenbriar CC&Rs is attached to my affidavit as Exhibit "3". Article III, Section 7 of the Greenbriar CC&Rs

defines "Community Storage Facility" as, "that certain community storage facility located on Lot 39, Block 1 of the Plat." Article IV, Section 4 of the Greenbriar CC&Rs describes how the storage facility will operate. Article IV makes it clear that the storage facilities are to be privately owned and operated and therefore not owned by the Greenbriar Homeowners' Association. Section 4 of the Greenbriar CC&Rs states that the owner of the storage facility is entitled to receive the fair market rental value for the storage unit with the increase in rent capped at 5% during any twelve (12) month period and in return, the owner of the storage facility agrees to be solely responsible for the operation and maintenance.

10. Section 4 of the Greenbriar CC&Rs clearly states that a storage facility would only be available for use by owners and residents of Greenbriar Estates. The storage facility was not open to the public. This is the reason why the CC&Rs refer to the storage facility as the "Community Storage Facility". The use of the word "Community" was to negate any concern that the storage facility would be open to the public since Greenbriar Estates is a gated community. Section 4 of the CC&Rs goes on to state that each owner will be responsible for paying assessments on their storage unit regardless of whether they use it or not.

11. The Greenbriar CC&Rs attached to this affidavit as Exhibit "3" were recorded in the records of Canyon County, Idaho, on October 4, 2005. Prior to the recording of the Greenbriar CC&Rs, I had recorded the final plat of the Greenbriar Estates Subdivision. That subdivision plat contained an error in Paragraph 8 of the notes. Paragraph 8 of the notes to the Greenbriar plat incorrectly stated that Lot 39 was included in the lots that were designated as common area lots to be owned and maintained by the Homeowners' Association, however, Paragraph 8 of the notes goes on to clarify that Lot 39 was to be owned and maintained by the

Homeowners' Association "as established in the subdivision covenants." The note on the Greenbriar Estates final plat does not reference or mention storage facilities.

12. On July 19, 2005, Asbury Park entered into a contract with Rocky Ridge Homes to sell Rocky Ridge all of the ninety-four (94) building lots in Greenbriar Estates Subdivision. Pursuant to that agreement, Rocky Ridge would "take down" blocks of lots at a time so that the closing on the sale of the lots did not all occur at once. Rocky Ridge in turn sold some of the lots to Prestige Homes, and therefore some of the lots were deeded directly from Asbury Park, LLC to Prestige Homes. Prior to the sale of any lot in Greenbriar Estates Subdivision, the Greenbriar CC&Rs were recorded and a matter of record and therefore constructive notice to all buyers that the storage units were privately owned and not owned by the Association, and that rent would be collected from each lot owner for a storage unit. Prior to selling all of the lots to Rocky Ridge, I met with Mike Pearson and Jared Sherburne as the principals of Rocky Ridge to discuss the Greenbriar Estates Subdivision. I explained to them that the storage facility would remain privately owned and that each lot owner would lease a storage unit with the rent included in the assessment to be collected by the Greenbriar HOA.

13. The deeds used to convey all ninety-four (94) lots were identical except for the date, the name of the grantee, and the legal description lot number. Attached to my affidavit as Exhibit "4" are a sample of deeds from conveyance of the lots, including the deed for Lots 35, 85, and 94. Every deed executed by Asbury Park to convey one of the ninety-four (94) lots explicitly stated that the conveyance was, "SUBJECT TO: Current general taxes, a lien in the process of assessments, not yet due or payable. Easements, restrictions, reservations, provisions

of record, and assessments, if any.” For this reason, every conveyance was subject to the previously recorded Greenbriar CC&Rs.

14. Asbury Park has always owned the land known as Lot 39, Block 1 of Greenbriar Estates Subdivision since the time that the land was originally acquired by Asbury Park and has not deeded that lot or otherwise conveyed it at any time.

15. In early July 2007, Asbury Park began the process of turning over the Greenbriar Estates Subdivision Homeowners’ Association in a document titled “Action Without a Meeting”, a copy of which is attached to my affidavit as Exhibit “5”. That document was signed by me and my wife on behalf of Asbury Park as the Declarant, and by the new homeowner board of directors consisting of Greenbriar homeowners. Lot 39 was specifically excluded from the common areas turned over to the Homeowners’ Association and specifically reconfirmed as the privately owned storage units of Asbury Park as the Declarant. In relevant part, the Action Without a Meeting states as follows:

The **Declarant**, (Asbury Park, LLC; whose owner is John Esposito and Lexi Esposito who are also officers/the board of directors of Greenbriar Estates Homeowners’ Association, Inc.) are the owners/developers of Greenbriar Estates Subdivision No. 1 (hereinafter the “**Subdivision**”) in Nampa, Idaho.

**Declarant**, hereby officially turns over the Greenbriar Estates Subdivision Homeowners’ Association, including certain common areas identified as: Lots 1, 2, 8, 32, 38, 50, 51, 53, all of/in Block 1 on the official plat of the **Subdivision**; but excluding:

- 1) The privately owned storage unit(s) property (identified as Lot 39, Block 1 of the **Subdivision**),
- 2) The R.V. storage area (a certain parcel of land that lies adjacent to the west of Lots 16-22, Block 1 of the **Subdivision**) to the homeowners on the following conditions(s).

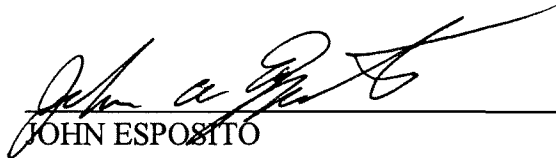
16. On August 9, 2007, I caused Asbury Park to execute a deed conveying the common areas to the Homeowners' Association, Exhibit "6", which did not included Lot 39 because it was not a common area and it was agreed that Lot 39 consisted of a privately owned storage facility.

17. Pursuant to Article IV, Section 4 of the Greenbriar CC&Rs, the Greenbriar Estates Homeowners' Association is charged with the responsibility of collecting the storage unit rent as part of the regular quarterly assessments. The initial monthly rental rate for a 10'x10' storage area was \$35.00 and the rental rate for a 10'x15' unit was \$50.00. These rates have never been changed. Early in the process it was agreed that to simplify the collection, I would directly collect the additional \$15.00 from the lotowners receiving the larger storage units, and that additional amount has been paid. Beginning September of 2006 through September 2007 the Homeowners' Association collected the storage unit rents and paid those rents to Asbury Park as required. As soon as the Homeowners' Association incorrectly asserted that I had finalized the process for turning over the Greenbriar HOA to the members, they stopped paying for most of the units and only tendered payment with regard to units that were occupied or used by members. Commencing October 2007 they only paid for thirty-two (32) units. The Homeowners' Association tendered payment of the rent for occupied storage units through January 1, 2008 and then stopped paying the rental amount to Asbury Park and paid nothing from February 1, 2008 through June 1, 2009. An accounting of the unpaid amounts and Asbury Park's most current invoice to Greenbriar Estates Subdivision Homeowners' Association is attached hereto as Exhibit "7".

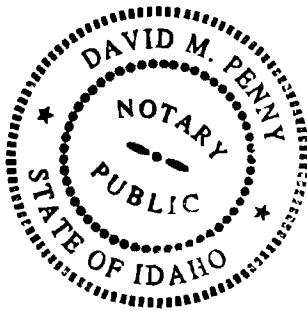



18. The Greenbriar HOA has continued to collect the full assessment (including the storage unit rent) from the owners of lots in Greenbriar Estates. When the Board of Directors for the Greenbriar HOA learned of the error in the plat regarding Lot 39, the Greenbriar HOA stopped paying the rent to Asbury Park on the theory that the error in the plat made the Greenbriar HOA the owner of Lot 39 and therefore no rent payment was due. Upon a determination that Asbury Park owns Lot 39, Block 1, and the Greenbriar HOA does not, Asbury Park is entitled to a judgment in the amount shown on Exhibit "7" of \$64,540.00, plus additional rent in the amount of \$3,290.00 for each month thereafter that the rent has not been paid.

FURTHER YOUR AFFIANT SAITH NAUGHT.

  
\_\_\_\_\_  
JOHN ESPOSITO

SUBSCRIBED AND SWORN to before me this 1<sup>st</sup> day of June, 2009.

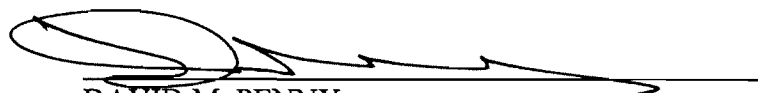


  
\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at Boise Idaho  
Commission expires: 7/14/2012

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 14 day of June, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Renae Points  
Hawley Troxell Ennis & Hawley, LLP  
P. O. Box 1617  
Boise, ID 83701-1617  
**Served by: U.S. Mail**



DAVID M. PENNY

0

**stewart**  
Title of Boise

2005 PM 9 PM 9 17  
 G NOEL HALES  
 CANYON CNTY RECORDER  
 BY PMA/ML  
 REQUEST STEWART TITLE MAIL  
 TYPED [Signature] FEE 1000

RECORDED

200525092

**WARRANTY DEED**

For Value Received Wesley Schober and Betty Mae Schober, husband and wife  
the Grantor, hereby grants, bargains, sells, conveys and warrants unto  
Asbury Park LLC, an Idaho Limited Liability Company,  
the grantees, whose current address is 354 Cove Colony Way Eagle, Id 83616  
the following described premises, to wit:  
See "Exhibit A" attached hereto  
And as Relinquished property in an I.R.C. 1031 Tax Deferred Exchange  
Parcel Number:

*JAC*

**SUBJECT TO:** Current General Taxes, a lien in the process of assessments, not yet due or payable. Easements, restrictions, reservations, provisions of record, and assessments, if any.

**TO HAVE AND TO HOLD** the said premises, with their appurtenances unto the said Grantee, their heirs and assign forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises, that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated this 5th day of May, 2005.

*Wesley R. Schober*  
Wesley Schober

*Betty Mae Schober*  
Betty Mae Schober

STATE OF Idaho )  
                              ) ss.  
COUNTY OF Canyon )

On this 5th day of May 2005, before me, the undersigned, a Notary Public, in and for said State, personally appeared Wesley Schober and Betty Mae Schober known to me, and/or identified to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.  
*Dorothy J. Starace*

Notary Public: Dorothy J. Starace  
Residing at: Boise, Id  
My commission expires January 27, 2009



**EXHIBIT**  
" 1 "  
tabbles

**Legal Description  
EXHIBIT "A"**

Order Number: 4029147

A parcel of land located in the Southwest Quarter of the Southeast Quarter of Section 4, Township 2 North, Range 2 West, Boise Meridian, Canyon County, Idaho more particularly described as follows:

Commencing at the South Quarter corner of said Section 4; thence  
 Along South boundary line of said Section 4, South 89°47'41" East, 304.52 feet to the REAL POINT OF BEGINNING; thence  
 Leaving said South boundary line North 00°12'19" East, 175.00 feet; thence  
 North 89°47'42" West, 67.94 feet to a point on the centerline of the Kemptorn Lateral; thence along said centerline the following 7 courses:  
 North 41°59'51" East, 14.24 feet; thence  
 North 24°02'06" East, 53.99 feet; thence  
 North 02°00'31" West, 56.46 feet; thence  
 North 31°40'19" West, 48.25 feet; thence  
 North 36°18'46" West, 144.06 feet; thence  
 North 43°10'43" West, 153.98 feet; thence  
 North 41°53'31" West, 69.38 feet to a point on the North-South centerline of said Section 4;  
 Thence leaving said centerline and along said North-South centerline North 00°24'09" East, 715.46 feet to the CS 1/16 corner of said Section 4;  
 Thence along the North boundary line of the Southwest Quarter of the Southeast Quarter of said Section 4, South 89°51'05" East, 779.30 feet;  
 Thence leaving said North boundary line South 00°08'23" West, 150.00 feet; thence  
 South 89°51'07" East, 219.32 feet; thence  
 South 00°24'40" West, 792.17 feet; thence  
 South 01°49'58" East, 386.02 feet to a point on the South boundary line of said Section 4;  
 thence along said South boundary line North 89°47'41" West, 709.72 feet to the REAL POINT OF BEGINNING.

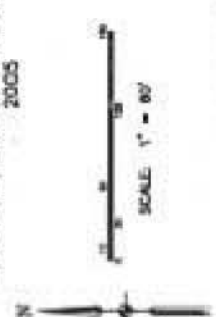
*W.R. Bane  
JAE*

# GREENTREE ESTATES SUBDIVISION

LOCATED IN A PORTION OF THE SW 1/4, OF THE SE 1/4, SECTION 4  
T.2N., R.27E., B.M. CANYON COUNTY, IDAHO

**NOTES:**

1. ALL LOT LINES REFERRED TO BY LOT NUMBER, SHALL HAVE A CORNER MARKED BY A CEMENT CONE OR IRON PIPE OR IRON ROD OR OTHER PERMANENT MARKING.
2. EACH ONE OF THESE LOTS UNDER A BLOCK, SHALL BE CONSIDERED AS A SEPARATE TRACT OF LAND, AND SHALL BE SUBJECT TO THE SAME TAXES, DUES, AND FEES AS ANY OTHER SINGLE TRACT OF LAND.
3. THE LOT AREA OF EACH LOT, AS SHOWN ON THIS PLAN, IS THE AREA AS DETERMINED BY THE SURVEYOR'S FIELD MEASUREMENTS.
4. THE DISTANCE BETWEEN ADJACENT LOTS, AS SHOWN ON THIS PLAN, IS THE DISTANCE BETWEEN THE CENTERS OF THE LOTS.
5. THE DISTANCE BETWEEN ADJACENT LOTS, AS SHOWN ON THIS PLAN, IS THE DISTANCE BETWEEN THE CENTERS OF THE LOTS.



LINE NUMBER	DESCRIPTION
1	...
2	...
3	...
4	...
5	...
6	...
7	...
8	...
9	...
10	...
11	...
12	...
13	...
14	...
15	...
16	...
17	...
18	...
19	...
20	...
21	...
22	...
23	...
24	...
25	...
26	...
27	...
28	...
29	...
30	...
31	...
32	...
33	...
34	...
35	...
36	...
37	...
38	...
39	...
40	...
41	...
42	...
43	...
44	...
45	...
46	...
47	...
48	...
49	...
50	...



**LEGEND:**

- 1. LOT LINE
- 2. STREET LINE
- 3. ...
- 4. ...
- 5. ...
- 6. ...
- 7. ...
- 8. ...
- 9. ...
- 10. ...
- 11. ...
- 12. ...
- 13. ...
- 14. ...
- 15. ...
- 16. ...
- 17. ...
- 18. ...
- 19. ...
- 20. ...
- 21. ...
- 22. ...
- 23. ...
- 24. ...
- 25. ...
- 26. ...
- 27. ...
- 28. ...
- 29. ...
- 30. ...
- 31. ...
- 32. ...
- 33. ...
- 34. ...
- 35. ...
- 36. ...
- 37. ...
- 38. ...
- 39. ...
- 40. ...
- 41. ...
- 42. ...
- 43. ...
- 44. ...
- 45. ...
- 46. ...
- 47. ...
- 48. ...
- 49. ...
- 50. ...

