

**ORIGINAL**

EXHIBIT 1 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

DEPT. OF LANDS  
2019 APR 15 PM 4:26  
BOISE, IDAHO

EXHIBIT 1 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT



**STATE BOARD OF LAND COMMISSIONERS**  
 C. L. "Butch" Otter, Governor and President of the Board  
 Ben Ysursa, Secretary of State  
 Lawrence G. Wasden, Attorney General  
 Brandon D. Woolf, State Controller  
 Tom Luna, Superintendent of Public Instruction

Tom Schultz, Secretary to the Board

Second Revised FINAL Agenda  
 State Board of Land Commissioners' Regular Meeting  
 July 16, 2013 – 9:00 AM  
 Capitol Auditorium (WW02), Lower Level, West Wing, 700 W Jefferson St, Boise

**1. Director's Report**

- A. Interest Rate on Department Transactions – July 2013
- B. Timber Sale Activity and Information Report – June 2013
- C. Division of Lands and Waterways Activity and Information Report – June 2013
- D. Legal Matter Summary – June 2013
- E. Fire Season Report – June 2013
- F. Forecast/Revenue Update

**2. Endowment Fund Investment Board Manager's Report – Presented by Larry Johnson, EFIB Manager of Investments**

- A. Manager's Report
- B. Investment Report

• **CONSENT**

**3. Timber Sales for Approval – Staffed by Eric Besaw, Regional Operations Chief-North, and Kurt Houston, Regional Operations Chief-South**

NORTH OPERATIONS

A. Thorn Mash OSR	CR-30-0603	4,590	MBF	<u>COUNTY</u> Benewah	<u>AREA OFFICE</u> St. Joe (St. Maries)
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SOUTH OPERATIONS

B. Wagon Bay North Ton	CR-50-0173	20,128	TON	<u>COUNTY</u> Valley/ Adams	<u>AREA OFFICE</u> Payette Lakes (McCall)
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**4. Approval of Minutes – June 18, 2013 Regular Meeting (Boise)**

• **REGULAR**

**5. Auction of Revised Unleased Lots at Priest Lake – Presented by Thomas Felter, Program Manager-Commercial Office/ Retail/ Industrial**

This certifies that this is a true and correct copy of this document, the original of which is on file with the Idaho Department of Lands (IDL).

*Thomas Felter*  
 IDL Representative

3-18-2013  
 Date

State Board of Land Commissioners  
 Second Revised FINAL Agenda\_0712  
 Regular Meeting (Boise) – July 16, 2013  
 Page 1 of 2

- EXECUTIVE SESSION

- A. Idaho Code 67-2345(1)(f) – to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. [TOPIC: SW Payette Lake Cottage Sites]

- REGULAR

- 6. Southwest Payette Lake Lot Solutions (CC&Rs, Association Membership and Disposition Plan) –  
*Presented by Kate Langford, Strategic Business Analyst-Planning*

- INFORMATION

NONE

- A FINAL AGENDA will be available at the Idaho Department of Lands, 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho, two (2) days preceding the meeting. If you have questions or would like to arrange auxiliary aides or services for persons with disabilities, please contact Dept. of Lands at (208) 334-0242. Accommodations for auxiliary aides or services must be made no less than five (5) working days in advance of the meeting.
- The CONSENT AGENDA addresses routine items the board may approve without discussion.
- The REGULAR AGENDA addresses policy and program items the board may wish to discuss prior to making a formal recommendation.
- The INFORMATION AGENDA provides information only.
- The EXECUTIVE SESSION is a special closed session to consider confidential matters pursuant to Idaho Code § 67-2345.
- An item may be moved from one agenda to another by the Board.
- The agenda is subject to change.

