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

**STATE SUBDIVISION – HESS POINT**

**BONNER COUNTY, IDAHO**

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**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,** is made on this 12<sup>th</sup> day of February, 2013, by the **STATE OF IDAHO, Board of Land Commissioners, by and through the Idaho Department of Lands,** with reference to the following facts:

A. The State Land Board is the owner of sixteen (16) residential Lots located in the Cavanaugh Bay Area of Priest Lake, Bonner County, Idaho, known as “STATE SUBDIVISION – HESS POINT.” The land encumbered by this Declaration is more particularly described as follows:

All land located within the Plat of “STATE SUBDIVISION – HESS POINT,” according to the Plat filed 22<sup>nd</sup> day of February, 2013, in Book “10” of Plats, Pages 166, as Instrument No. 840163, records of Bonner County, Idaho.

B. In addition to ownership of individual Lots, the Owners will hold a membership in an incorporated nonprofit Association, known or to be known as the HESS POINT Owner’s Association, Inc., which Association will operate and maintain certain properties and facilities within the Plat and assume maintenance obligations under certain easements over State land.

The State Land Board hereby declares that the Property 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 Owners, their successors-in-interest and assigns, Association, and all parties having or acquiring any right, title, or interest in or to any part of the Property subject to the rights reserved by the State Land Board in the Addendum.

**ARTICLE 1.  
DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in the Project Documents, shall have the following meanings:

1.1 “Addendum” shall mean the “Addendum to Declaration of Covenants, Conditions, and Restrictions” of equal date herewith or as may be amended from time to

time, that provides additional definitions and covenants related to Cottage Site Leases between the State of Idaho, Board of Land Commissioners and its Lessees.

1.2 "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.

1.3 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating, insuring, and managing the Common Area (if any) and meeting other obligations of the Association, which is to be paid by the Owners as determined by the Association under the Bylaws. Assessments may be designated as Regular Assessments or Extraordinary Assessments, as those terms are more specifically defined in the Bylaws.

1.4 "Association" shall mean the HESS POINT Owner's Association, Inc., an Idaho nonprofit corporation, formed by the State in conjunction with the recordation of this Declaration, the Members of which shall be Owners of Lots within the Property as provided herein, and any successor-in-interest thereto.

1.5 "Board" or "Board of Directors" shall mean the Board of Directors of the Association, as it shall be constituted from time to time.

1.6 "Bylaws" shall mean the Bylaws of the Association as restated or amended from time to time.

1.7 "Common Area" shall include property identified on the Plat as Common Area (if any), which may include roads, easements and rights-of-way. Common Area shall also include additional property or property rights obtained by the Association in the future. If no land on the Plat is labeled "Common Area", none exists as of the date of recording of the Plat.

1.8 "Common Expenses" shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area (if any), meeting obligations of the Association and of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents.

1.9 "County" shall mean Bonner County, Idaho.

1.10 "County Code" shall mean the Bonner County Revised Code as amended, superseded or repealed.

1.11 "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions, as it may be amended from time to time.

1.12 "Lot" shall mean a platted parcel of land which is part of the Plat.

1.13 "Member" shall mean a member of the Association. Every Owner of a Lot shall be a Member of the Association, except where said Lot Owner is the State Land Board.

1.14 "Mortgage" includes a recorded mortgage, deed of trust, real estate contract, or other instrument creating a voluntary security interest in any Lot.

1.15 "Mortgagee" includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a voluntary security interest in any Lot.

1.16 "Owner" or "Owners" shall mean the record holder or holders of title to a Lot within the Property, except that the State Land Board shall not be considered an Owner for purposes of this Declaration. The term "Owner" or "Owners" shall include any person having a fee simple title to any Lot, but shall exclude Mortgagees and any other persons or entities having any interest merely as security for the performance of any obligation. Further, if a Lot is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "Owner."

1.17 "Person" shall mean any natural person, corporation, partnership, association, trustee, or other legal entity, but shall not include the State Land Board.

1.18 "Plat" shall refer to the recorded plat for "STATE SUBDIVISION – HESS POINT" and any amendments thereto. The Plat identifies each Lot and shows its relative location and dimensions.

1.19 "Project Documents" shall mean the Plat, this Declaration, the Addendum, and the Articles, Bylaws, and any properly adopted rules and regulations of the Association, as each shall be amended from time to time.