**NOTES:**

1. THE DISTANCE BETWEEN ADJACENT LOTS, AS SHOWN ON THIS PLAN, IS THE DISTANCE BETWEEN THE CENTERS OF THE LOTS.
2. THE DISTANCE BETWEEN ADJACENT LOTS, AS SHOWN ON THIS PLAN, IS THE DISTANCE BETWEEN THE CENTERS OF THE LOTS.
3. THE DISTANCE BETWEEN ADJACENT LOTS, AS SHOWN ON THIS PLAN, IS THE DISTANCE BETWEEN THE CENTERS OF THE LOTS.
4. THE DISTANCE BETWEEN ADJACENT LOTS, AS SHOWN ON THIS PLAN, IS THE DISTANCE BETWEEN THE CENTERS OF THE LOTS.
5. THE DISTANCE BETWEEN ADJACENT LOTS, AS SHOWN ON THIS PLAN, IS THE DISTANCE BETWEEN THE CENTERS OF THE LOTS.

**CHANGE DATA**

NO.	DATE	DESCRIPTION
1	...	...
2	...	...
3	...	...
4	...	...
5	...	...
6	...	...
7	...	...
8	...	...
9	...	...
10	...	...
11	...	...
12	...	...
13	...	...
14	...	...
15	...	...
16	...	...
17	...	...
18	...	...
19	...	...
20	...	...
21	...	...
22	...	...
23	...	...
24	...	...
25	...	...
26	...	...
27	...	...
28	...	...
29	...	...
30	...	...
31	...	...
32	...	...
33	...	...
34	...	...
35	...	...
36	...	...
37	...	...
38	...	...
39	...	...
40	...	...
41	...	...
42	...	...
43	...	...
44	...	...
45	...	...
46	...	...
47	...	...
48	...	...
49	...	...
50	...	...



HARRIS MEASUREMENTS & SURVEYING  
 100 N. 2ND ST., BOISE, IDAHO 83724  
 208-333-8888

**IDAHO SURVEY SURVEYORS**  
 BOARD OF SURVEYORS  
 208-333-8888

PROJECT NO. 2007-01  
 SHEET 1 OF 3

DATE: 08-20-07

BY: JAMES H. HARRIS

SCALE: 1" = 60'

N

LEGEND

LOT LINE  
 STREET LINE  
 ...

CHANGE DATA

NO.	DATE	DESCRIPTION
1	...	...
2	...	...
3	...	...
4	...	...
5	...	...
6	...	...
7	...	...
8	...	...
9	...	...
10	...	...
11	...	...
12	...	...
13	...	...
14	...	...
15	...	...
16	...	...
17	...	...
18	...	...
19	...	...
20	...	...
21	...	...
22	...	...
23	...	...
24	...	...
25	...	...
26	...	...
27	...	...
28	...	...
29	...	...
30	...	...
31	...	...
32	...	...
33	...	...
34	...	...
35	...	...
36	...	...
37	...	...
38	...	...
39	...	...
40	...	...
41	...	...
42	...	...
43	...	...
44	...	...
45	...	...
46	...	...
47	...	...
48	...	...
49	...	...
50	...	...

LEGEND

- 1. LOT LINE
- 2. STREET LINE
- 3. ...
- 4. ...
- 5. ...
- 6. ...
- 7. ...
- 8. ...
- 9. ...
- 10. ...
- 11. ...
- 12. ...
- 13. ...
- 14. ...
- 15. ...
- 16. ...
- 17. ...
- 18. ...
- 19. ...
- 20. ...
- 21. ...
- 22. ...
- 23. ...
- 24. ...
- 25. ...
- 26. ...
- 27. ...
- 28. ...
- 29. ...
- 30. ...
- 31. ...
- 32. ...
- 33. ...
- 34. ...
- 35. ...
- 36. ...
- 37. ...
- 38. ...
- 39. ...
- 40. ...
- 41. ...
- 42. ...
- 43. ...
- 44. ...
- 45. ...
- 46. ...
- 47. ...
- 48. ...
- 49. ...
- 50. ...

PROJECT NO. 2007-01  
 SHEET 1 OF 3  
 DATE: 08-20-07  
 BY: JAMES H. HARRIS

# PLAT SHOWING GREENERIAR ESTATES SUBDIVISION

LOCATED IN A PORTION OF THE SW 1/4, OF THE SE 1/4, SECTION 4  
T.2N., R.2W., B.M. CANYON COUNTY, IDAHO  
2005



1. ALL LOT LINES SHOWN ON LOT 1, BLOCK 1 SHALL HAVE A 5' PLANTING STRIP AND SHALL BE PLANTED WITH PLANTS, TREES, SHRUBS, AND BUSHES TO BE DETERMINED BY THE HOMEOWNER. THE HOMEOWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
2. EACH SIDE OF EACH LOT LINES SHALL HAVE A 5' PLANTING STRIP AND SHALL BE PLANTED WITH PLANTS, TREES, SHRUBS, AND BUSHES TO BE DETERMINED BY THE HOMEOWNER. THE HOMEOWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
3. EACH SIDE OF EACH LOT LINES SHALL HAVE A 5' PLANTING STRIP AND SHALL BE PLANTED WITH PLANTS, TREES, SHRUBS, AND BUSHES TO BE DETERMINED BY THE HOMEOWNER. THE HOMEOWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
4. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
5. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
6. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
7. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
8. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
9. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
10. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
11. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.
12. THE HOMEOWNER OF ANY LOT SHOWN ON THIS PLAT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTING STRIP AND SHALL BE RESPONSIBLE FOR REPLACING ANY PLANTS, TREES, SHRUBS, AND BUSHES THAT DIE OR ARE DAMAGED WITHIN THE FIRST YEAR AFTER THE DATE OF COMPLETION OF THE SUBDIVISION.

**CURVE DATA**

STATION	CHORD BEARING	CHORD DIST.	CHORD BEG.	CHORD END.
100				
101				
102				
103				
104				
105				
106				
107				
108				
109				
110				
111				
112				
113				
114				
115				
116				
117				
118				
119				
120				
121				
122				
123				
124				
125				
126				
127				
128				
129				
130				
131				
132				
133				
134				
135				
136				
137				
138				
139				
140				
141				
142				
143				
144				
145				
146				
147				
148				
149				
150				
151				
152				
153				
154				
155				
156				
157				
158				
159				
160				
161				
162				
163				
164				
165				
166				
167				
168				
169				
170				
171				
172				
173				
174				
175				
176				
177				
178				
179				
180				
181				
182				
183				
184				
185				
186				
187				
188				
189				
190				
191				
192				
193				
194				
195				
196				
197				
198				
199				
200				
201				
202				
203				
204				
205				
206				
207				
208				
209				
210				
211				
212				
213				
214				
215				
216				
217				
218				
219				
220				
221				
222				
223				
224				
225				
226				
227				
228				
229				
230				
231				
232				
233				
234				
235				
236				
237				
238				
239				
240				
241				
242				
243				
244				
245				
246				
247				
248				
249				
250				
251				
252				
253				
254				
255				
256				
257				
258				
259				
260				
261				
262				
263				
264				
265				
266				
267				
268				
269				
270				
271				
272				
273				
274				
275				
276				
277				
278				
279				
280				
281				
282				
283				
284				
285				
286				
287				
288				
289				
290				
291				
292				
293				
294				
295				
296				
297				
298				
299				
300				

000100

JOB NO. 04-278  
SHEET 2 OF 3

DEVELOPER:  
JOHN EXPONTO  
LANCE BARD

IDAHO  
SURVEY  
GROUP

GREENBRIAR ESTATES SUBDIVISION

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS: THAT AMBERTERRIC, LLC, AN IDAHO LIMITED LIABILITY COMPANY, IS THE OWNER OF THE PROPERTY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LOCATED IN THE SW1/4 OF THE SW1/4 OF SECTION 4, T24N, R22E, S14E, CANYON COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SW1/4 CORNER SAID SECTION 4; THENCE ~~SOUTH 89°17'41" WEST, 304.52 FEET TO THE REAL POINT OF BEGINNING; THENCE LEAVING SAID SOUTH BOUNDARY LINE NORTH 00°17'41" EAST, 175.00 FEET; THENCE NORTH 89°47'42" WEST, 67.84 FEET TO A POINT ON THE CENTERLINE OF THE EAST-WEST LATERAL; THENCE ALONG SAID CENTERLINE THE FOLLOWING: 2) COURSED: NORTH 47°52'51" EAST, 14.24 FEET; THENCE NORTH 24°02'04" EAST, 53.89 FEET; THENCE NORTH 02°00'31" WEST, 58.48 FEET; THENCE NORTH 37°46'19" WEST, 46.25 FEET; THENCE NORTH 30°18'46" WEST, 144.06 FEET; THENCE NORTH 42°10'42" WEST, 155.86 FEET; THENCE NORTH 47°52'51" WEST, 89.39 FEET TO A POINT ON THE NORTH-SOUTH CENTERLINE OF SAID SECTION 4; THENCE LEAVING SAID CENTERLINE AND ALONG SAID NORTH-SOUTH CENTERLINE NORTH 00°17'41" EAST, 715.49 FEET TO THE SW1/4 CORNER OF SAID SECTION 4; THENCE ALONG THE NORTH BOUNDARY LINE OF THE SW1/4 OF THE SW1/4 OF SAID SECTION 4 SOUTH 89°17'41" EAST, 779.30 FEET; THENCE LEAVING SAID NORTH BOUNDARY LINE SOUTH 02°00'31" WEST, 150.00 FEET; THENCE SOUTH 06°51'07" EAST, 216.32 FEET; THENCE SOUTH 03°04'42" WEST, 791.17 FEET; THENCE SOUTH 07°49'52" EAST, 248.52 FEET TO A POINT ON THE SOUTH BOUNDARY LINE OF SAID SECTION 4; THENCE ALONG SAID SOUTH BOUNDARY LINE NORTH 89°47'41" WEST, 709.72 FEET TO THE REAL POINT OF BEGINNING, CONTAINING 28.80 ACRES, MORE OR LESS.~~

IT IS THE INTENTION OF THE UNDERSIGNED TO HEREBY INCLUDE THE ABOVE DESCRIBED PROPERTY IN THIS PLAT AND TO DEDICATE TO THE PUBLIC, THE PUBLIC SCHOOLS AS SHOWN ON THIS PLAT. THE EASEMENTS AS SHOWN ON THIS PLAT ARE NOT DEDICATED TO THE PUBLIC. HOWEVER, THE RIGHT TO USE SAID EASEMENTS IS HEREBY PERPETUALLY RESERVED FOR PUBLIC UTILITIES AND SUCH OTHER USES AS DESIGNATED WITHIN THIS PLAT, AND NO PERMANENT STRUCTURES ARE TO BE ERRECTED WITHIN THE LIMITS OF SAID EASEMENTS. ALL LOTS IN THIS PLAT WILL BE ELIGIBLE TO RECEIVE WATER SERVICE FROM THE CITY OF HANNA EXISTING WATER SYSTEM AND THE CITY OF HANNA HAS AGREED IN WRITING TO SERVE ALL THE LOTS IN THIS SUBDIVISION.

AMBERTERRIC, LLC  
John Esposto, Managing Member

ACKNOWLEDGMENT

STATE OF IDAHO } S.S.  
 COUNTY OF Blaine }  
 ON THIS 10 DAY OF March, 2005 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED JOHN ESPOSTO, KNOWN OR IDENTIFIED TO ME TO BE THE MANAGING MEMBER OF AMBERTERRIC, LLC, THE PERSON WHO EXECUTED THIS INSTRUMENT ON BEHALF OF SAID LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED TO ME THAT SAID LIMITED LIABILITY COMPANY EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HERETOBY SET MY HAND AND AFFIXED MY OFFICIAL SEAL, THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

5.9.2004  
 BY COMMISSION EXPIRES  
  
Amber Terric  
 NOTARY PUBLIC FOR IDAHO  
 RESIDING IN Blaine, IDAHO

APPROVAL OF CITY PLANNING AND ZONING COMMISSION  
 ACCEPTED AND APPROVED THIS 10 DAY OF Feb 2005 BY THE PLANNING AND ZONING COMMISSION OF HANNA, IDAHO.

Richard A. Allegiance  
 CITY COMMISSIONER

COUNTY RECORDER'S CERTIFICATE  
 STATE OF IDAHO } S.S.  
 COUNTY OF CANYON }  
 I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD AT THE REQUEST OF \_\_\_\_\_ AT \_\_\_\_\_ MINUTES PAST \_\_\_\_\_ O'CLOCK \_\_\_\_\_ A.M. ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_ IN BOOK \_\_\_\_\_ OF PLATS AT PAGE \_\_\_\_\_ AND INSTRUMENT NO. \_\_\_\_\_  
 DEPUTY \_\_\_\_\_ COUNTY RECORDER \_\_\_\_\_

CERTIFICATE OF SURVEYOR

I, GREGORY G. CARTER, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED BY THE STATE OF IDAHO, AND THAT THIS PLAT AS DESCRIBED IN THE "CERTIFICATE OF OWNERS" WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON, AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

GREGORY G. CARTER  
  
 IDAHO NO. 7729

SATISFACTION OF SANITARY RESTRICTION

SANITARY RESTRICTIONS AS REQUIRED BY IDAHO CODE, TITLE 50, CHAPTER 13 HAVE BEEN SATISFIED BASED ON THE DEED APPROVAL OF THE DESIGN PLANS AND SPECIFICATIONS AND THE CONDITIONS IMPOSED ON THE DEVELOPER FOR CONTINUED SATISFACTION OF SANITARY RESTRICTIONS. WATER IS CAUTIONED THAT AT THE TIME OF THIS APPROVAL, NO DRINKING WATER OR SEWER/SEPTIC FACILITIES WERE CONSTRUCTED. BUILDING CONSTRUCTION CAN BE ALLOWED WITH APPROPRIATE BUILDING PERMITS IF DRINKING WATER OR SEWER FACILITIES HAVE SINCE BEEN CONSTRUCTED OR IF THE DEVELOPER IS SIMULTANEOUSLY CONSTRUCTING THOSE FACILITIES. IF THE DEVELOPER FAILS TO CONSTRUCT FACILITIES OR MEET THE OTHER CONDITIONS OF I.D.C., THEN SANITARY RESTRICTIONS ARE IN FORCE, IN ACCORDANCE WITH SECTION 50-1326, IDAHO CODE, AND NO CONSTRUCTION OF ANY BUILDING OR SHEDDLE REQUIRING DRINKING WATER OR SEWER/SEPTIC FACILITIES SHALL BE ALLOWED.