EXHIBIT 2 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

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STATE BOARD OF LAND COMMISSIONERS  
July 16, 2013  
Regular Agenda

SUBJECT

Southwest Payette Lot Solutions

BACKGROUND

Endowment ownership in the southwest portion of Payette Lake contains three cottage site developments commonly known as Payette Lakes Cottage Sites, Cedar Knoll Acres and Pinecrest Addition. Ownership in this area is intermingled between the Endowment and deeded lot owners. (Attachments 1 and 2)

The Lot Solutions Project conducted neighborhood meetings for lessees and deeded owners between June and August 2012 to collect feedback on draft plats for these areas. The Department was contacted by a newly formed group, Citizens for Payette Lake, in October 2012. Citizens for Payette Lake represent a small group, primarily deeded lot owners, within the southwest area wanting to provide feedback on the draft plats.

A history of the creation and management of the roads and common areas with the subdivisions has been prepared that provides additional context for past and present Board actions (Attachment 3).

DISCUSSION

Dialogue have been ongoing with this group since late 2012 focusing on the desire to find a course to address long-standing issues related to the disposition of the roads and common areas within these developments. Active discussion with the Citizens for Payette Lake group has lead to the formulation of a Southwest Payette Lot Solutions package. Key elements of the solutions package include:

- Formation of an association by the Department. The association could then receive a deed for the roads and common areas to complete the transfer of ownership.
- Replat the Endowment ownership within the three existing subdivisions to clarify identification of roads and common areas.
- Create a new subdivision plat for the lake front lots and acreage being retained by the Endowment. An easement would be issued to the three existing subdivisions for the continued use of Payette Drive.
- Develop and record a Covenants, Conditions and Restrictions (CC&R) document for each replatted subdivision.

This certifies that this is a true and correct copy  
of this document, the original of which is on file  
with the Idaho Department of Lands (IDL).  
Renee J. Miller 3-18-2019  
IDL Representative Date

State Board of Land Commissioners  
Southwest Payette Lot Solutions-v2  
Regular Land Board Meeting – July 16, 2013  
Page 1 of 2

Draft association bylaws and CC&R documents have been prepared to reflect the salient points of this proposal and, subject to the Board's concurrence, the drafts will be circulated to the lessees and deeded owners within the southwest area for comment. All comments would be tabulated and presented to the Board at a subsequent meeting for consideration. (Attachments 4, 5 and 6)

Additionally, if the Board approves this package, the Department will have the final plats for Southwest Payette Cottage Sites, Amended Cedar Knoll Acres and Amended Pinecrest Addition, prepared to reflect these features.

### RECOMMENDATION

The Department recommends that the Land Board:

1. Approve the concepts outlined in the Southwest Payette Lot Solutions package.
2. Direct the Department to circulate the draft association bylaws and covenants, conditions and restrictions for comment by lessees and deeded owners; and report the results to the Board at a future meeting.