1.20 "Property" or "Project" shall mean the land described in Recital A of this Declaration, together with all buildings, improvements and structures thereon owned by the Owner of the fee interest in the land, and every easement or right appurtenant thereto.

1.21 "State Land Board" shall mean the State of Idaho, Board of Land Commissioners, acting by and through the Idaho Department of Lands, collectively.

## **ARTICLE 2.**

### **ASSOCIATION ADMINISTRATION MEMBERSHIP AND VOTING RIGHTS**

2.1 Organization of Association. The Association shall be incorporated under the name of HESS POINT Owner's Association, Inc., as a nonprofit corporation under the Idaho Nonprofit Corporation Act.

2.2 Duties and Powers. The duties and powers of the Association are those set forth in the Articles and Bylaws, together with its general and implied powers as a nonprofit corporation, generally to do any and all things that a nonprofit corporation organized under the laws of the State of Idaho may lawfully do, including, but not limited to, the performance of, and compliance with, all duties, responsibilities, terms and conditions set forth herein.

2.3 Membership. The Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association, and shall remain a Member thereof until such time as its ownership ceases for any reason, at which time its membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and the Bylaws of the Association.

**ARTICLE 3.**  
**CONSTRUCTION STANDARDS AND USE RESTRICTIONS**

In addition to all of the covenants contained herein, the use of the Property and each Lot therein is subject to the following:

3.1 Single-Family Residential Use. No Lot shall be occupied and used except for single-family residential purposes by the Owner and its family, or by a single-family tenant, which fits within with the rustic character of the Idaho Panhandle National Forests. No more than one (1) Single-Family Dwelling shall be allowed on any Lot.

3.2 Mobile Homes. Mobile homes shall not be placed on the Property.

3.3 Manufactured or Modular Homes. Manufactured or modular homes that comply with all applicable building codes, have a minimum 4:12 roof pitch, meet applicable Bonner County snow load requirements for this area, and are installed on a permanent foundation shall be allowed.

3.5 Permits; Construction Standards. Each Owner shall comply with all applicable federal, state, and local laws, rules, and regulations and procure at its own expense all licenses and permits required by such laws, rules, and regulations related to the use of the Lots. Construction standards and setbacks shall be in accordance with County Code. Notwithstanding the foregoing, any nonconforming structures, uses of land and structures or characteristics of use that were approved by the State Land Board are permitted to continue; provided, however, nonconformities shall not be enlarged upon, expanded or extended. Construction standards and setbacks shall be in accordance with County Code.

- a. Setback Requirements. Structures shall be setback from the ordinary high water mark a minimum of forty feet (40'). The side setback shall be fifteen feet (15') from the side lot lines. The front setback shall be twenty-five feet (25') from the front lot line. Setbacks to be measured from outer edge of building eaves and decks.
- b. Building Height. The maximum height of any structure shall be thirty-five feet (35') above ground level on the waterfront or front side.

3.6 Environmental Protection. Lot development and uses shall conform to the County Land, Title 12, Chapter 7 Environmental Standards, as may be amended from time to time, unless otherwise noted herein.

3.7 Fire Hazards. Lots shall be maintained to reduce fire hazards by the elimination of fine fuels and dead material on the Lot to provide a natural but managed appearance.

3.8 Protection of Forest Resources. Other forest resources shall be protected, such as archeological resources, sensitive plant and animal species, water quality and fish habitat.

3.9 Fences. Fences on Lots to establish lot perimeter or to exclude accessibility onto or across the site are not be permitted.

3.10 Colors, Roofing and Siding. All structures shall be painted with earth tone colors. Examples of earth tone colors include natural weathered wood, varnished, painted, or stained siding using dark green, brown, gray or red tones that will blend into the natural surroundings. Natural stone-faced structures, which conform to County Code, are acceptable. Roofs may be metal. Roofs and siding must be non-reflective and painted with earth tone colors. Siding on all new and replacement structures must be metal, cementitious, wood, or masonry.

#### **ARTICLE 4.**

#### **ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Assessments as set forth in the Bylaws. All Assessments, together with interest, costs, penalties, and actual attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each Assessment is made, the lien to become effective upon recordation of a Notice of Assessment Lien by the Board as required by law (and limited in duration as provided by law). Each such Assessment, together with interest, costs, penalties, and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area (if any) or any other part of the Project, or by the abandonment of his or her Lot.