David M. Lyman 2/25/05 6-1-05  
 DISTRICT HEALTH DEPARTMENT

APPROVAL OF CITY ENGINEER

I, THE UNDERSIGNED, CITY ENGINEER IN AND FOR THE CITY OF HANNA, CANYON COUNTY, IDAHO, HEREBY APPROVE THIS PLAT.

Michael J. Hooper  
 CITY ENGINEER

APPROVAL OF CITY COUNCIL

I, THE UNDERSIGNED, CITY CLERK IN AND FOR THE CITY OF HANNA, CANYON COUNTY, IDAHO, DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005, THIS PLAT WAS DULY ADOPTED AND APPROVED.



Deana Lambing  
 CITY CLERK, HANNA, IDAHO

CERTIFICATE OF COUNTY SURVEYOR

I, THE UNDERSIGNED, COUNTY SURVEYOR, IN AND FOR CANYON COUNTY, IDAHO, DO HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND THAT IT COMPLEYS WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

David R. Kuehn 2/25/05  
 COUNTY SURVEYOR

CERTIFICATE OF THE COUNTY TREASURER

I, THE UNDERSIGNED, COUNTY TREASURER IN AND FOR THE COUNTY OF CANYON STATE OF IDAHO, FOR THE REQUIREMENTS OF I.C. 50-1306 DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS SUBMISSION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

James D. Boyd  
 COUNTY TREASURER  
 By John Mann, Deputy  
Paul J. J. J.

000101



200563819

RECORDED

2005 OCT 4 PM 12 13

G. NOEL HALE

CANKON CNTY RECORDER

BY

*Abby Danville*  
Misc 81-

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
GREENBRIAR ESTATES SUBDIVISION  
(A COMMUNITY FOR PERSONS 55 OR OLDER)**

September 23, 2005

EXHIBIT  
"3"  
tabbler

PLF00021

000102

# NOTICE

**THE FOLLOWING IS A VERY IMPORTANT DOCUMENT WHICH EACH AND EVERY POTENTIAL OWNER AND RESIDENT WITHIN THE GREENBRIAR ESTATES SUBDIVISION SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS AND PROHIBITIONS IMPOSED UPON ALL OWNERS, OCCUPANTS AND RESIDENTS.**

**TABLE OF CONTENTS**

**ARTICLE I: RECITALS** ..... 1

Section 1.    Property Covered ..... 1

Section 2.    Purpose of Declaration ..... 1

**ARTICLE II: DECLARATION** ..... 1

**ARTICLE III: DEFINITIONS** ..... 1

Section 1.    "Architectural Committee" ..... 1

Section 2.    "Assessments" ..... 1

Section 3.    "Assisted Living Facility" ..... 1

Section 4.    "Association" ..... 1

Section 5.    "Board" ..... 1

Section 6.    "Common Area" ..... 1

Section 7.    "Community Storage Facility" ..... 2

Section 8.    "Declarant" ..... 2

Section 9.    "Dwelling Unit" ..... 2

Section 10.    "Improvement" ..... 2

Section 11.    "Limited Assessment" ..... 2

Section 12.    "Member" ..... 2

Section 13.    "Mortgage" ..... 2

Section 14.    "Owner" ..... 2

Section 15.    "Perimeter Fence" ..... 2

Section 16.    "Person(s)" ..... 2

Section 17.    "Plat" ..... 2

Section 18.    "Private Roads" ..... 2

Section 19.    "Property" ..... 3

Section 20.    "RV Storage Facility" ..... 3

Section 21.    "Regular Assessments" ..... 3

Section 22.    "Resident" ..... 3

Section 23.    "Residential Unit" ..... 3

Section 24.    "Restrictions" ..... 3

Section 25.    "Single Family Lot" ..... 3

Section 26.    "Special Assessments" ..... 3

**ARTICLE IV: COMMUNITY USES AND REGULATION OF USES** ..... 3

Section 1.    Community For Persons 55 Or Older ..... 3

Section 2.    Single Family Lots ..... 4

Section 3.    Assisted Living Facility ..... 4

Section 4.    Community Storage Facility ..... 5

Section 5.    RV Storage Facility ..... 5

Section 6.    Common Area, Perimeter Fence and Private Roads ..... 5

Section 7.    Home Occupations ..... 6

Section 8.    Vehicle Storage ..... 6

Section 9.    Compliance With Laws and Waste ..... 6

Section 10.    Signs ..... 7

Section 11.    Pets ..... 7

Section 12.    Nuisance and Garbage Requirements ..... 7

Section 13.    Exterior Improvements, Appearance and Emergency Maintenance ..... 8

<u>Section 14.</u>	<u>Lawn Maintenance, Irrigation System and Snow Removal</u>	8
<u>Section 15.</u>	<u>Outbuildings.</u>	8
<u>Section 16.</u>	<u>Basketball Hoops.</u>	8
<u>Section 17.</u>	<u>Fences.</u>	8
<u>Section 18.</u>	<u>Satellite Dishes and Antennae.</u>	8
<u>Section 19.</u>	<u>Insurance.</u>	9
<u>Section 20.</u>	<u>Garages</u>	9
<u>Section 21.</u>	<u>Irrigation Water</u>	9
ARTICLE V: INSURANCE		9
<u>Section 1.</u>	<u>Insurance</u>	9
<u>Section 2.</u>	<u>Insurance Proceeds</u>	9
<u>Section 3.</u>	<u>Premiums Included in Assessments</u>	10
ARTICLE VI: MEMBERSHIP AND VOTING RIGHTS		10
<u>Section 1.</u>	<u>Membership</u>	10
<u>Section 2.</u>	<u>Voting Classes</u>	10
ARTICLE VII: COVENANT FOR ASSESSMENTS		10
<u>Section 1.</u>	<u>Creation of the Lien and Personal Obligation of Assessments</u>	10
<u>Section 2.</u>	<u>Purposes of Assessments</u>	10
<u>Section 3.</u>	<u>Rate of Assessment</u>	10
<u>Section 4.</u>	<u>Date of Commencement of Annual Assessments; Due Dates</u>	11
<u>Section 5.</u>	<u>Effect of Nonpayment of Assessments; Remedies of the Association</u>	11
<u>Section 6.</u>	<u>Subordination of the Lien to Mortgages</u>	11
ARTICLE VIII: AUTHORITY OF BOARD OF DIRECTORS		11
<u>Section 1.</u>	<u>Authority of Board</u>	11
<u>Section 2.</u>	<u>Easement</u>	12
<u>Section 3.</u>	<u>Non-Waiver</u>	12
<u>Section 4.</u>	<u>Limitation of Liability</u>	13
<u>Section 5.</u>	<u>Indemnification of Board Members</u>	13
ARTICLE IX: ARCHITECTURAL COMMITTEE		13
<u>Section 1.</u>	<u>Charter of Architectural Committee</u>	13
<u>Section 2.</u>	<u>Architectural Control</u>	13
<u>Section 3.</u>	<u>Review of Proposed Alteration</u>	14
<u>Section 4.</u>	<u>Inspection of Approved Improvements</u>	14
<u>Section 5.</u>	<u>Review of Unauthorized Improvements</u>	14
ARTICLE X: GENERAL PROVISIONS		15
<u>Section 1.</u>	<u>Enforcement</u>	15
<u>Section 2.</u>	<u>Severability</u>	15
<u>Section 3.</u>	<u>Term and Amendment</u>	15
<u>Section 4.</u>	<u>Annexation</u>	15
<u>Section 5.</u>	<u>Duration and Applicability to Successors</u>	15
<u>Section 6.</u>	<u>Attorneys Fees.</u>	15
<u>Section 7.</u>	<u>Governing Law.</u>	16

EXHIBIT A - LEGAL DESCRIPTION OF THE PROPERTY ..... 17  
EXHIBIT B - LEGAL DESCRIPTION OF THE COMMON AREA ..... 18  
EXHIBIT C - FINAL PLAT ..... 19  
EXHIBIT D - LEGAL DESCRIPTION OF PRIVATE ROADS ..... 20

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE GREENBRIAR ESTATES SUBDIVISION  
(A COMMUNITY FOR PERSONS 55 OR OLDER)**

This Declaration of Covenants, Conditions and Restrictions for the Greenbriar Estates Subdivision (this "Declaration") is made effective this 23rd day of September, 2005, by Asbury Park, LLC, an Idaho limited liability company ("Declarant").

**ARTICLE I: RECITALS**

Section 1.     Property Covered. The property subject to this Declaration is the property legally described in the attached Exhibit A, which is made a part hereof, together with any other property made subject to this Declaration pursuant to the terms herein (the "Property").

Section 2.     Purpose of Declaration. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, conditions and equitable servitudes (collectively "Restrictions") that will apply to the Property, and use of any and all portions thereof. The Restrictions are designed to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property in a cost effective and administratively efficient manner.

**ARTICLE II: DECLARATION**

Declarant hereby declares that the Property, including each Single Family Lot, Dwelling Unit, Assisted Living Facility, and any other parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, used, occupied and improved subject to the following terms and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness thereof.

**ARTICLE III: DEFINITIONS**

Section 1.     "Architectural Committee" shall mean the Architectural Committee of the Association established pursuant to Article IX herein.

Section 2.     "Assessments" shall mean Regular Assessments, Special Assessments and Limited Assessments.

Section 3.     "Assisted Living Facility" shall mean that certain assisted living facility located on Lot 52, Block 1 of the Plat.

Section 4.     "Association" shall mean the Greenbriar Estates Homeowners' Association, Inc., its successors and assigns.

Section 5.     "Board" shall mean the Board of Directors of the Association.

Section 6.     "Common Area" shall mean all real property (including the Improvements thereto) owned by the Association for the common use and enjoyment of all Owners, Residents and the Assisted

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 1**

Living Facility owner. The Common Area is legally described on the attached Exhibit B, which is made a part hereof.

Section 7. "Community Storage Facility" shall mean that certain community storage facility located on Lot 39, Block 1 of the Plat.

Section 8. "Declarant" shall mean Asbury Park, LLC, an Idaho limited liability company.

Section 9. "Dwelling Unit" shall mean single-family, attached and detached residential houses constructed or to be constructed on each Single Family Lot.

Section 10. "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon, under or over any portion of the Property, including, without limitation, Dwelling Units, fences, landscaping, streets, roads, drives, driveways, parking areas, sidewalks, bicycle paths, curbs, walls, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, waterways, recreational facilities, grading, utility improvements, dog runs and/or kennels, play equipment, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing on the Property on the date hereof and all later changes.

Section 11. "Limited Assessment" shall mean a charge against a particular Owner or the Assisted Living Facility owner directly attributable to such Owner or Assisted Living Facility owner (or any of his/her/its Residents), equal to the cost incurred by the Association in connection with maintenance, repairs, replacements and/or corrective action performed pursuant to the provisions of this Declaration or any supplemental declaration.

Section 12. "Member" shall mean each Person holding a membership in the Association, including Declarant.

Section 13. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.

Section 14. "Owner" shall mean each record owner, other than Declarant, whether one or more Persons, of fee simple title to a Single Family Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 15. "Perimeter Fence" shall collectively mean the fence and/or retaining walls which have been constructed by Declarant along the boundaries of the Property.

Section 16. "Person(s)" shall mean any individual, partnership, corporation or other legal entity, including Declarant.

Section 17. "Plat" shall mean the Greenbriar Estates Subdivision final plat filed in Book 36 of Plats at Page 36, Records of Canyon County, Idaho, a copy of which is attached hereto as Exhibit C, and made a part hereof.

Section 18. "Private Roads" shall mean all roads within the Property which shall be owned by the Association for the common use and enjoyment of all Owners, Residents and the Assisted Living Facility

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 2

owner. The Private Roads are legally described on the attached Exhibit D, which is made a part hereof. As used herein, the definition of Private Roads shall include all Improvements thereto, including, without limitation, the entry gates to S. Greenbriar Road and S. Don Street, all roadway surfaces, curbs, gutters, sidewalks, if any, drainage facilities, if any, and any and all appurtenant Improvements located thereon such as street lights, street signs and landscaping, if any.

Section 19. "Property" shall mean that certain real property legally described on the attached Exhibit A, and such annexations or other additions thereto as may hereafter be brought within the jurisdiction of this Declaration.

Section 20. "RV Storage Facility" shall mean that certain recreational vehicle storage facility located adjacent to the western Property boundary.

Section 21. "Regular Assessments" shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Area, Perimeter Fence and Private Roads, including all Improvements thereon or thereto, and all other costs and expenses incurred to conduct the business and affairs of the Association, including, without limitation, the rents associated with the use of the Community Storage Facility, which are levied against every Owner and Assisted Living Facility owner by the Association pursuant to the terms of this Declaration or any supplemental declaration.

Section 22. "Resident" shall mean a resident of the Assist Living Facility other than the owner thereof and its staff, employees, managers, caretakers, etc.

Section 23. "Residential Unit" shall mean a residential unit for occupancy by Residents within the Assist Living Facility.

Section 24. "Restrictions" shall mean the basic restrictions, covenants, limitations, conditions and equitable servitudes that will apply to the Property, and use of any and all portions thereof.

Section 25. "Single Family Lot" shall mean any lot designated in the Plat and/or any other recorded subdivision plat of the Property, with the exceptions of 1) the Common Area, 2) Lot 52, Block 1 (Assisted Living Facility) 3) Lot 39, Block 1 (Community Storage Facility) and 4) Lot 49, Block 1 (Medical-Professional Lot). It is anticipated that two medical/professional office buildings will be constructed on Lot 49, Block 1 and, as such, this Lot is not subject to this Declaration.

Section 26. "Special Assessments" shall mean that portion of the costs of the capital improvements and replacements, equipment purchases and replacements or shortages in Regular Assessments paid to the Association pursuant to the provisions of this Declaration or any supplemental declaration.

#### ARTICLE IV: COMMUNITY USES AND REGULATION OF USES

Section 1. Community For Persons 55 Or Older. Greenbriar Estates Subdivision is a community designed for residents 55 years of age or older. As such, at least 80% of the Dwelling Units must be occupied by at least one individual fifty-five (55) years of age or older and 80% of the Residential Units must be occupied by at least one individual fifty-five (55) years of age or older. Notwithstanding the foregoing, Declarant or the Association may require, in their sole and absolute discretion, that more than 80% of the Dwelling Units and/or more than 80% of the Residential Units be occupied by at least one individual fifty-five (55) years of age or older. Any Dwelling Unit occupant



or Resident under fifty-five (55) years of age must be at least eighteen (18) years of age. In the event that any Dwelling Unit occupants or Residents are no longer qualified by reason of the birth of a child, such a disqualified occupant or Resident shall only be allowed to continue the occupancy of the Dwelling Unit or Assisted Living Facility for a maximum of one (1) year after the date of birth of the child. During this one (1) year period, such Dwelling Unit occupant must exercise best efforts to sell their Single Family Lot and Dwelling Unit.