### BOARD ACTION

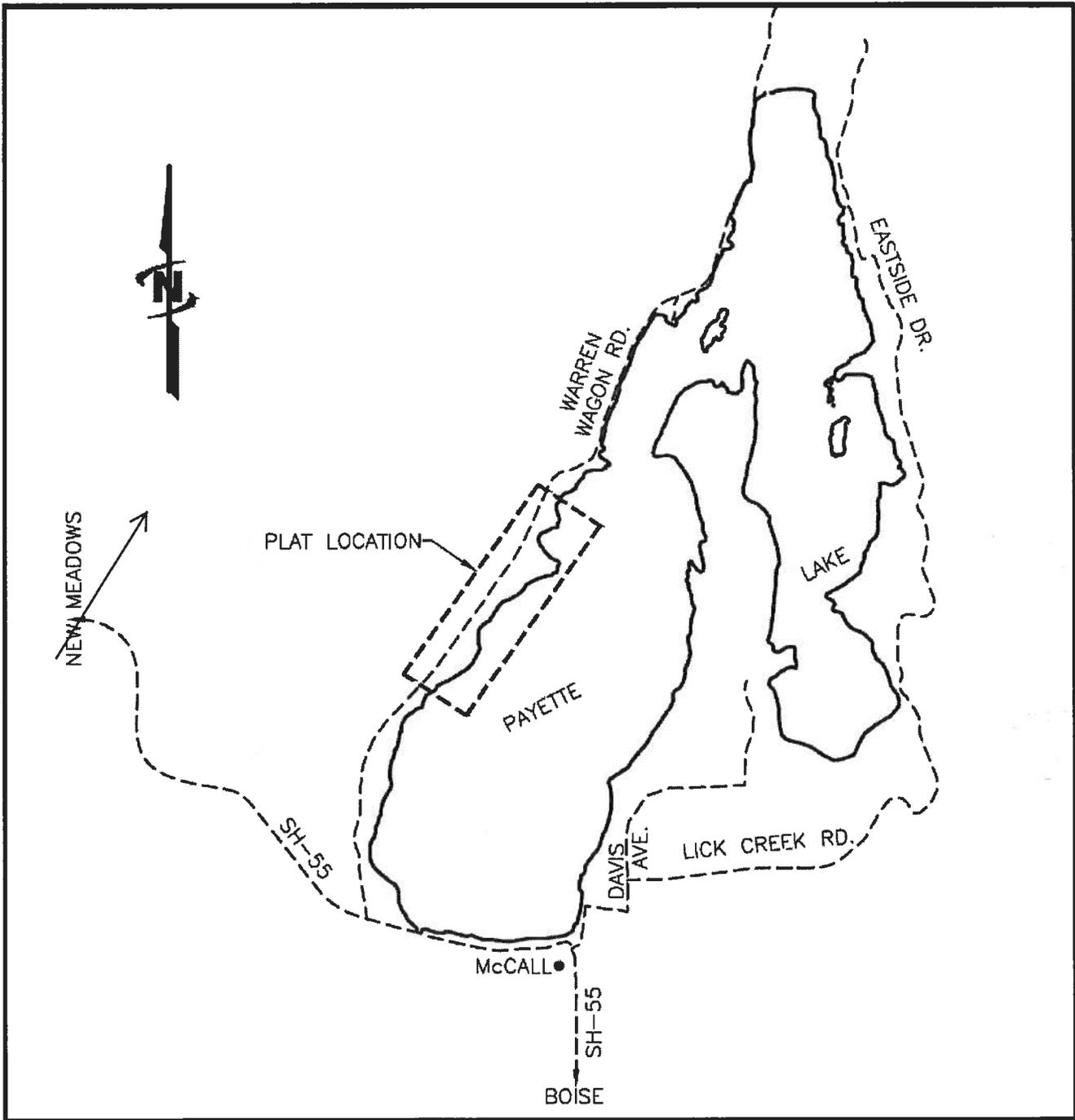
A motion was made by Attorney General Wasden that the Board approve the Department recommendation; that is that the Land Board approve the concepts outlined in the Southwest Payette Lot Solutions package and that the Board direct the Department to circulate the draft association bylaws and covenants, conditions and restrictions for comment by lessees and deeded owners and report the results to the Board at a future meeting. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

