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BONNER COUNTY, SANDPOINT, IDAHO

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MARIE SCOTT

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Ex-Officio Recorder Deputy

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Index to: MISC

**ADDENDUM TO
DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
STATE SUBDIVISION – HESS POINT
BONNER COUNTY, IDAHO**

THIS ADDENDUM TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (“Addendum”), is made on this 12th day of February, 2013, by the **STATE OF IDAHO, Department of Lands**, with reference to the following facts:

A. The State recorded a Declaration of Covenants, Conditions and Restrictions encumbering the State Subdivision – HESS POINT on 22nd day of February, 2013 as Instrument No. 840172, records of Bonner County, Idaho.

B. The State desires to temporarily supersede and add to the provisions of the Declaration with this Addendum.

C. The State hereby declares that the Property, as defined below, shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the subdivision and sale of the Property as a rural, lake front residential community. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon the Owners, Lessees, as defined below, their successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property.

**ARTICLE 1.
INCORPORATION BY REFERENCE**

1.1 “Definitions.” The terms defined in Article 1 of the Declaration are incorporated herein by reference. A capitalized term in this Addendum shall have the same meaning as provided in the Declaration unless defined differently herein.

1.2 Owners Include Lessees. Lessees shall be bound by all terms of the Declaration to the same extent as Owners, whether or not it shall be so expressed in the lease. Unless expressly modified herein, the term Owner in the Declaration shall include Lessee.

ARTICLE 2.
ADDITIONAL AND SUPERSEDING DEFINITIONS

The following terms as used herein and in the Declaration are defined as follows until terminated under Section 4.1 below:

2.1 "Cottage Site" shall mean a particularly described Lot owned by the State in fee simple that is available for lease or is currently leased for the purpose of constructing and maintaining a residence.

2.2 "Improvements" shall mean buildings or other relatively permanent structures, additions, or development located on, or attached to, the Cottage Site including, but not limited to, buildings, garages, fences, sheds, homes, driveways and decks.

2.3 "Lease" shall mean the any lease in effect during the term of this Addendum for a Cottage Site between the State and the Lessee of a Lot.

2.4 "Lessee" shall mean a lessee of a Cottage Site.

2.5 "Mortgage", while the State Land Board owns and leases the Cottage Site, includes a recorded mortgage, deed of trust, real estate contract, or other instrument creating a voluntary security interest in Lessee's leasehold interest in the Cottage Site and in the Lessee's title to the Improvements constructed or to be constructed on the Cottage Site, for which the State Land Board has given its prior written consent. No Mortgage shall be valid or enforceable without the State Land Board's prior written consent.

2.6 "Mortgagee", while the State Land Board owns and leases the Cottage Site, includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a voluntary security interest in Lessee's title to the Cottage Site and to the Improvements constructed on the Cottage Site.

2.7 "Property" or "Project" shall mean the land described in Recital A of the Declaration, and every easement or right appurtenant thereto. While the State Land Board owns the Cottage Site, Improvements and all personal property thereon shall not be included in the definition of Property or Project because each are owned by the Lessee.

ARTICLE 3.
THE STATE'S RIGHTS AND RESERVATIONS

3.1 The State is undertaking the establishment of a subdivision on the Property. In order that the sale of all Cottage Sites may be completed, nothing in the Declaration shall be understood or construed to:

(a) Prevent the State, or its respective contractors or subcontractors, from doing on the Property or within any Cottage Site, whatever is reasonably necessary or advisable in connection with the disposition of the Cottage Sites.

(b) Prevent the State from:

(1) amending the Plat to designate a particular Cottage Site as Common Area and obligating the Association to maintain that Common Area without any approval of the Owners, Lessees or Mortgagees;

(2) making such special provisions relating to the operation and use of any Cottage Site as the State may deem appropriate, including the imposition of special conditions on any Cottage Sites and/or exempting any Cottage Site from any or all provisions of the Declaration without any approval of the Owners, Lessees or Mortgagees;

(3) amending the Declaration in any manner, including amendments of a material nature as set forth in Article 5 of the Declaration, without any approval of the Owners, Lessees or Mortgagees; or

(4) de-annexing any Cottage Site from the Project and Plat without any approval of the Owners, Lessees or Mortgagees.

3.2 Prevent the State from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of establishing said Property as a subdivision, and disposing of the Cottage Sites by sale, lease or otherwise.

3.3 Prevent the State from maintaining such sign or signs on any portion of the Property as may be necessary for the sale, lease or disposition thereof.

3.4 All un-leased Cottage Sites owned by the State shall be exempt from all covenants, conditions and restrictions set forth in the Declaration, including, but not limited to, the restrictions set forth in Article 3 and Assessments as set forth in Article 4 of the Declaration.

3.5 At all times that the State owns the any Cottage Site, the State shall be exempt and shall not be required to comply with any provision of County Code. The exemption is based in part upon Idaho Code § 58-307, *Fenwick v. Idaho Dept. of Lands*, 144 Idaho 318, 160 P.3d 757 (2007), and *State ex rel. Kempthorne v. Blaine County*, 139 Idaho 348, 79 P.3d 717 (2003).