All potential Owners and Residents must sign an affidavit, in form and content acceptable to the Association, acknowledging his/her/their compliance with the age and other restrictions contained in this Declaration and the Older Persons Act of 1995 including, without limitation, any and all rules and regulations thereto as amended from time to time ("HOPA"). Any potential Owner or Resident may be denied the right to purchase or become a Resident if such purchase or residency will violate the age requirements contained in this Declaration, HOPA and/or mandated by Declarant or the Association. In addition, at least once every two years, each Owner and Resident agrees to verify through reliable surveys and/or affidavits, in form and content acceptable to the Association, that they are in compliance with the age and other restrictions contained in this Declaration, HOPA and/or mandated by the Association. A summary of all affidavits and surveys collected by the Association pursuant to this Section shall be available for inspection by any Person upon reasonable notice and request to the Association.

No more than fifteen percent (15%) of all Dwelling Units can be leased at any given time on a permanent basis. For purposes of this Declaration, "permanent basis" shall mean a lease term and/or actual occupancy of a Dwelling Unit by a lessee of six (6) months or more during any twelve month period. Owners can lease their Dwelling Units on a non-permanent basis at any time. Notwithstanding the foregoing, Owners cannot lease their Dwelling Units unless at least one lessee/occupant thereof is fifty-five (55) years of age or older. In this regard, all lease agreements must require lessees to comply with this Declaration. Declarant and/or the Association may require reasonable proof from any Owner leasing a Dwelling Unit that such leasing activities are in compliance with this Section. In addition, Declarant and/or the Association shall have the right to deny any such leasing activities if such activities will be in violation of this Section. The Association may assess a penalty of up to \$2,000/per month for any breach of the leasing provisions contained herein. This penalty shall be in addition to any other remedies available to the Association for any breach of this Declaration.

Guests may be present for up to two (2) weeks. Any longer stay by guests requires approval by the Association.

Section 2. Single Family Lots. Each Single Family Lot shall be used for single-family attached and detached residential purposes only. Single Family Lots may be used for the purposes of operating the Association and for the management of the Association if required. The provisions of this Section shall not preclude Declarant from conducting sales, construction, development and related activities from Single Family Lots owned by Declarant.

Section 3. Assisted Living Facility. The Assisted Living Facility shall be privately owned and operated. The Assisted Living Facility owner shall be a Member in the Association. Residents of the Assisted Living Facility shall not be Members in the Association but shall be entitled to use the Common Area and Private Roads. Subject to availability and the payment of rental rates therefore, Residents shall also be entitled to use the Community Storage Facility and RV Storage Facility. The Assisted Living Facility

is not designed for permanent medical staff. Accordingly, no doctors or nurses will be present at the Assisted Living Facility.

Owners, their families and guests, shall be entitled to use the Assisted Living Facility's recreational and exercise facilities provided that the Assisted Living Facility owner shall have the right to charge a reasonable fee and restrict such usage to reasonable hours. The Assisted Living Facility owner cannot increase such fees more than three percent (3%) during any twelve month period.

Section 4. Community Storage Facility. The Community Storage Facility shall be privately owned and operated. The Community Storage Facility owner will not be a Member in the Association and shall not be required to pay Assessments. The Community Storage Facility owner will be entitled to a fair market value rental rate, as determined in its sole and absolute discretion, for the use of storage units within the Community Storage Facility; provided however, that such rental rate may not be increased by more than five percent (5%) during any twelve (12) month period. The Community Storage Facility owner shall be solely responsible for the operation and maintenance of the Community Storage Facility.

The Community Storage Facility shall only be available for use by Owners and Residents. Every Owner shall be entitled to use one storage unit within the Community Storage Facility. The rental rate for the use of these storage units shall be included in each Owner's Regular Assessments. Non-use by an Owner of a storage unit will not preclude him/her/they from paying Assessments associated with their storage unit. Subject to availability, Owners may lease additional storage units and the rent associated therewith may be included in their Assessments or billed separately. Subject to availability, Residents may also lease storage units within the Community Storage Facility.

Section 5. RV Storage Facility. The RV Storage Facility shall be privately owned and operated. The RV Storage Facility owner shall not be a Member in the Association and shall not be required to pay Assessments. The RV Storage Facility owner will be entitled to a fair market value rental rate, as determined in its sole and absolute discretion, for the use of storage spaces within the RV Storage Facility; provided however, that such rental rate may not be increased by more than five percent (5%) during any twelve (12) month period. The RV Storage Facility owner shall be solely responsible for the operation and maintenance of the RV Storage Facility.

The RV Storage Facility shall only be available for use by Owners and Residents. Leasing of storage spaces within the RV Storage Facility shall be available to all Owners and Residents on a first come, first served basis. The rental rate for the use of these storage spaces may be included in each Owner's Regular Assessments or billed separately.

Section 6. Common Area, Perimeter Fence and Private Roads. The Association shall own and be responsible for the maintenance, repair and replacement of the Common Area, Perimeter Fence and Private Roads. Nothing shall be altered or constructed in or removed from the Common Area or Private Roads except upon written consent of the Board and in accordance with procedures required herein and by law. Every Owner and Resident shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Single Family Lot and residency of the Assisted Living Facility, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees or Assessments for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and use of any recreational facility by an Owner or Resident for any period during which any Assessment remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its rules and regulations.

Neither the Common Area nor the Private Roads can be mortgaged, conveyed or encumbered without the approval of at least two-thirds (2/3) of the Class A Members. If ingress or egress to any Single Family Lot or the Assisted Living Facility is through any portion of the Common Area or Private Roads, any such conveyance or encumbrance shall be subject to an easement of the Owners and Residents for the purpose of ingress and egress.

There is hereby reserved for the use and benefit of Declarant, and granted for the use and benefit of 1) the Association, 2) all Owners, 3) all Residents, 4) the Assisted Living Facility owner, 5) the Community Storage Facility owner, 6) the RV Storage Facility owner and 7) each of the above referenced parties' respective successors, assigns, invitees and licensees, for the purposes incidental to the use and enjoyment of the Property, a perpetual easement to enter on, over, across and through the Private Roads, which Private Roads shall be used for ingress to and egress from all portions of the Property. It is expressly understood and agreed that the easement herein created shall be absolute and non-exclusive and that in all respects the Private Roads shall be used, and available for use, by all such Persons, their guests, invitees and licensees in the same manner as if the Private Roads were public roads, subject to the Restrictions contained in this Declaration and the right of the Board to impose such rules, regulations and restrictions, as may be necessary, required or convenient to assure the privacy, safety, security and well-being of Declarant, the Association, the Owners and the Residents, provided, however, that such shall not deprive or unreasonably restrict any Owner's or Resident's right to have access to and from the Property.

Nothing herein contained shall prohibit or limit the right of Declarant and/or the Association to extend the easement rights herein granted over, along and across the Private Roads to provide for necessary utilities, drainage, irrigation or other services across any portion of the Property for the benefit of the Owners and Residents.

Section 7. Home Occupations. Home occupations of any kind are prohibited.

Section 8. Vehicle Storage. Unenclosed areas (which include the Private Roads, driveways and all other areas within the Property other than the Assisted Living Facility) are restricted to use for temporary parking of operative motor vehicles of guests, invitees and licensees of Owners and Residents, provided that such vehicles are parked so as to not interfere with any other Owner's or Resident's right of ingress and egress. For purposes of this Section, "temporary parking" shall mean twenty-four hours or less. Notwithstanding the foregoing, the parking of equipment (lawn or otherwise), inoperative vehicles, motor homes, campers, trailers, boats, any other recreational vehicles and all other items on the Property is strictly prohibited unless parked in garages.

The Board may remove any inoperative vehicle, or any unsightly vehicle, and any other vehicle, motor home, camper, trailer, boat, equipment or item improperly parked or stored after three (3) days' written notice at the risk and expense of the Owner or Resident thereof.

Section 9. Compliance With Laws and Waste. No Owner or Resident shall permit anything to be done or kept in his or her Single Family Lot, Dwelling Unit, Residential Unit or any part of the Assisted Living Facility, Common Area or Private Roads which would be in violation of any laws, rules, regulations

or ordinances. No waste shall be permitted in the Assisted Living Facility Common Area, Private Roads, Single Family Lot or any Dwelling Unit.

Section 10. Signs. No sign of any kind shall be displayed on the Assisted Living Facility, Single Family Lot or Dwelling Unit without the prior written consent of the Board; provided however, one sign of not more than four (4) square feet advertising a Single Family Lot for sale may be installed on any Single Family Lot, but the sign shall be removed within five (5) days following the closing of such sale. Notwithstanding the foregoing, Declarant may display any sign it sees fit on any portion of Property owned by Declarant.

Section 11. Pets. No animals (which term includes livestock, domestic animals, poultry, reptiles and any other living creature of any kind) shall be raised, bred or kept in the Assisted Living Facility. In addition, no animals (which term includes livestock, domestic animals, poultry, reptiles and any other living creature of any kind) shall be raised, bred or kept in any Dwelling Unit and/or Single Family Lot, whether as pets or otherwise, except as may be allowed by rules and regulations adopted by the Board; provided however, that this provision shall not prohibit Owners from having two (2) or less dogs and/or cats (i.e. an Owner may have a maximum of two (2) dogs, two (2) cats or one (1) dog and one (1) cat). The Board may at any time require the removal of any animal, including domestic dogs and cats, which it finds is creating unreasonable noise or otherwise disturbing the Owners unreasonably, in the Board's determination, and may exercise this authority for specific animals even though other animals are permitted to remain. All dogs shall be walked on a leash only and shall not be allowed to roam or run loose, whether or not accompanied by an Owner or other person. All Owners shall be responsible for picking up and properly disposing of all organic waste of their domestic dogs and cats.

Section 12. Nuisance and Garbage Requirements. No noxious or offensive activity shall be carried on in the Assisted Living Facility, any Dwelling Unit, Common Area, Private Roads or Single Family Lot, or shall anything be done therein which may be or become an annoyance or nuisance to other Owners or Residents. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including, without limitation, the Common Area and Private Roads, and no odor shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants or residents, or to any other property in the vicinity thereof or to its occupants or residents. No noise, obstructions of pedestrian walkways, unsightliness, or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or residents or to other property in the vicinity or to its occupants or residents, as determined by the Board, in its reasonable judgment, or in violation of any state or local law or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Architectural Committee), flashing lights or search lights, shall be located, used or placed on the Property. No unsightly articles shall be permitted to remain on the Assisted Living Facility or any Single Family Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage, garbage cans, trash, trash cans, dog runs/kennels, equipment, gas canisters, propane gas tanks, containers, lumber, firewood, grass, shrub or tree clippings, metals, bulk material, and scrap shall be screened from street view at all times; provided that garbage and recycle containers can be placed on the appropriate sidewalks or driveways on garbage and recycle collection days, but such containers must be removed no later than 6:00pm that evening. No clothing or fabric shall be hung, dried or aired in such a way as to be visible to any other portion of the Property. In addition, no activities shall be conducted on the Property, and no Improvements shall be constructed on any Property which are or might be unsafe or hazardous to any Person or property.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 7

PLF00032

000113

**Section 13. Exterior Improvements, Appearance and Emergency Maintenance.** No Owner or Assisted Living Facility owner shall install or place any item on any Single Family Lot, Dwelling Unit exterior or the Assisted Living Facility without the consent of the Architectural Committee, including, without limitation, any fences or landscaping.

All Owners and the Assisted Living Facility owner shall keep and maintain their Single Family Lots, Dwelling Unit exteriors and the Assisted Living Facility in a repaired, attractive, clean and habitable condition as determined by the Board in its reasonable judgement. In the event any Owner or Assisted Living Facility owner does not satisfy this standard, the Board and its agents or employees, may, after thirty days' prior written notice to such Owner or Assisted Living Facility owner, enter such Single Family Lot or Assisted Living Facility to make such repairs or perform such maintenance as to bring such Single Family Lot, Dwelling Unit or Assisted Living Facility into compliance with this Section. The cost of any such repairs and maintenance shall be treated as a Limited Assessment to such Owner or Assisted Living Facility owner. In the event an emergency which in the judgment of the Board presents an immediate threat to the health and safety of the Members, Residents, their guests or invitees, or an immediate risk of harm or damage to any of the Dwelling Units or any part of the Property, the Board and its agents or employees, may enter any Single Family Lot or Assisted Living Facility to make repairs or perform maintenance. Such entry shall be repaired by the Board out of the common expense fund if the entry was due to an emergency (unless the emergency was caused by an Owner or Resident, in which case the cost shall be treated as a Limited Assessment and charged only to that Owner or Assisted Living Facility owner). If the repairs or maintenance were requested by an Owner or Assisted Living Facility owner, the costs thereof shall be treated as a Limited Assessment to such Owner or Assisted Living Facility owner.

**Section 14. Lawn Maintenance, Irrigation System and Snow Removal.** The Association shall be responsible for mowing, trimming, fertilizing, spraying for weeds and pesticides for all Single Family Lots and the Assisted Living Facility lawns. The Association shall also be responsible for maintaining the pressurized irrigation system and all snow removal for the Property. All Owners must cooperate with the Association in order for the Association to complete these duties. Other than the aforementioned duties, the Association shall have no further duties or obligations associated with the maintenance, repair and/or replacement of Improvements on a Single Family Lot, Dwelling Unit or the Assisted Living Facility including, without limitation, landscaping maintenance, repair or replacement. Other than as provided in this Section, each Owner and the Assisted Living Facility owner shall be responsible for any and all maintenance, repairs and/or replacements of their Single Family Lot, Dwelling Unit and/or Assisted Living Facility including, without limitation, replacing dead trees and vegetation and maintaining weed free flower and planter beds.

**Section 15. Outbuildings.** Outbuildings and sheds are prohibited.

**Section 16. Basketball Hoops.** Basketball hoops are prohibited.

**Section 17. Fences.** Fences are not required. If a fence is desired, plans for such fence shall be pre-approved in writing by the Architectural Committee. Other than the Perimeter Fence, all fences shall be white vinyl and no more than five feet (5') tall. All fences must have a four foot (4') gate for rear yard maintenance access. This gate must remain unlocked on yard maintenance days.

**Section 18. Satellite Dishes and Antennae.** Subject to Architectural Committee approval, Satellite dishes and/or antennae shall be placed on the back or side of all Dwelling Units and shall be placed and/or mounted in such a way to minimize the visual impact to all other portions of the Property.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 8**

PLF00033

000114

Section 19. Insurance. Nothing shall be done or kept in any Dwelling Unit, Single Family Lot, Private Roads, Common Area or the Assisted Living Facility which will increase the rate of insurance on the Common Area, Private Roads, Single Family Lots or Assisted Living Facility. Each Owner must maintain a homeowner's insurance policy insuring the homeowner from loss by fire, theft, and other loss or damage.

Section 20. Garages. To the extent possible, garage doors must remain closed at all times.

Section 21. Irrigation Water. Irrigation water will be supplied to the Property by the City of Nampa utilizing non-potable (non-drinkable) water through a pressurized irrigation system. The pressurized irrigation system through the Property shall be maintained by the Association.