### ATTACHMENTS

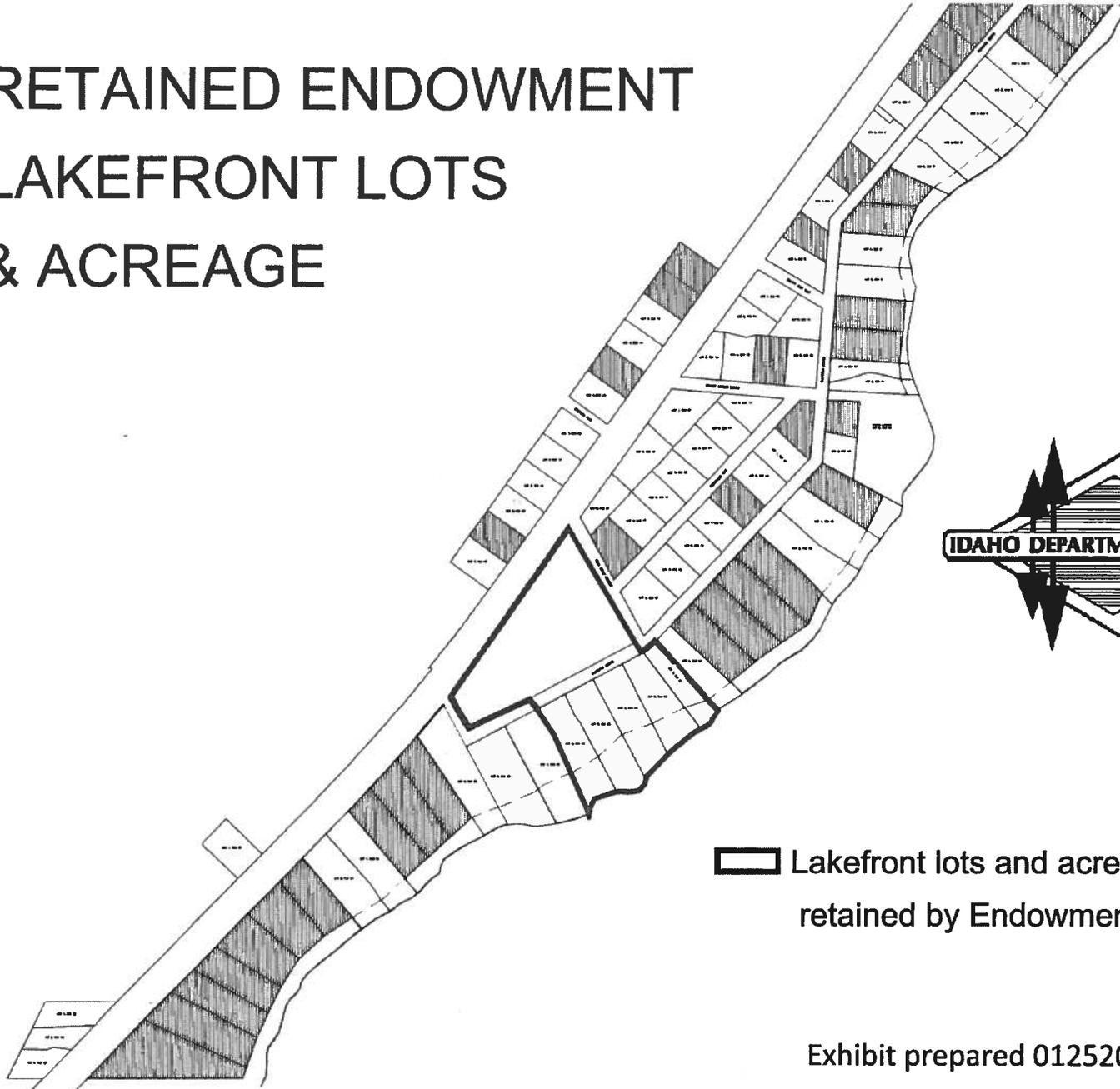
1. Vicinity Map
2. Retained Endowment Lots Map
3. History of State Lands on Payette Lake, SHRA Report
4. Draft Covenants, Conditions and Restrictions Declaration
5. Draft Addendum to the Covenants, Conditions and Restrictions Declaration
6. Draft Association Bylaws



