

Perkins

**AMENDED AND RESTATED ADDENDUM TO
DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

**AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION
AND SOUTHWEST PAYETTE COTTAGE SITES**

VALLEY COUNTY, IDAHO

THIS AMENDED AND RESTATED ADDENDUM TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Addendum"), is made on this 24th day of March, 2014, by the STATE BOARD OF LAND COMMISSIONERS ("State Land Board"), by and through the Idaho Department of Lands (hereinafter referred to as the "State Land Board" or generally as the "State"), with reference to the following facts:

A. The State recorded a Declaration of Covenants, Conditions and Restrictions encumbering the State Subdivision – Amended Cedar Knoll Acres, Amended Pinecrest Addition, Southwest Payette Cottage Sites on the 14th day of November, 2013 as Instrument No. 381830, records of Valley County, Idaho.

B. The State previously recorded that certain Addendum to Declaration of Covenants, Conditions, and Restrictions, Amended Cedar Knoll Acres, Amended Pinecrest Addition and Southwest Payette Cottage Sites, Valley County, Idaho, recorded in the records of Valley County, Idaho, November 14, 2013, as Instrument No. 381831. This Amended and Restated Addendum is intended to replace said Addendum which is Instrument No. 381831.

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

D. 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 said limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be 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 for the continuing term of this Addendum.

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 and shall enjoy the rights afforded by all terms of the Declaration to the same extent as Owners, whether it is 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 within the platted area that is available for lease or is currently leased for the purpose of constructing and maintaining a residence.

2.2 **"Lease"** shall mean any lease in effect during the term of this Addendum for a Cottage Site between the State and the Lessee of a Lot, but shall not include rental agreements or leases executed for a term of less than one year.

2.3 **"Lessee"** shall mean a lessee of a Cottage Site for a lease term of at least one year.

2.4 **"Mortgage"**, while the State Land Board owns and leases the Cottage Site, which 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 which may also provide a voluntary security interest in the Lessee's title to the Personal Property constructed or to be constructed on the Cottage Site, for which the State Land Board has given its prior written consent. No Mortgage, or Mortgage and security interest on any of Lessee's Cottage Site leasehold interest or security interest in the Personal Property, shall be valid or enforceable without the State Land Board's prior written consent, and in no event shall any such Mortgage or security interest extend to, or include, state-owned land.

2.5 **"Mortgagee"**, while the State Land Board owns and leases the Cottage Site, a "Mortgagee" includes a mortgagee, lender, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a voluntary security interest in Lessee's leasehold interest in the Cottage Site and/or to the Personal Property constructed on the Cottage Site.

2.6 "Personal Property" 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.

2.7 "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, the Personal Property and all personal belongings thereon belonging to Lessee 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 While State endowment lands are not subject to local zoning laws, for the purposes of the use and development of State-owned Lots within the Plats, the Board, as a matter of comity and in order to maximize the long term financial return to the endowment, agrees that State-owned Lots will be used and developed in accordance with applicable local planning and zoning ordinances and procedures.

3.2 All un-leased Cottage Sites owned by the State shall be exempt from all Assessments.

3.3 Except as otherwise provided herein, the State shall be exempt and shall not be required to comply with any provision of County Code and City Code.

ARTICLE 4.

TERMINATION OF ADDENDUM

4.1 The terms of 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 and the Lessee's successor-in-interest shall become a Member. Membership shall be in accordance with and Lessees shall enjoy all rights accorded to Owners under the Articles and Bylaws of the Association and the Declaration. Lessees who execute the 2014 lease and subsequent leases offered by the State shall be deemed a Member of the Association incorporated with the office of

the Idaho Secretary of State on the 3rd day of March, 2014. No Assessment by the Association shall be made prior to the effective date of the lease on January 1, 2014.

5.3. Number and Term of Directors. The Initial Board shall consist of three (3) Directors, who shall serve until the first annual meeting of the Members. The Initial Directors shall consist of one (1) Owner who is also a Lessee, who shall be designated by the Lessees; one (1) Pre-Existing Owner, provided the pre-existing Owner has subjected such Owner's Lot to the Declaration, either as a Permanent Member or Provisional Member and who shall be designated by the Citizens for Payette Lake, an unincorporated Idaho Association ("CPL"); and one (1) person who shall be selected by the other two said Directors, or as hereinafter provided. Within seven (7) days of the designation of Directors by the Lessees and the CPL, the two said Directors shall meet and designate a third Director. In the event the two said Directors cannot agree on a third Director, then a special election shall be held within twenty (20) days from the meeting of the two Directors in which the both the Lessee Members and the Pre-existing Owner Members shall vote and elect the third Director.

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 Declaration and Bylaws, provided however, any lien created shall encumber only the leasehold interest together with Lessee's interest in the Personal Property (as the personal property of Lessee), and shall in no way 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 not 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 Common and Special 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 Common 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 in accordance with the terms of the Declaration and Bylaws. 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.

STATE BOARD OF LAND
COMMISSIONERS



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

Countersigned:

Ben Ysursa
Secretary of State

Thomas M. Schultz, Jr.
Director, Idaho Department of Lands



THE STATE OF IDAHO)

) ss.

COUNTY OF ADA)

On this 26th day of March, 2014, 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.



Vanessa Wilson
NOTARY PUBLIC for Idaho
Residing at Borise,
Idaho
My Commission expires: 8-11-2014