#### ARTICLE V: INSURANCE

Section 1. Insurance. The Association shall obtain insurance from insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Association deems necessary or advisable, which shall include, without limitation, the following policies to the extent its is possible for the Association to obtain the same:

(a) Fire insurance including those risks embraced by coverage of the type known as the broad form or "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all equipment and fixtures located within the Common Area and Private Roads;

(b) Comprehensive general liability insurance insuring the Association, Owners and Residents, and the individual grantees, agents and employees, invitees and guests of each of the foregoing against any liability incident to the ownership, management, maintenance and/or use of the Property. Limits on liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage or such amounts in excess thereof which the Association determines is commercially reasonable and prudent under the circumstances after taking into account inflation occurring after the execution of this Declaration;

(c) Full coverage directors' and officers' liability insurance for the Association's directors and officers with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000) or such amounts in excess thereof which the Association determines is commercially reasonable and prudent under the circumstances after taking into account inflation occurring after the execution of this Declaration;

(d) Such other insurance, including motor vehicle insurance and worker's compensation insurance, to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Association shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.

Section 2. Insurance Proceeds. The Association shall be deemed trustee of the interests of all Owners and Assisted Living Facility owner in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such proceeds and to deal therewith.

Section 3. Premiums Included in Assessments. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

#### ARTICLE VI: MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner and the Assisted Living Facility owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Single Family Lot or the Assisted Living Facility. Residents shall not be Members in the Association.

Section 2. Voting Classes. The Association shall have two (2) classes of voting memberships:

Class A. Class A Members shall be all Owners and the Assisted Living Facility owner. Each Owner shall be entitled to one vote for each Single Family Lot owned. The Assisted Living Facility owner shall be entitled to twenty (20) votes. When more than one Person holds an interest in any Single Family Lot or the Assisted Living Facility, all such Persons shall be Members. The vote for such Single Family Lot or Assisted Living Facility shall be exercised as they determine, but in no event shall more than the above allocated votes be cast.

Class B. The Class B Member shall be the Declarant and shall be entitled to five (5) votes for each Single Family Lot owned and all votes of the Assisted Living Facility until such time as it is no longer the owner of the Assisted Living Facility Lot. The Class B membership shall cease when, and if, Declarant has sold all Single Family Lots and the Assisted Living Facility Lot.

#### ARTICLE VII: COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner and the Assisted Living Facility owner is deemed to covenant and agree to pay to the Association: (1) Regular Assessments, (2) Special Assessments, and (3) Limited Assessments. Regular, Special and Limited Assessments, together with interest, costs, late fees and reasonable attorney's fees, shall be a continuing lien upon the Single Family Lot and Assisted Living Facility against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of all Owners and the Assisted Living Facility owner at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his/her/its successors unless expressly assumed by them. **Declarant has no obligation to pay Assessments but must maintain any and all portions of the Property and Improvements it owns in a neat and clean condition.**

Section 2. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for any construction, maintenance, and operation of the Common Area, Perimeter Fence and Private Roads. The Association may also charge a reasonable transfer fee associated with the purchase and sale of Single Family Lots. These transfer fees shall be classified as Regular Assessments.

Section 3. Rate of Assessment. Regular and Special Assessments should be fixed at a uniform rate; provided, however, that 1) Regular Assessments for Owners shall include the rental rates associated with the use of one storage unit within the Community Storage Facility and 2) the Assisted Living Facility owner shall be responsible for thirty-five percent (35%) of all Regular and

**Special Assessments levied by the Association. The remaining sixty-five percent (65%) shall be apportioned among all Owners in equal amounts.**

**Section 4. Date of Commencement of Annual Assessments; Due Dates.** The Assessments provided for herein shall commence as to all Owners and the Assisted Living Facility owner on the first day of the month following the closing of the sale of a Single Family Lot or the Assisted Living Facility. The first annual assessment shall be pro-rated according to the number of months remaining in the calendar year. Subsequently, the Board shall fix the amount of the Assessments at least thirty (30) days in advance of each annual Assessment period and written notice of the Assessments shall be sent to every Owner and the Assisted Living Facility owner. The due dates shall be established by the Board, which may be quarterly, monthly or annually as the Board, in its sole discretion, shall determine. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specific Single Family Lot or Assisted Living Facility have been paid. A properly executed certificate of the Association as to the status of Assessments is binding upon the Association as of the date of its issuance.

**Section 5. Effect of Nonpayment of Assessments; Remedies of the Association.** Any Assessment not paid within thirty (30) days after the due date shall bear interest from the date of delinquency at a rate equal to the lesser of twelve percent (12%) or the highest rate allowed by applicable law. The date of delinquency is the date which is thirty (30) days after the due date of any Assessment. The Association may bring an action at law against the Owner or the Assisted Living Facility owner personally obligated to pay the same, or foreclose the lien against the Single Family Lot or Assisted Living Facility. No Owner or the Assisted Living Facility owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area, Perimeter Fence or Private Roads, or abandonment of his or her Single Family Lot or Assisted Living Facility.

**Section 6. Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Single Family Lot or the Assisted Living Facility shall not affect the Assessment lien. However, the sale or transfer of any Single Family Lot or Assisted Living Facility pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer.

#### ARTICLE VIII: AUTHORITY OF BOARD OF DIRECTORS

**Section 1. Authority of Board.** The Board, for the benefit of the Association, Owners, Assisted Living Facility owner and Residents, shall enforce the provisions of this Declaration and the Association's articles and by-laws, shall have all powers and authority permitted to the Board under the Association's articles of incorporation and by-laws and this Declaration, and shall acquire and shall pay for, out of a common expense fund to be established by the Board, all goods and services requisite for the proper functioning of the Association and the Property, including but not limited to the following:

(a) Operation, maintenance and management of the Common Area, Perimeter Fence and Private Roads, including repair and replacement of property damaged or destroyed by casualty loss.

(b) Water, sewer, garbage collection, electrical, and any other utility service as required for the Common Area, Perimeter Fence and Private Roads. The Board may arrange for special metering of utilities as appropriate.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 11**

PLF00036

000117



(c) Policies of insurance providing coverage for fire and other hazard, public liability and property damage, and fidelity bonding as the same are more fully described in the by-laws and/or this Declaration. Each Owner shall be responsible for his or her own insurance for their Single Family Lot, Dwelling Unit and personal property.

(d) The services of Persons as required to properly manage the affairs of the Association to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Property.

(e) Legal and accounting services necessary or proper in the operation of the Association's affairs, administration of the Property, or the enforcement of this Declaration.

(f) Any other materials, supplies, labor services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure by law or which in its opinion shall be necessary or proper for the operation of the Property or for the enforcement of this Declaration.

(g) Maintenance and repair of any Single Family Lot and/or Dwelling Unit or the Assisted Living Facility, there appurtenances and appliances, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect or preserve the appearance and value of the Property, provided that the Owner or Assisted Living Facility owner has failed or refused to perform said maintenance or repair after written notice of the necessity of said maintenance or repair has been delivered by the Board.

(h) The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the Property or any part thereof, which is claimed to or against the Property. Where one or more Owners or Assisted Living Facility owner are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs and expenses incurred by the Board by reason of such lien or liens shall be assessed against such Persons.

(i) The Board shall not make any non-budgeted expenditure in excess of \$5,000 without the approval thereof by Declarant or by two-thirds (2/3) of each class of Members voting thereon at a meeting called for such purpose, except for an emergency threatening the security of any Improvement on the Property.

**The Board shall have the absolute right to adopt any rules and regulations it deems to be in the best interest of the Property and the Owners and Residents. By accepting a deed to any portion of the Property, all Owners and the Assisted Living Facility owner hereby covenant that they will adhere to any such rules or regulations. In addition, the Board shall have the absolute right to hire or otherwise contract with independent third parties to operate, maintain and manage the Common Area, Perimeter Fence and Private Roads, and to perform the required lawn maintenance, snow removal and any other right, duty or obligation of the Board or Association.**

**Section 2. Easement.** The Board and its agents and employees shall have, and are hereby granted, a permanent easement of ingress and egress to enter upon any portion of the Property for purposes of performing repairs, maintenance and care of the Property as provided herein or for otherwise discharging the responsibilities and duties of the Board as provided in this Declaration.

**Section 3. Non-Waiver.** The failure of the Board in any one or more instances to insist upon the strict performance of any of the terms or Restrictions of this Declaration, or of the Association's articles

of incorporation or by-laws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, or Restriction, but such term, or Restriction shall remain in full force and effect. Failure by the Board to enforce any such term or Restriction shall not be deemed a waiver of the right to do so thereafter, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed for the Board. This Section also extends to the Declarant exercising the powers of the Board during the initial period of operation of the Association.

**Section 4. Limitation of Liability.** The Board shall not be liable for any failure of any utility or other service to be obtained and paid for by the Board, or for injury or damage to a Person or property caused by the elements, or by another Person; or resulting from electricity, gas, water, rain, dust or sand which may lead or flow from pipes, drains, conduits, appliances, or equipment, or from articles used or stored by Owners, Residents or the Assisted Living Facility owner. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or Improvements to the Property or from any action taken to comply with any law, ordinance, or order of a governmental authority. This Section shall not be interpreted to impose any form of liability by implication, and shall extend to and apply also for the protection of the Declarant exercising the powers of the Board during the initial period of operation of the Association and the Property.

**Section 5. Indemnification of Board Members.** Each member of the Board shall be indemnified by the Association, Owners, Assisted Living Facility owner and Residents against all expenses (including attorney's fees), judgments, liabilities, fines and amounts paid in settlement, or actually and reasonably incurred, in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by or against the Association or against the Board member and incurred by reason of the fact that he or she is or was a Board member, if such Board member acted in good faith and in a manner such Board member believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such Board member's conduct was unlawful. This Section shall extend to and apply also to the indemnification of the Declarant during the initial period of operation of the Association and the Property.

#### ARTICLE IX: ARCHITECTURAL COMMITTEE

**Section 1. Charter of Architectural Committee.** The Association or Declarant is authorized to appoint an Architectural Committee. The charter of the Architectural Committee is to represent the collective interests of all Owners and Assisted Living Facility owner, and to help Owners and the Assisted Living Facility owner wishing to make exterior alterations. **Each Owner and the Assisted Living Facility owner is deemed to covenant and agree to be bound by the terms and conditions of this Declaration, including the standards and process of architectural review and approval. This Article IX does not apply to the Declarant, provided that in the event Declarant remains the owner of, and builds, the Assisted Living Facility, this Facility shall be consistent with the remainder of the Property. In the event Declarant does not own and build the Assisted Living Facility, the owner thereof shall be subject to the architectural review and approval process detailed in this Article IX.**

**Section 2. Architectural Control.** No exterior Improvement of any kind or nature shall be altered, erected, or placed on the Property by an Owner or the Assisted Living Facility owner unless and until the building, plot or other plan has been reviewed in advance by the Architectural Committee and same has been approved, in the Architectural Committee's reasonable discretion, in writing, and an appropriate building permit has been acquired, if required by law. The review and approval may include, without

limitation, topography, finish, ground elevations, landscaping, lighting, drainage, color, material, design, conformity to other residences in the area, and architectural symmetry. Approval of the architectural design shall apply only to the exterior appearance of said Improvements. It shall not be the intent of these restrictions to control the interior layout or design of said structures. All decisions of the Architectural Committee shall be appealable to the Board pursuant to such appeal procedures as are established by the Board.

Section 3. Review of Proposed Alteration. The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties from time to time as may be assigned to it by the Board, including the inspection of construction in progress. The Architectural Committee may condition its approval of proposals upon the agreement of the applicant to an additional Limited Assessment for the cost of maintenance and the payment of an architectural review processing fee. The Architectural Committee may require submission of additional plans or review by a professional architect. The Architectural Committee may issue guidelines setting forth procedures for the submission of plans for approval. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevations, drawings and description of samples of exterior material and colors. Until receipt by the Architectural Committee of any required plans and specifications the Architectural Committee may postpone review of plans. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee, in writing, to the applicant at the address set forth in the application for approval within thirty (30) days after filing all materials required by the Architectural Committee. If the Architectural Committee has not accepted (either conditionally or otherwise) or rejected an applicant's application within this thirty (30) day period, such application shall be deemed approved.

Section 4. Inspection of Approved Improvements. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon completion of any work for which approved plans are required under this Article, the applicant shall give written notice of completion to the Architectural Committee.

(b) Within sixty (60) days thereafter, the Architectural Committee, or its duly authorized representative, may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the applicant and the Board in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the applicant to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification, the applicant has failed to remedy such noncompliance, the Board may, at its option, exercise its right to enforce the provisions of this Declaration, by any proceeding at law or in equity on behalf of the Association, and may take such other actions as are appropriate, including the levy of a Limited Assessment against such applicant for reimbursement associated with correcting or removing the same pursuant to this Declaration.

Section 5. Review of Unauthorized Improvements. The Architectural Committee may identify for review, Improvements which were not submitted to the approval process as follows:

(a) The Architectural Committee or its duly authorized representative may inspect such unauthorized Improvement.

(b) If the Architectural Committee finds that the work is in noncompliance it shall notify the Owner or Assisted Living Facility owner and the Board in writing of such noncompliance.

(c) If noncompliance exists, the Owner or Assisted Living Facility owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling. If the Owner or Assisted Living Facility owner does not comply with the Board ruling within such period, the Board may, at its option, exercise its right to enforce the provisions of this Declaration, by a proceeding at law or in equity on behalf of the Association, and may take such other actions as are appropriate, including the levy of a Limited Assessment against such Owner or Assisted Living Facility owner for reimbursement of the costs associated with correcting or removing the same pursuant to this Declaration.

#### ARTICLE X: GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant, any Owner and/or the Assisted Living Facility owner shall have the right to enforce, by any proceeding at law or in equity, all Restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any such Persons to enforce any covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term and Amendment. The terms and Restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by Declarant (assuming Declarant owns one or more Single Family Lots or the Assisted Living Facility) and not less than two-thirds (2/3) of the Class A Members. Amendments shall be in the form of supplemental declarations, and must be recorded in the records of Canyon County, Idaho.

Section 4. Annexation. Additional residential property, Common Area and Private Roads may be annexed to the Property by Declarant or with the consent of two-thirds (2/3) of each class of Members. Annexations shall be accomplished by supplemental declarations to this Declaration recorded in the records of Canyon County, Idaho. Owners of additional residential property annexed to the Property and subject to the terms and Restrictions of this Declaration, shall, at Declarant's option, have access to, and use of, the existing Common Area and Private Roads, subject only to the Board's absolute right to collect from such owners a reasonable sum commensurate with the additional burden placed upon the Common Area and Private Roads by the owners of such additional property, and their occupants, invitees and licensees, as a contribution for the maintenance, repair and replacement of such Common Area and Private Roads.

Section 5. Duration and Applicability to Successors. The covenants, conditions, and Restrictions set forth in this Declaration shall run with the land and shall inure to the benefit of and be binding upon the Declarant, the Association, all Owners and Residents and the Assisted Living Facility owner, and their successors in interest.