# Payette Lake Vicinity Map



# RETAINED ENDOWMENT LAKEFRONT LOTS & ACREAGE



 Lakefront lots and acreage retained by Endowment

Exhibit prepared 01252013-KJL

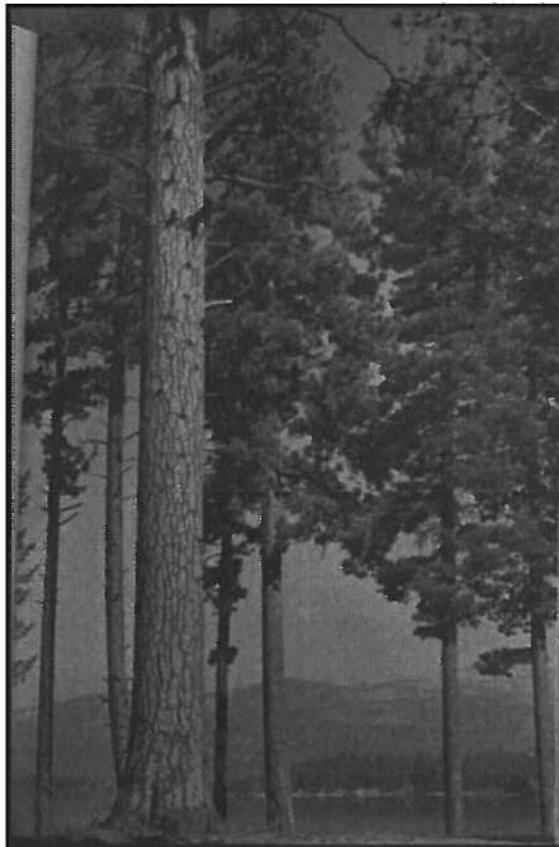
ATTACHMENT 2

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# THE HISTORY OF STATE LANDS ON PAYETTE LAKE, IDAHO: 1924-2012

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WITH A FOCUS ON WEST SIDE PARCELS



By Jennifer A. Stevens, Ph.D.

July 12, 2013: Subject to further modifications

TABLE OF CONTENTS

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Introduction.....	3
Section 1: Payette Lake Cottage Sites, 1924-1947.....	6
Section 2: Payette Lake Cottage Sites, 1947 – 1970.....	12
Section 3: Payette Lake Cottage Sites, 1970-2012.....	20
The Dock and Other Concerns on Wagon Wheel Bay.....	20
The Community Beach and a Change in Department Policy.....	24
Conclusion.....	27
Appendix I.....	28
Appendix II - Timeline.....	35

## INTRODUCTION

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Payette Lake was formed by glacial activity in the Pleistocene era, and is located approximately 100 miles north of Boise, Idaho in Valley County. The lake, which is more than 100 meters deep, freezes in the winter and offers recreational opportunities in the summer for residents from across Idaho and the American West. From the mountains surrounding Payette Lake, its waters flow into the North Fork of the Payette River, winding south toward the Snake River at the western end of the Treasure Valley in southeast Idaho. The waters are critical for irrigation purposes and agricultural production.

Payette Lake is one of Idaho's greatest recreational and natural assets, and thanks to state ownership of much of the lake-side land, the State of Idaho has been actively involved in its development since early in the 20<sup>th</sup> century. The history of state cottage site management on Payette Lake stretches back to the early 1920s, when State Land Commissioner I.H. Nash recognized the recreational potential along the shores of Payette and Priest Lakes. He declared the desirability of lake-side camp sites and summer homes in his 1924 official state report, and explained that "the increased use of the automobile [had] made travel more heavy" to areas such as these. At the time of his report, construction of summer homes at Payette Lake had already begun, and as automobile use continued to expand in the ensuing years, the accessibility and popularity of these wild places increased.<sup>1</sup>

As a result of the increased accessibility, the state's cottage site program grew dramatically. Initially, the State sold individual lots, although some were rented. In the 1930s and 1940s, however, the State adopted a "no sales" policy that reflected growing national and state concern over public access to recreational lands. Soon afterwards, the State adopted an alternate program of cottage site leasing. Today, the State of Idaho administers several hundred leases on both Payette and Priest Lakes through its State of Idaho Board of Land Commissioners (hereafter referred to as the Land Board), a body of elected officials made up of the secretary of state, the governor, the state controller, the attorney general, and the superintendent of education. The leases provide a source of income to Idaho's Endowment Fund, constitutionally obliging the Land Board to generate the greatest income possible in order to adequately fund the state's endowments.