ARTICLE 4. **TERMINATION OF ADDENDUM**

4.1 The covenants, conditions, restrictions, additions and modifications of the Declaration as set forth in this Addendum shall terminate when the State no longer owns any Cottage Site.

ARTICLE 5.
MEMBERSHIP IN ASSOCIATION

5.1 State Membership. The State shall not be a Member of the Association. The State shall be exempt from all duties and obligations imposed upon a Member of the Association.

5.2 Lessee Membership. In accordance with the terms of the Lease, Lessees shall automatically, upon becoming the Lessee of a Cottage Site, be a Member of the Association, and shall remain a Member thereof until such time as its Lease terminates or is assigned with the State's written approval, at which time the Lessee's membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

ARTICLE 6.
ASSESSMENTS

6.1 Lessee's Personal Obligation for Assessments. For purposes of Assessments, Lessees shall have the same obligation to pay Assessments as Owners set forth in the Bylaws, provided however, any lien created shall encumber only the leasehold interest together with Lessee's interest in the Improvements (as the personal property of Lessee), and it shall not encumber the fee simple title of the State.

6.2 Transfer of Leasehold Interest by Assignment or Foreclosure. The assignment, sale or transfer of any Lease interest shall not affect any Assessment lien, or relieve the Lessee (current or former) from any liability therefore, whether the lien pertains to payments becoming due prior or subsequent to such assignment, sale or transfer. Notwithstanding the foregoing, the assignment, sale or transfer of any Lease pursuant to foreclosure or by deed in lieu of foreclosure of a recorded first Mortgage encumbering the leasehold interest given in good faith and for value shall extinguish the lien of all such Assessments as to payments which became due prior to such assignment, sale or transfer. Assignment, sale or transfer pursuant to the Mortgage foreclosure or by deed in lieu of foreclosure shall not, however, relieve the Lessee from personal liability for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Paragraph shall be deemed to be Common Expenses collectible from all of the Owners and Lessees, including the Cottage Site for which the lien was extinguished.

In a voluntary assignment, sale or transfer of a Lease, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the leasehold interest conveyed be subject to a lien for, any unpaid Assessments made by

the Association against the grantor in excess of the amount set forth in the statement; provided however, the grantee shall be liable for any such Assessment becoming due after the date of any such statement.

6.3 State Exemption from All Assessments. The State shall never be required to pay any Assessments for any Cottage Site owned by it whether such Cottage Site is leased or un-leased. Each such Assessment, together with interest, costs, penalties and actual attorneys' fees, shall be the personal obligation of any Lessee of such Cottage Site at the time when the Assessment was due. During the time a Cottage Site is un-leased, no Assessments shall be levied against that Lot.

6.4 Allocation of Assessments. Each Lot and leased Cottage Site shall bear an equal share of each aggregate Regular and Extraordinary Assessment. The Cottage Sites owned by the State, but not leased, shall bear no responsibility for Assessments.

6.5 Date of Commencement of Assessment; Due Date. The Regular Assessments provided for in the Bylaws shall commence upon sale or lease of a Cottage Site. Due dates of Assessments shall be established by the Board of Directors of the Association, on written Notice to all Owners and Lessees. If a Lot is sold or leased by the State, the Owner or Lessee shall be responsible for all Assessments that are levied after the recording of the deed for the Cottage Site or the date of the Lease.

ARTICLE 7. AMENDMENT OF DECLARATION

7.1 Lessees shall be entitled to vote as an Owner on all amendments of the Declaration as set forth in Article 5 and Article 6 of the Declaration.

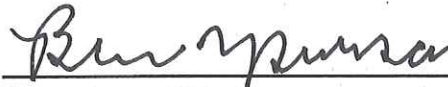
IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the Director, Idaho Department of Lands.

THE STATE BOARD OF LAND
COMMISSIONERS



Governor of the State of Idaho and
President of the State Board of Land
Commissioners

Countersigned:



Secretary of State



Director, Idaho Department of Lands

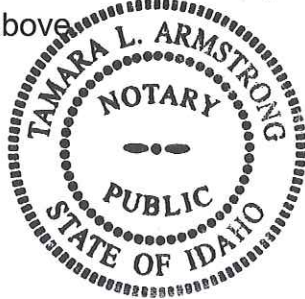
THE STATE OF IDAHO)

) ss.

COUNTY OF ADA)

On this 12th day of February, 2013, before me, a Notary Public in and for said The State, personally appeared **C.L. "BUTCH" OTTER**, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners; **BEN YSURSA**, known to me to be the Secretary of State for the State of Idaho; and **THOMAS M. SCHULTZ, JR.**, known to me to be the Director of Department of Lands of the State of Idaho, that executed the same instrument and acknowledged to me that such The State of Idaho and The State Board of Land Commissioners executed same.

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



Tamara Armstrong
NOTARY PUBLIC for Idaho
Residing at Boise,
Idaho
My Commission expires: 12/26/18