Section 6. Attorneys Fees. In the event it shall become necessary for Declarant, the Association, any Owner or the Assisted Living Facility owner to retain legal counsel to enforce any term,

covenant, condition, or Restriction contained within this Declaration, the prevailing party to any court proceeding shall be entitled to recover their reasonable attorneys' fees and costs of suit, including any bankruptcy, appeal or arbitration proceeding.

Section 7. Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 23rd day of September, 2005.

Asbury Park, LLC  
an Idaho limited liability company

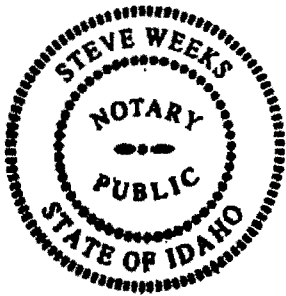
By: *John A. Esposito*  
John A. Esposito, Manager

STATE OF IDAHO            )  
  ) ss.  
County of Ada             )

On this 23rd day of September, 2005, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared John A. Esposito, known or identified to me to be the Manager of Asbury Park, LLC, the person who subscribed said company name to the foregoing instrument, 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 in this certificate first above written.

*Steve Weeks*  
Notary Public for Idaho  
Residing at Eagle, Idaho  
My commission expires: 6-1-2011



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

Lots 1 through 41, 42A and B, 43A and B, 44A and B, 45A and B, 46A and B, 47A and B, 48A and B and Lots 50 through 99, Block 1 of Greenbriar Estates Subdivision, according to the official plat thereof, filed in Book 36 of Plats at Page 36, Official Records of Canyon County, Idaho.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 17**

PLF00042

**000123**

**EXHIBIT B**

**LEGAL DESCRIPTION OF COMMON AREA**

**Lots 2, 8, 20, 31, 32, 39, 50, 51 and 53, Block 1, of Greenbriar Estates Subdivision, according to the official plat thereof, filed in Book 36 of Plats at Page 36, Official Records of Canyon County, Idaho.**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 18**

PLF00043

**000124**

**EXHIBIT C**

**GREENBRIAR ESTATES SUBDIVISION FINAL PLAT**

See Attached.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 19**

PLF00044

**000125**



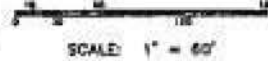
DEVELOPER  
JOHN ESPPOSITO  
EAGLE, IDAHO

# PLAT SHOWING GREENBRIAR ESTATES SUBDIVISION

LOCATED IN A PORTION OF THE SW 1/4, OF THE SE 1/4, SECTION 4  
T.2N., R.2W., B.M. CANYON COUNTY, IDAHO  
2005

LINE TABLE

LINE	LENGTH	BEARING
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		
33		
34		
35		
36		
37		
38		
39		
40		



NOTES:

- ALL LOT LINES CORNER TO LOT 1, BLOCK 1 SHALL HAVE A TEN (10) FOOT WIDE PUBLIC UTILITIES, PROPERTY DRAINAGE, AND IRRIGATION EASEMENT UNLESS OTHERWISE SHOWN.
- EACH SIDE OF INTERIOR LOT LINES HAVE A FIVE (5) FOOT WIDE PUBLIC UTILITIES, PROPERTY DRAINAGE, AND IRRIGATION EASEMENT UNLESS OTHERWISE SHOWN.
- EACH SIDE OF PERIM LOT LINES HAVE AN EIGHT (8) FOOT WIDE PUBLIC UTILITIES, PROPERTY DRAINAGE, AND IRRIGATION EASEMENT UNLESS OTHERWISE SHOWN.
- THE EXTERIOR BOUNDARY HAS A TWELVE (12) FOOT WIDE PUBLIC UTILITIES, PROPERTY DRAINAGE, AND IRRIGATION EASEMENT ON THE SIDE OF SAID BOUNDARY UNLESS OTHERWISE SHOWN.

NOTES:

- MAINTENANCE OF ANY IRRIGATION CANAL, DRAINAGE PIPE OR OTHER FACILITY IS A DUTY OF THE HOMEOWNER OF THE LOT FRONTING SAID FACILITY AND IS EXERCISED BY AN ASSOCIATION OF DRAINAGE DISTRICT.
- THIS SUBDIVISION IS SUBJECT TO COMPLIANCE WITH THE 2004 ZONING ORDINANCE SECTION 11-3003 CONCERNING IRRIGATION WATER.
- ANY REVISIONS OF THIS PLAT SHALL COMPLY WITH THE APPLICABLE ZONING REGULATIONS IN EFFECT AT THE TIME OF REVISIONS.
- LOTS 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30 AND 32, BLOCK 1 ARE DESIGNATED AS GENERAL RESIDENTIAL LOTS AND SHALL BE OPENED AND SUBDIVIDED AT THE DISCRETION OF THE HOMEOWNER AS ESTABLISHED IN THE SUBDIVISION COMPANYS SAID LOTS ARE SUBJECT TO PUBLIC UTILITY EASEMENTS.
- ALL OF LOT 15, BLOCK 1, IS DESIGNATED AS A DRAINAGE LOT AND SHALL HAVE A SLURRY STONE DRAIN AND PUBLIC UTILITIES EASEMENT.
- LOT 18, BLOCK 1 IS DESIGNATED AS A MEDICAL-PROFESSIONAL LOT.
- ALL LOTS IN THIS SUBDIVISION ARE DESIGNATED AS RESIDENTIAL LOTS UNLESS OTHERWISE NOTED.
- LOT 1, BLOCK 1 SHALL BE A PRIVATE CARED STREET TO BE OPENED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION. LOT 1, BLOCK 1 SHALL ALSO SERVE AS A PERMITTED LOCAL EASEMENT FOR ALL LOTS IN THIS SUBDIVISION WHO SERVE AS A PUBLIC UTILITIES EASEMENT.

CURVE DATA

Curve No.	Radius	Length	Start Sta.	End Sta.
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58				
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
71				
72				
73				
74				
75				
76				
77				
78				
79				
80				
81				
82				
83				
84				
85				
86				
87				
88				
89				
90				
91				
92				
93				
94				
95				
96				
97				
98				
99				
100				



- LEGEND**
- LOT NO.
  - FOUND 3/4" IRON PIN
  - FOUND BRASS CAP MARKER
  - FOUND P.A. NAIL
  - CALCULATED POINT
  - SET 3/4" IRON PIN WITH CAP
  - SET 1/2" IRON PIN WITH CAP
  - WITH CORNER
  - REFERENCE BOUNDARY
  - PROPERTY BOUNDARY LINE
  - LOT LINE
  - TOWN HOUSE LOT LINE
  - SECTION LINE
  - NORTH-SOUTH LINE
  - CENTERLINE
  - EASEMENT LINE
  - MATCH LINE

ASSISTED LIVING  
3.02 ACRES

BLOCK 1

BLOCK 1  
MEDICAL-PROFESSIONAL LOT



**EXHIBIT D**

**LEGAL DESCRIPTION OF PRIVATE ROADS**

Lot 1, Block 1 of the Greenbriar Estates Subdivision, according to the official plat thereof, filed in Book 36 of Plats at Page 36, Official Records of Canyon County, Idaho.

200651704

RECORDED

2006 JUN 29 PM 4 16

G NOEL HALES  
CANYON COUNTY RECORDER  
BY *[Signature]*

REQUEST STEWART TITLE-NAMPA

TYPE *Doc Fee 3-*

**stewart**  
title of boise

*10047468/DS*

**WARRANTY DEED**

For Value Received Asbury Park LLC, an Idaho Limited Liability Company

the Grantor, hereby grants, bargains, sells, conveys and warrants unto

Rocky Ridge GB, LLC

the Grantee, whose current address is 533 E. Riverside #110 Eagle, ID 83616

the following described premises, to wit:

Lot 35, in Block 1 of Greenbriar Estates Subdivision, According to the official Plat thereof, filed in Book 36 of Plats at Page 36, records of Canyon County, Idaho.

Parcel Number: *LeR29256-129-0*

**SUBJECT TO:** Current General Taxes, a lien in the process of assessments, not yet due or payable. Easements, restrictions, reservations, provisions of record, and assessments, if any.

**TO HAVE AND TO HOLD** the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises, that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated this 21st day of October, 2005

Asbury Park LLC

By *[Signature]*  
John A. Esposito  
Member

STATE OF Idaho )  
 ) ss.  
COUNTY OF Ada )

On this 21st day of October, 2005, before me, the undersigned, a Notary Public, in and for said State, personally appeared John A. Esposito known to me, on the basis of satisfactory evidence, to be the Member of the Limited Liability Company that executed the instrument and the foregoing instrument was signed on behalf of said company by authority of consent of its members and acknowledged to me that he/she/they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

*[Signature]*  
Notary Public: Dorothy J. Starace  
Residing at: Boise, Id  
My commission expires January 27, 2009



200569952

RECORDED

2005 OCT 24 PM 4 27

G NOEL HALES  
CANYON COUNTY RECORDER  
REQUEST STEWART TITLE-NAMPA

TYPE Doc FEE 31

**stewart**  
title of boise

5041527125

**WARRANTY DEED**

For Value Received Asbury Park LLC, an Idaho Limited Liability Company

the Grantor, hereby grants, bargains, sells, conveys and warrants unto

JARED ENTERPRISES INC., dba Rocky Ridge Homes

the Grantor, whose current address is 533 E. Riverside Drive #110 Eagle, ID 83616

the following described premises, to wit:

Lot 85, in Block 1 of Greenbriar Estates Subdivision, According to the official Plat thereof, filed in Book 36 of Plats at Page 36, records of Canyon County, Idaho.

Parcel Number: \*

**SUBJECT TO:** Current General Taxes, a lien in the process of assessments, not yet due or payable. Easements, restrictions, reservations, provisions of record, and assessments, if any.

**TO HAVE AND TO HOLD** the said premises, with their appurtenances unto the said Grantor, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises, that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated this 21st day of October, 2005

Asbury Park LLC

By John A. Esposito  
John A. Esposito  
Member

STATE OF Idaho )  
 ) ss.  
COUNTY OF Ada )

On this 21st day of October, 2005, before me, the undersigned, a Notary Public, in and for said State, personally appeared John A. Esposito known to me, on the basis of satisfactory evidence, to be the Member of the Limited Liability Company that executed the instrument and the foregoing instrument was signed on behalf of said company by authority of consent of its members and acknowledged to me that he/she/they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

Dorothy J. Staraco  
Notary Public: Dorothy J. Staraco  
Residing at: Boise, Id  
My commission expires January 27, 2009



200642846

RECORDED

2006 JUN 2 PM 4 13

NOEL MALES  
CANYON COUNTY RECORDER  
BY *Noel Males*

STEWART TITLE COMPANY

TYPED *Yes* FEE 3.00

**stewart**  
title of Boise

*1004663/PS*

**WARRANTY DEED**

For Value Received Asbury Park LLC, an Idaho Limited Liability Company

the Grantor, hereby grants, bargains, sells, conveys and warrants unto

Rocky Ridge GB, LLC

the Grantee, whose current address is 533 E. Riverside Dr. Suite 110 Eagle, ID 83616

the following described premises, to wit:

Lot 94, in Block 1 of Greenbriar Estates Subdivision, According to the official Plat thereof, filed in Book 36 of Plats at Page 36, records of Canyon County, Idaho.

Parcel Number: \*

**SUBJECT TO:** Current General Taxes, a lien in the process of assessments, not yet due or payable. Easements, restrictions, reservations, provisions of record, and assessments, if any.

**TO HAVE AND TO HOLD** the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises, that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated this 21st day of October, 2005

Asbury Park LLC

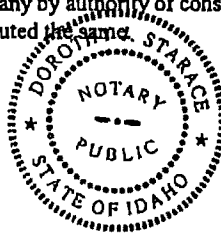
By *John A. Esposito*  
John A. Esposito  
Member

STATE OF Idaho )  
 ) ss.  
COUNTY OF Ada )

On this 21st day of October, 2005, before me, the undersigned, a Notary Public, in and for said State, personally appeared John A. Esposito known to me, on the basis of satisfactory evidence, to be the Member of the Limited Liability Company that executed the instrument and the foregoing instrument was signed on behalf of said company by authority of consent of its members and acknowledged to me that he/she/they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

*Dorothy J. Starace*  
Notary Public: Dorothy J. Starace  
Residing at: Boise, Id  
My commission expires January 27, 2009



CONSENT WITHOUT A MEETING

The **Declarant**, (Asbury Park, LLC; whose owner is John Esposito and Lexi Esposito who are also officers/the board of directors of Greenbriar Estates Homeowners' Association, Inc.) are the owners/developers of Greenbriar Estates Subdivision No. 1 (hereinafter the "**Subdivision**") in Nampa, Idaho.

**Declarant**, hereby officially turns over the Greenbriar Estates Subdivision Homeowners' Association, including certain common areas identified as: Lots 1, 2, 8, 32, 38, 50, 51, 53, all of/in Block 1 on the official plat of the **Subdivision**; but excluding:

- 1) The privately owned storage unit(s) property (identified as Lot 39, Block 1 of the **Subdivision**), and;
- 2) The R.V. storage area (a certain parcel of land that lies adjacent to and west of Lots 16-22, Block 1 of the **Subdivision**) to the homeowners on the following condition(s):

**Declarant** hereby acknowledges that they are, and shall continue to be, responsible to continue to develop the subdivision until "build-out"; that is, until the subdivision is satisfactorily completed with all improvements and amenities of quality workmanship and materials as stipulated and required by those governmental authorities (including but not limited to the City of Nampa) appropriately involved in overseeing development of the **Subdivision**.

Transferral of the **Subdivision** by the Declarant shall not have the effect of abrogating the **Declarant's** responsibility to fully complete all City of Nampa and other local and state authorities required improvements associated with development of said **Subdivision**, and, shall not have the effect of causing the property owners therein to become responsible for the installation, repair and/or replacement of improvements therein as may be required by the City of Nampa or other governmental or irrigation district agency having jurisdiction over the **Subdivision**, until after the **Subdivision** has been signed off as acceptable by the City of Nampa.

**Declarant** hereby agrees to and accepts the above outlined conditions as presented and hereby appoints John Smolders, 3721 S. Edgeview Dr., Nampa, ID 83686, Joe Smith, 415 W. Briar Hill St., Nampa, ID 83686 and Larry De Coux, 3807 S. Greenbriar Rd., Nampa, ID 83686 as the board of directors.