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<sup>1</sup> I.H. Nash, 17<sup>th</sup> Biennial Report of the State Land Department of the State of Idaho, 1923-1924 (Boise, ID: Idaho State Land Department, 1924). (Pitt167)

Payette Lake, in particular, has undergone intensive development since the 1920s. In addition to private development, the State established multiple subdivisions around the lake in the 20<sup>th</sup> century, designed to produce income for the State Endowment Fund and to provide recreational enjoyment for citizens. The first subdivision, known as the Payette Lake Cottage Sites, was platted on the west side of Payette Lake in 1924. The lots were spread across and directly behind the lakefront in Sections 28, 32, and 33 of Township 19 North, Range 3 East of the Boise Meridian. Three adjacent additions were developed and platted over the next 30 years, including the Pinecrest Addition, Cedar Knoll Acres Addition, and "Additional Tracts A, B, and C."<sup>2</sup> In addition to these west-side cottage sites, the State of Idaho also platted land on the eastern arm of the lake in Pilgrim Cove in the 1950s. Together, the two areas constitute the majority of State-developed land around Payette Lake.

Although the program has provided much recreational enjoyment and generated income to the endowment fund, the cottage leasing program has caused controversy both for lessees as well as the State during much of the 20<sup>th</sup> century and into the 21<sup>st</sup>. Because of the regular turnover in the Land Board's membership, the body has not always acted consistently, making the lessees' continued future enjoyment of the property uncertain. For instance, the concept of government-sponsored recreation evolved and expanded through these years, and some members of the Land Board over time felt it was imperative to preserve parts of the lakeshore for public recreation. During other years, certain members of the Land Board were more concerned about the fiduciary duty of the Land Board and were intent on maximizing revenues, leading to lot sales and lease rate increases. What resulted was the patchwork system we see around the lake today, in which some properties are privately owned while others remain subject to state leases. We also see historical documents referencing and intent on preserving community beaches, public roads, and public access, but lessees and owners treating such areas as privately owned. The nature and persistence of the conflicts begs for analysis and clarity for all parties involved.

This report will provide a history of the State Board of Land Commissioners' actions with regard to the Payette Lake Cottage Sites and its subsequent additions, as well as the State's interactions with other Payette Lake interests. It will examine the original intent of the Land Board's actions with regard to platting the sites as well as the actions of the Land Board in the ensuing years. Then, the

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<sup>2</sup> This plat, adopted in 1949, merely re-platted the lots originally known as Lots 1-4 at the southern end of the subdivision. Therefore, this plat will not be discussed in any detail in this report.

report will address how the changing Land Board has interpreted and applied the original intent in its actions since the sites were developed.

## SECTION 1: PAYETTE LAKE COTTAGE SITES, 1924-1947

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Situated on the west shore of Payette Lake, the homes comprising the Payette Lake Cottage Sites look east over the lake to Idaho's Central Mountains. It was on June 30, 1924 that the Land Board approved the plat creating this neighborhood out of a 13.24-acre, approximately two-mile long parcel lying on a north/south axis between Warren Wagon Road and Payette Lake. The Land Board's resolution specified that the plat accurately described and set forth all of the streets, alleys, and commons or public grounds, and also specifically authorized and directed the Land Board's members to execute on behalf of the State of Idaho a certificate ownership and deed of donation "of all the streets and alleys shown on said plat."<sup>3</sup> The plat itself further noted the State's intention to donate and dedicate the "streets, roads, alleys, commons and public grounds as shown on this plat to the use of the public forever."<sup>4</sup> Valley County recorded the plat just two days later on July 2, 1924.<sup>5</sup> The historical question being probed herein is what the Board intended with both the creation and dedication of public grounds and all roads in the plat.