4.2 Transfer of Lot by Sale or Foreclosure. The sale or transfer of any Lot shall not affect any Assessment lien, or relieve the Lot from any liability therefore, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Lot pursuant to foreclosure or by deed in lieu of foreclosure of a recorded bona fide first mortgage given in good faith and for value shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer. Sale or transfer pursuant to mortgage foreclosure or by deed in lieu of foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Furthermore, any Assessments for which the liens are extinguished pursuant to this Paragraph shall be deemed to be Common Expenses collectible from all of the Lots, including the Lot for which the lien was extinguished.

In a voluntary conveyance of a Lot, 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 Lot 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.

**ARTICLE 5.**  
**RIGHTS OF MORTGAGEES**

In order to induce various lenders and lending agencies to participate in the financing of any sale of Lots within the Property, this Article 5 is included in this Declaration. To the extent these added provisions pertaining to the rights of such lenders and lending agencies conflict with any other provisions of this Declaration or any other of the Project Documents EXCEPT THE ADDENDUM, these added restrictions shall control.

5.1 No Impairment. The following rights of a Mortgagee shall not be impaired:

- (a) To foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage;
- (b) To accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or
- (c) To sell or lease a Lot so acquired by the Mortgagee without interference.

5.2 Subordination. Any lien created or claimed in the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgage which encumbers all or any interest in a Lot, made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. If any Lot and/or interest therein is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for Assessments, or installments of Assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for Assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Lot or interest therein free of the lien for Assessments or installments that have accrued up to the time of the foreclosure sale. On taking title to the Lot and/or interest therein, the foreclosure purchaser shall be obligated to pay only Assessments or other charges levied or assessed by the Association that become due or payable on or after the foreclosure purchaser acquired title to the Lot and/or interest therein. The subsequently levied assessment or other charges may include previously unpaid Assessments, provided all Lot Owners, including the foreclosure-purchaser and its successors and assigns, are required to pay their proportionate share of such assessment as provided herein. As used herein, the term "foreclosure" shall include both judicial and nonjudicial (i.e., trustee's sales), and a deed (or assignment) in lieu of foreclosure.

5.3 Amendment of Declaration. No amendment to this Declaration shall affect the rights of the holder of any first Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

5.4 Mortgagee Protection Clause. No breach of any covenants, conditions and restrictions in this Declaration, nor the enforcement of any of the lien provisions herein, shall defeat or render invalid the rights under any Mortgage on any Lot made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Lot Owner whose title is derived through foreclosure or otherwise.

## **ARTICLE 6. DURATION AND AMENDMENT**

6.1 Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded, meeting the requirements of an amendment to this Declaration as set forth in Paragraph 6.2.

6.2 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the Notice of any meeting of the Association at which the proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of the Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association.

Notwithstanding the foregoing, the following special voting provisions shall apply: the Director of the Department of Lands must provide its written consent to any amendment so long as the State owns a Lot. If such written consent is not provided, the amendment shall fail.

A certificate, signed and sworn to by two (2) officers of the Association, that the record Owners of the required number of Lots have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The written consent of the Director of the Department of Lands must separately be recorded as evidence of its consent to any Amendment. The Association shall maintain in its files the record of all such votes or written consents for a period of at least five (5) years.

## **ARTICLE 7. GENERAL PROVISIONS**

7.1 Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

7.2 Conflict of Project Documents. If there is any conflict among or between the Project Documents, priority shall be given to Project Documents in the following order: the Plat, the Addendum, this Declaration, the Articles, the Bylaws, and the rules and regulations of the Association.



7.3 Addendum. The State Land Board will record an Addendum to this Declaration that provides specific rights to Lessees of Lots under the Cottage Site Lease Program of the State Land Board by and through the Idaho Department of Lands. The Addendum shall terminate and have no further effect after the State no longer owns any Lot.

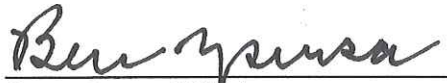
IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the Director, Idaho Department of Lands.

STATE BOARD OF LAND COMMISSIONERS



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

Countersigned:



Secretary of State



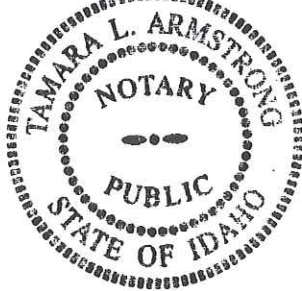
Director, Idaho Department of Lands

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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