**DECLARANT**

\_\_\_\_\_  
John Esposito, Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lexi Esposito, Signature

\_\_\_\_\_  
Date

**HOMEOWNER BOARD**

*[Handwritten Signature]*  
\_\_\_\_\_  
John Smolders, Signature

7-10-07  
Date

*[Handwritten Signature]*  
\_\_\_\_\_  
Joe Smith, Signature, Signature

7/10/07  
Date

*[Handwritten Signature]*  
\_\_\_\_\_  
Larry De Coux, Signature

7-10-07  
Date

*[Handwritten Signature]*  
DAN BEEL

7/23/07

000132

GBHOA00121

**EXHIBIT**

5



ACTION WITHOUT A MEETING

The Declarant; (Asbury Park, LLC; whose owner is John Esposito and Lexi Esposito who are also officers/the board of directors of Greenbriar Estates Homeowners' Association, Inc.) are the owners/developers of Greenbriar Estates Subdivision No. 1 (hereinafter the "Subdivision") in Nampa, Idaho.

Declarant, hereby officially turns over the Greenbriar Estates Subdivision Homeowners' Association, including certain common areas identified as: Lots 1, 2, 8, 32, 38, 50, 51, 53, all of/in Block 1 on the official plat of the Subdivision; but excluding:

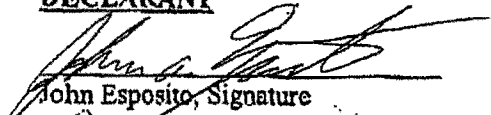
- 1) The privately owned storage unit(s) property (identified as Lot 39, Block 1 of the Subdivision), and;
- 2) The R.V. storage area (a certain parcel of land that lies adjacent to and west of Lots 16-22, Block 1 of the Subdivision) to the homeowners on the following condition(s):

Declarant hereby acknowledges that they are, and shall continue to be, responsible to continue to develop the subdivision until "build-out"; that is, until the subdivision is satisfactorily completed with all improvements and amenities of quality workmanship and materials as stipulated and required by those governmental authorities (including but not limited to the City of Nampa) appropriately involved in overseeing development of the Subdivision.

Transferral of the Subdivision by the Declarant shall not have the effect of abrogating the Declarant's responsibility to fully complete all City of Nampa and other local and state authorities required improvements associated with development of said Subdivision, and, shall not have the effect of causing the property owners therein to become responsible for the installation, repair and/or replacement of improvements therein as may be required by the City of Nampa or other governmental or irrigation district agency having jurisdiction over the Subdivision, until after the Subdivision has been signed off as acceptable by the City of Nampa.

Declarant hereby agrees to and accepts the above outlined conditions as presented and hereby appoints John Smolders, 3721 S. Edgeview Dr., Nampa, ID 83686, Joe Smith, 415 W. Briar Hill St., Nampa, ID 83686 and Larry De Coux, 3807 S. Greenbriar Rd., Nampa, ID 83686 as the board of directors.

DECLARANT

  
John Esposito, Signature

7/5/07  
Date

  
Lexi Esposito, Signature

7/5/07  
Date

HOMEOWNER BOARD

\_\_\_\_\_  
John Smolders, Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joe Smith, Signature, Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Larry De Coux, Signature

\_\_\_\_\_  
Date



2007055521

RECORDED

2007 AUG 9 PM 4 39

WILLIAM H. HURST  
CANYON CNTY RECORDER  
BY *WHH*

PIONEER TITLE COMPANY  
REQUEST  
TYPE *MD* FEE *0-*

**QUIT CLAIM DEED**

FOR VALUE RECEIVED, Asbury Park, LLC, an Idaho limited liability company, the Grantor, does hereby convey, release, remise and forever quit claim all of Grantor's right, title and interest in and to the real property hereinafter described, unto Greenbriar Estates Homeowners' Association, Inc., an Idaho non-profit corporation, the Grantee, whose address is 354 N. Cove Colony Way, Eagle, Idaho 83616, the following described premises, to wit:

Lots 2, 8, 20, 31, 32, 50, 51 and 53, Block 1, of Greenbriar Estates Subdivision, according to the official plat thereof, filed in Book 36 of Plats at Page 36, Official Records of Canyon County, Idaho, together with their appurtenances.

IN WITNESS WHEREOF, the Grantor has caused its name to be hereunto subscribed this 7 day of August, 2007.

Asbury Park, LLC,  
an Idaho limited liability company

By:

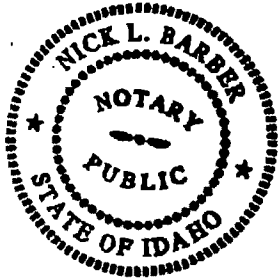
*John A. Esposito*  
\_\_\_\_\_  
John A. Esposito, Manager

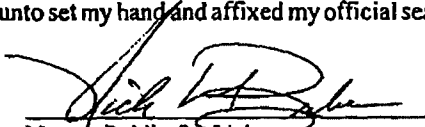
EXHIBIT  
tabbles  
6

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 17<sup>th</sup> day of August, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared John A. Esposito, known or identified to me to be the manager of Asbury Park, LLC, the person who executed the instrument on behalf of said company, and acknowledged to me that such company 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  
My commission expires: March 16, 2011

# Asbury Park LLC

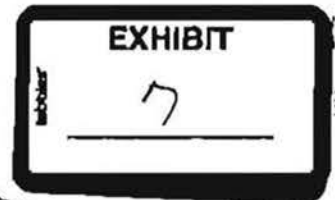
354 N Cove Colony Wy  
 Eagle, Idaho 83818  
 (208) 939-0204  
 Fax (208) 939-8247

Greenbrier Estates Subdivision  
 c/o Action Association Mgmt  
 PO Box 1177  
 Nampa, Idaho 83853-1177

Invoice Date: April 1st. 2009

Oct. 1st 2007	<b>\$3,290.00</b>
Received Check #1096	<b>\$1,120.00</b> (for 32 units)
Balance outstanding for Oct.	<b>\$2,170.00</b>
Nov. 1st 2007	<b>\$3,290.00</b>
Received check #1102	<b>\$1,120.00</b> (for 32 units)
Balance outstanding for Nov.	<b>\$2,170.00</b>
Dec. 1st 2007	<b>\$3,290.00</b>
Received check #1108	<b>\$1,155.00</b> (for 33 units)
Balance outstanding for Dec.	<b>\$2,135.00</b>
Jan. 1st 2008	<b>\$3,290.00</b>
Received check #1109	<b>\$1,155.00</b> (for 33 units)
Balance outstanding for Jan.	<b>\$2,135.00</b>
Feb. 1st 2008	<b>\$3,290.00</b>
March 1st 2008	<b>\$3,290.00</b>
April 1st 2008	<b>\$3,290.00</b>
May 1st 2008	<b>\$3,290.00</b>
June 1st 2008	<b>\$3,290.00</b>
July 1st 2008	<b>\$3,290.00</b>
•August 1st 2008	<b>\$3,290.00</b>
Sept. 1st 2008	<b>\$3,290.00</b>
Oct. 1st 2008	<b>\$3,290.00</b>
Nov. 1st 2008	<b>\$3,290.00</b>
Dec. 1st 2008	<b>\$3,290.00</b>
Jan. 1st 2009	<b>\$3,290.00</b>
Feb. 1st 2009	<b>\$3,290.00</b>
March 1st 2009	<b>\$3,290.00</b>
April 1st, 2009	<b>\$3,290.00</b>
May 1st ; 2009	<b>\$3,290.00</b>
June 1st 2009	<b>\$3,290.00</b>

**Total monies due by June 15th, 2009** **\$64,540.00**



**FAX TRANSMISSION 000136**  
 TO: *David Rany*  
 LOCATION: \_\_\_\_\_  
 FROM: *John Espada*  
 DATE: \_\_\_\_\_ TIME: \_\_\_\_\_  
 PHONE#: \_\_\_\_\_  
 FAX#: \_\_\_\_\_  
 PAGES: 1

**F I L E D**  
A.M. | 10 P.M.

**JUN 19 2009**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

**DAVID M. PENNY ISB #3631  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290**

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiffs,

v.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY.

Defendant.

Case No. CV 08-9740\*C

**AFFIDAVIT OF GREGORY G. CARTER**

STATE OF IDAHO )  
                          )ss.  
County of Ada    )

GREGORY G. CARTER, being first duly sworn upon oath, deposes and says the following:

1. I am an individual over the age of eighteen (18) and I make this affidavit of my own personal knowledge.

2. I am a professional land surveyor licensed and registered with the state of Idaho, License No. 7729. I am a surveyor with Idaho Survey Group, PC with offices at 1450 E. Watertower Street, Meridian, Idaho 83642.

3. John Esposito hired Idaho Survey Group to prepare the plat for Greenbriar Estates Subdivision. I was personally involved in the preparation of the plat. When discussing the layout for the subdivision with me, John explained that the storage shown as Lot 39, Block 1 was not a subdivision common area but would remain under the ownership of Asbury Park, LLC as the developer.

4. Attached to my affidavit as Exhibit "A" is a copy of the document that was recorded as the final plat for Greenbriar Estates Subdivision. While the plat diagram itself does not indicate the ownership of Lot 39, Block 1, Note 8 included Lot 39 in a list of lots that were "designated as common area lots and shall be owned and maintained by the Homeowner's Association as established in the subdivision covenants."

5. When the plat was prepared, a mistake was made when Lot 39 was included in Note 8 to the Greenbriar Estates Subdivision plat. Lot 39 was never intended to be a common area lot. It was so designated only by error.

6. I must also point out that Note 8 is drafted so that the "subdivision covenants" control how the lots will be owned.

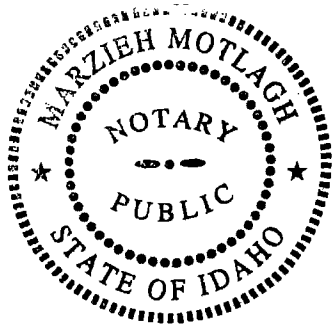
7. In July 2007, I was contacted by John Esposito. He pointed out the error created by the inclusion of Lot 39 within Note 8 to be subdivision plat. Because I agreed that an error


had occurred, I prepared and recorded an Affidavit Authorizing Correction to Plat of Greenbriar Estates Subdivision which was recorded in the records of Canyon County on July 31, 2007 as Instrument No. 2007052893. A copy of that Affidavit is attached hereto as Exhibit "B" and incorporated into my affidavit.

FURTHER YOUR AFFIANT SAITH NAUGHT

  
\_\_\_\_\_  
GREGORY G. CARTER

SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of April, 2009.



  
\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at Boise, Idaho  
Commission expires: 5/9/2009

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 14 day of <sup>June</sup>~~April~~, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Renae Points  
Hawley Troxell Ennis & Hawley, LLP  
P. O. Box 1617  
Boise, ID 83701-1617  
Served by: ~~Facsimile (208) 342-3829~~ and U.S. Mail

  
\_\_\_\_\_  
DAVID M. PENNY

# CRENSHAW BAY PLATS SUBDIVISION

LOCATED IN A PORTION OF THE SW 1/4 OF THE SE 1/4, SECTION 4  
 T2N., R2W., B1E., CANYON COUNTY, IDAHO  
 2005

LEGEND

1	1/4 AC. LOT
2	1/2 AC. LOT
3	3/4 AC. LOT
4	1 AC. LOT
5	1 1/4 AC. LOT
6	1 1/2 AC. LOT
7	1 3/4 AC. LOT
8	2 AC. LOT
9	2 1/4 AC. LOT
10	2 1/2 AC. LOT
11	2 3/4 AC. LOT
12	3 AC. LOT
13	3 1/4 AC. LOT
14	3 1/2 AC. LOT
15	3 3/4 AC. LOT
16	4 AC. LOT
17	4 1/4 AC. LOT
18	4 1/2 AC. LOT
19	4 3/4 AC. LOT
20	5 AC. LOT
21	5 1/4 AC. LOT
22	5 1/2 AC. LOT
23	5 3/4 AC. LOT
24	6 AC. LOT
25	6 1/4 AC. LOT
26	6 1/2 AC. LOT
27	6 3/4 AC. LOT
28	7 AC. LOT
29	7 1/4 AC. LOT
30	7 1/2 AC. LOT
31	7 3/4 AC. LOT
32	8 AC. LOT
33	8 1/4 AC. LOT
34	8 1/2 AC. LOT
35	8 3/4 AC. LOT
36	9 AC. LOT
37	9 1/4 AC. LOT
38	9 1/2 AC. LOT
39	9 3/4 AC. LOT
40	10 AC. LOT
41	10 1/4 AC. LOT
42	10 1/2 AC. LOT
43	10 3/4 AC. LOT
44	11 AC. LOT
45	11 1/4 AC. LOT
46	11 1/2 AC. LOT
47	11 3/4 AC. LOT
48	12 AC. LOT
49	12 1/4 AC. LOT
50	12 1/2 AC. LOT
51	12 3/4 AC. LOT
52	13 AC. LOT
53	13 1/4 AC. LOT
54	13 1/2 AC. LOT
55	13 3/4 AC. LOT
56	14 AC. LOT
57	14 1/4 AC. LOT
58	14 1/2 AC. LOT
59	14 3/4 AC. LOT
60	15 AC. LOT
61	15 1/4 AC. LOT
62	15 1/2 AC. LOT
63	15 3/4 AC. LOT
64	16 AC. LOT
65	16 1/4 AC. LOT
66	16 1/2 AC. LOT
67	16 3/4 AC. LOT
68	17 AC. LOT
69	17 1/4 AC. LOT
70	17 1/2 AC. LOT
71	17 3/4 AC. LOT
72	18 AC. LOT
73	18 1/4 AC. LOT
74	18 1/2 AC. LOT
75	18 3/4 AC. LOT
76	19 AC. LOT
77	19 1/4 AC. LOT
78	19 1/2 AC. LOT
79	19 3/4 AC. LOT
80	20 AC. LOT
81	20 1/4 AC. LOT
82	20 1/2 AC. LOT
83	20 3/4 AC. LOT
84	21 AC. LOT
85	21 1/4 AC. LOT
86	21 1/2 AC. LOT
87	21 3/4 AC. LOT
88	22 AC. LOT
89	22 1/4 AC. LOT
90	22 1/2 AC. LOT
91	22 3/4 AC. LOT
92	23 AC. LOT
93	23 1/4 AC. LOT
94	23 1/2 AC. LOT
95	23 3/4 AC. LOT
96	24 AC. LOT
97	24 1/4 AC. LOT
98	24 1/2 AC. LOT
99	24 3/4 AC. LOT
100	25 AC. LOT



NOTES:

1. ALL LOTS ARE SUBJECT TO LOT 1, BLOCK 1, PLAT 1000, 0000.
2. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.
3. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.
4. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.
5. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.
6. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.
7. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.
8. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.
9. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.
10. THE LOTS ARE TO BE USED FOR RESIDENTIAL PURPOSES ONLY.



DATE DATA

LOT NO.	ACRES	AREA	PERCENTAGE	REMARKS
1	0.25	17,424	0.0014	
2	0.50	34,848	0.0028	
3	0.75	52,272	0.0042	
4	1.00	69,696	0.0056	
5	1.25	87,120	0.0070	
6	1.50	104,544	0.0084	
7	1.75	121,968	0.0098	
8	2.00	139,392	0.0112	
9	2.25	156,816	0.0126	
10	2.50	174,240	0.0140	
11	2.75	191,664	0.0154	
12	3.00	209,088	0.0168	
13	3.25	226,512	0.0182	
14	3.50	243,936	0.0196	
15	3.75	261,360	0.0210	
16	4.00	278,784	0.0224	
17	4.25	296,208	0.0238	
18	4.50	313,632	0.0252	
19	4.75	331,056	0.0266	
20	5.00	348,480	0.0280	
21	5.25	365,904	0.0294	
22	5.50	383,328	0.0308	
23	5.75	400,752	0.0322	
24	6.00	418,176	0.0336	
25	6.25	435,600	0.0350	
26	6.50	453,024	0.0364	
27	6.75	470,448	0.0378	
28	7.00	487,872	0.0392	
29	7.25	505,296	0.0406	
30	7.50	522,720	0.0420	
31	7.75	540,144	0.0434	
32	8.00	557,568	0.0448	
33	8.25	574,992	0.0462	
34	8.50	592,416	0.0476	
35	8.75	609,840	0.0490	
36	9.00	627,264	0.0504	
37	9.25	644,688	0.0518	
38	9.50	662,112	0.0532	
39	9.75	679,536	0.0546	
40	10.00	696,960	0.0560	
41	10.25	714,384	0.0574	
42	10.50	731,808	0.0588	
43	10.75	749,232	0.0602	
44	11.00	766,656	0.0616	
45	11.25	784,080	0.0630	
46	11.50	801,504	0.0644	
47	11.75	818,928	0.0658	
48	12.00	836,352	0.0672	
49	12.25	853,776	0.0686	
50	12.50	871,200	0.0700	
51	12.75	888,624	0.0714	
52	13.00	906,048	0.0728	
53	13.25	923,472	0.0742	
54	13.50	940,896	0.0756	
55	13.75	958,320	0.0770	
56	14.00	975,744	0.0784	
57	14.25	993,168	0.0798	
58	14.50	1010,592	0.0812	
59	14.75	1028,016	0.0826	
60	15.00	1045,440	0.0840	
61	15.25	1062,864	0.0854	
62	15.50	1080,288	0.0868	
63	15.75	1097,712	0.0882	
64	16.00	1115,136	0.0896	
65	16.25	1132,560	0.0910	
66	16.50	1150,000	0.0924	
67	16.75	1167,440	0.0938	
68	17.00	1184,880	0.0952	
69	17.25	1202,320	0.0966	
70	17.50	1219,760	0.0980	
71	17.75	1237,200	0.0994	
72	18.00	1254,640	0.1008	
73	18.25	1272,080	0.1022	
74	18.50	1289,520	0.1036	
75	18.75	1306,960	0.1050	
76	19.00	1324,400	0.1064	
77	19.25	1341,840	0.1078	
78	19.50	1359,280	0.1092	
79	19.75	1376,720	0.1106	
80	20.00	1394,160	0.1120	
81	20.25	1411,600	0.1134	
82	20.50	1429,040	0.1148	
83	20.75	1446,480	0.1162	
84	21.00	1463,920	0.1176	
85	21.25	1481,360	0.1190	
86	21.50	1498,800	0.1204	
87	21.75	1516,240	0.1218	
88	22.00	1533,680	0.1232	
89	22.25	1551,120	0.1246	
90	22.50	1568,560	0.1260	
91	22.75	1586,000	0.1274	
92	23.00	1603,440	0.1288	
93	23.25	1620,880	0.1302	
94	23.50	1638,320	0.1316	
95	23.75	1655,760	0.1330	
96	24.00	1673,200	0.1344	
97	24.25	1690,640	0.1358	
98	24.50	1708,080	0.1372	
99	24.75	1725,520	0.1386	
100	25.00	1742,960	0.1400	

EXHIBIT  
 A



INSTRUMENT NO.

2007052893

AFFIDAVIT AUTHORIZING CORRECTION TO PLAT OF GREENBRIAR ESTATES SUBDIVISION

STATE OF IDAHO )
COUNTY OF ADA )

I, Gregory G. Carter, a Professional Land Surveyor, licensed by the State of Idaho and Asbury Park, LLC, do hereby certify that the plat of Greenbriar Estates Subdivision, recorded in the office of the Canyon County Recorder on September 23, 2005, in Book 36 of Plats at Page 36, Instrument No. 200560513 was prepared by us. Since the date of recording, drafting errors were discovered in Note 8 of Plat Notes on sheets 1 and 2 and on the designation of Lot 39 on sheet 2 of 3.

This affidavit is for the purpose of authorizing the Canyon County Recorder to make notation on said plat correcting these errors.

NARRATIVE:

Note 8 on sheets 1 and 2 provides that Lots 2, 8, 20, 32, 39, 50, 51 and 53, Block 1 are common area lots to be owned and maintained by the Homeowners Association and subject to a public utility easement. Lot 39 should not have been included in this note. Lot 39 is a Community Storage Facility which is privately owned. In addition, Lot 39 on sheet 2 is designated as RV Parking and Storage. Lot 39 should be designated as a Community Storage Facility. This affidavit authorizes the Canyon County Recorder to make corrections to Note 8 on sheets 1 and 2 and to make a correction to the designation of Lot 39 on sheet 2 as follows:

NOTE 8 ON SHEETS 1 AND 2 CURRENTLY READS:

8. Lots 2, 8, 20, 32, 39, 50, 51 and 53, Block 1 are designated as common area lots and shall be owned and maintained by the Homeowner's Association as established in the subdivision covenants. Said lots are subject to public utility easements.

NOTE 8 ON SHEETS 1 AND 2 SHOULD READ:

8. Lots 2, 8, 20, 32, 50, 51 and 53, Block 1 are designated as common area lots and shall be owned and maintained by the Homeowner's Association as established in the subdivision covenants. Said lots are subject to public utility easements.

LOT 39 DESIGNATION ON SHEET 2 CURRENTLY READS:

RV Parking and Storage

LOT 39 DESIGNATION ON SHEET 2 SHOULD READ:

Community Storage Facility

PIONEER TITLE COMPANY

REQUEST

TYPE Miss Fee Co. 00

Greenbriar Affidavit of Correction

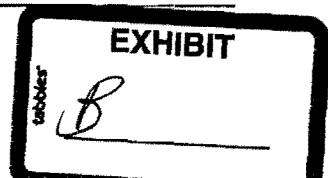
WILLIAM H. BURST
CANYON COUNTY RECORDER
[Signature]

2007 JUL 31 PM 4 19

RECORDED

2007052893

Page 1 of 2



*John A. Esposito*

Asbury Park, LLC  
An Idaho Limited Liability Co.  
John A. Esposito, Manager

*Gregory G. Carter* 7/31/07

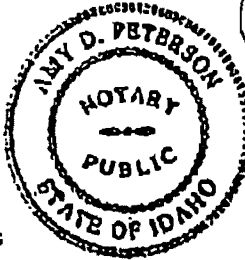
Gregory G. Carter, PLS  
Idaho Certification No. 7729



STATE OF IDAHO )  
                          ) ss  
COUNTY OF ADA )

On this 31 day of July, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared John A. Esposito, known or identified to me to be the manager of Ashbury Park, LLC, the person who executed this instrument on behalf of said company, and acknowledged to me that such company 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.

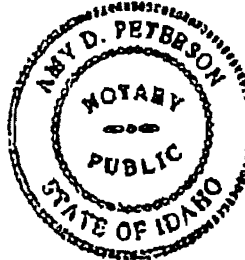


*Amy D. Peterson*  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 01/1/2011

STATE OF IDAHO )  
                          ) ss  
COUNTY OF ADA )

On this 31 day of July, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory G. Carter, known to me to be the person whose name is subscribed to the within instrument, 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 in this certificate first above written.



*Amy D. Peterson*  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 01/1/2011

DAVID M. PENNY ISB #3631  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290

**FILED**  
A.M. 11:00 P.M.  
**JUN 19 2009**  
CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiffs,

v.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY.

Defendant.

Case No. CV 08-9740\*C

**AFFIDAVIT OF JARED SHERBURNE**

STATE OF IDAHO )  
  )ss.  
County of Ada        )

JARED SHERBURNE, being first duly sworn upon oath, deposes and says the following:

1. I am an individual over the age of eighteen (18) and I make this affidavit of my own personal knowledge.

2. During 2005 and 2006 I was a fifty percent (50%) owner of Jared Enterprises, Inc., Rocky Ridge Group, LLC, and Rocky Ridge GB, LLC which collectively did business as Rocky Ridge Homes. Mike Pearson was my business partner and owned fifty percent (50%) of all the entities mentioned above.

3. Over a period of time in 2005 and 2006, Rocky Ridge Homes, through the business entities mentioned above, purchased all of the original ninety-four (94) lots in Greenbriar Estates Subdivision No. 1 from Asbury Park, LLC as the developer.

4. Prior to the purchase of the ninety-four (94) Greenbriar Estates lots, Mike Pearson and I discussed the storage facility with Mr. Esposito as the owner and representative of Asbury Park, LLC. From those discussions, it was clear to me that the storage facility was to be privately owned by the developer and the relationship with lot owners would be as set forth in the CC&Rs.

5. While Mike and I were deciding whether to purchase lots in Greenbriar Estates, I had the opportunity to review and comment on the Covenants, Conditions, and Restrictions (hereinafter "CC&Rs") that were under consideration. Prior to us purchasing the original ninety-four (94) lots in Greenbriar Estates Subdivision No. 1, I reviewed the provisions in the CC&Rs regarding the storage facility. From reviewing the CC&Rs I understood that Asbury Park, LLC as the developer would own the storage facility, not the subdivision Association. I understood that each purchaser of a lot would be assigned a storage unit for which they would pay a mandatory rental fee. The rental fees would be collected by the Greenbriar Estates

Homeowners' Association and then paid to Asbury Park as the developer. I understood that the obligation to make rental fee payments on the lots commenced with the purchase the lots.

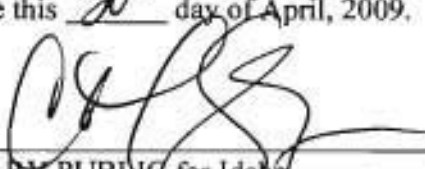
6. The CC&Rs show that they were recorded on October 4, 2005. Rocky Ridge Homes through the various entities purchased all ninety-four (94) lots after that date and over a period of time during 2005 and 2006. We agreed to purchase the ninety-four (94) lots in Greenbriar Estates Subdivision No. 1 with the understanding and knowledge regarding the storage facility as recited in my affidavit. As we purchased lots, we commenced paying the storage rental fees.

FURTHER YOUR AFFIANT SAITH NAUGHT

  
\_\_\_\_\_  
JARED SHERBURNE

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of April, 2009.




  
\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at Arco, Idaho  
Commission expires: 09/2012

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 19 day of ~~April~~ <sup>June</sup>, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Renae Points  
Hawley Troxell Ennis & Hawley, LLP  
P. O. Box 1617  
Boise, ID 83701-1617  
**Served by: U.S. Mail**

  
DAVID M. PENNY

**DAVID M. PENNY ISB #3631**  
COSHO HUMPHREY, LLP  
800 PARK BLVD., STE. 790  
BOISE, ID 83712  
PO BOX 9518  
BOISE, ID 83707-9518  
Telephone (208) 344-7811  
Facsimile (208) 338-3290

**FILED**  
A.M. / P.M.

**JUN 19 2009**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ASBURY PARK, LLC, an Idaho limited liability company; and JOHN ESPOSITO, an individual,

Plaintiffs,

v.

GREENBRIAR ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation; DEBRA HOBBS a/k/a DEBBIE HOBBS, an individual d/b/a ACTION ASSOCIATION MANAGEMENT COMPANY.

Defendant.

Case No. CV 08-9740\*C

**AFFIDAVIT OF MIKE E. PEARSON**

STATE OF IDAHO )  
  )ss.  
County of Ada         )

MIKE E. PEARSON, being first duly sworn upon oath, deposes and says the following:

1. I am an individual over the age of eighteen (18) and I make this affidavit of my own personal knowledge.

2. During 2005 and 2006 I was a fifty percent (50%) owner of Jared Enterprises, Inc., Rocky Ridge Group, LLC, and Rocky Ridge GB, LLC which collectively did business as Rocky Ridge Homes. Jared Sherburne was my business partner and owned fifty percent (50%) of all the entities mentioned above. Jared and I were both involved in the day-to-day management and operation of those entities.

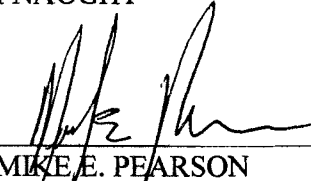
3. Over a period of time in 2005 and 2006, Rocky Ridge Homes, through the business entities mentioned above, purchased all of the original ninety-four (94) lots in Greenbriar Estates Subdivision No. 1 from Asbury Park, LLC as the developer. I understood that John Esposito was the owner and manager of Asbury Park, LLC.

4. Prior to the purchase of the lots, John Esposito informed me and Jared that Asbury Park was going to develop a storage facility on one of the subdivision lots and that Asbury Park as the developer would retain ownership of the storage facility. I understood that each owner of a lot in the Greenbriar Estates Subdivision would have a storage unit assigned and would be charged a mandatory rental fee that would be collected by the Greenbriar Homeowners' Association and paid to Asbury Park as the developer. I knew that the obligation to pay the rental fee would commence upon the purchase of the lots. It was clear to me that the storage facility was not to be owned by the subdivision Association.

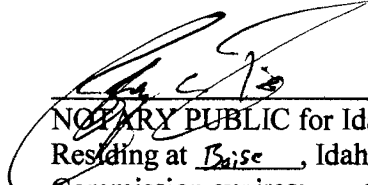
5. With knowledge of the terms regarding the storage facility as set forth in this Affidavit, the original ninety-four (94) lots in Greenbriar Estates Subdivision No. 1 were purchased from Asbury Park with the closings on the purchase of the lots spread over a period of time during 2005 and 2006. As we closed on the purchase of lots in the Greenbriar Estates Subdivision, we commenced the payment of the storage rental fees.

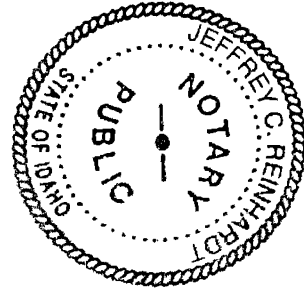


FURTHER YOUR AFFIANT SAITH NAUGHT

  
\_\_\_\_\_  
MIKE E. PEARSON

SUBSCRIBED AND SWORN to before me this 20th day of April, 2009.


  
\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at Boise, Idaho  
Commission expires: April 27, 2013



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 19 day of <sup>June</sup> ~~April~~, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Michelle Renae Points  
Hawley Troxell Ennis & Hawley, LLP  
P. O. Box 1617  
Boise, ID 83701-1617  
Served by: ~~Facsimile (208) 342-3829~~ and U.S. Mail

  
DAVID M. PENNY