To understand the significance of the modern disputes, it is important to describe the physical layout of the original 1924 plat so that its evolution can be properly analyzed. (See Figure 1 in Appendix 1.) In its original form, the plat depicted approximately 120 lots, the majority of which were situated on the lakeshore. One long north-south road known today as Payette Drive was platted behind these lots, parallel to the lakeshore (and in front of – or on the lake side – of the 17 "second-tier" lots that were part of the original plat). From this main road (which was platted to be 40 feet wide) through the subdivision were multiple roads – at least ten – that provided access to the shore of Payette Lake, most platted to be 30 feet wide. The roads were spaced at relatively even intervals between lots through the subdivision. One of these roads provided access between lots 27 and 28 to the picnic grounds depicted on the shore in front of those lots.<sup>6</sup> Additionally, a "community beach," located on the northern tip of Wagon Wheel Bay was likely part of this original plat, although copies of the original plat that survive today do not depict the north side of the

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<sup>3</sup> State of Idaho Board of Land Commissioners, Minutes of June 30, 1924 meeting (hereafter "Board Minutes"), in Land Board Minutes Book 7, May 10, 1923 to Jan. 12, 1926, AR 39, Records of the Idaho State Land Department, Idaho State Archives, Boise, ID (hereafter ISA). (Pitt43)

<sup>4</sup> Plat of State Land Subdivided into Lots and Known as the Payette Lake Cottage Sites, July 2, 1924, Idaho State Attorney General Office. (Pitt38)

<sup>5</sup> Instrument No. 6279, Plat of State Land – Subdivided into Lots and Known as the Payette Lake Cottage Sites, July 2, 1924, pp. 482-484, Payette Lake Cottage Sites, Planning and Zoning Division, Valley County Courthouse, Cascade, ID. (Pitt148)

<sup>6</sup> Plat of State Land Subdivided into Lots and Known as the Payette Lake Cottage Sites, July 2, 1924, Idaho State Attorney General Office. (Pitt38)

subdivision. This beach would create several debates beginning in the 1960s regarding its intended use and users. (Section 3: Payette Lake Cottage Sites, 1970-2012.)

In the early days of Payette Lake development, the wisdom of the Land Board was to sell the state-owned land. Therefore, soon after the Land Board approved the PLCS plat, it began the process of disposing of the platted lots. Its first action took place on July 16, 1924, when the Board designated five lots for auction and sale. Three of the five lots (numbers 143, 144, and 145) were contiguous parcels located on the southern tip of Wagon Wheel Bay. (See Figure 1 in Appendix 1.) The other two lots to be auctioned were 186, an oddly shaped triangular parcel at the north end of the same bay on Sylvan Beach, and 192, a large, rectangular 4.25-acre parcel of land that stretched the full width between Warren Wagon Road and the north point of Wagon Wheel Bay and Sylvan Beach.<sup>7</sup> The auction for the lots was held on August 18, 1924, and the sales were approved on August 21.<sup>8</sup> Another ten (10) lots were sold at public auction on July 21, 1928, including lots 51-59 and lot 151, on Wagon Wheel Bay.<sup>9</sup>

By 1930, there was some dispute among the members of the Land Board regarding the proper use of these properties. Mired in the depths of the Great Depression, at least some members of the Board were concerned that this state resource not be reserved for only the few who could afford to purchase lots. In his 1930 biennial report to the State, State Land Commissioner I.H. Nash proudly stated the Department had "surveyed and platted into lots and blocks" three tracts comprised of 287 lots, which included "roads through and around the state holdings" that had been surveyed and built by the Department. Nash noted that prior to his taking office, "a number of choice lots had been sold on what is called Wagon Wheel Bay" and that they had subsequently "advertised and sold most of the lots in that section." However, Nash stated, "in addition to camp sites for the private use of families ample ground should be held for public camp sites to be leased to individuals or companies, who will erect suitable cottages or tents... Those who cannot afford to build their own permanent camps should not be deprived of the privilege of weekend camping." Finally, under the heading "Lake Frontage Should Not Be Sold," Nash defended this point, stating the "endowment funds will receive more revenue in the end if this property is kept and leased for campsites." He

<sup>7</sup> Board Minutes, July 16, 1924, Book 7, May 10, 1923 to Jan. 12, 1926, AR 39, Records of the Idaho State Land Department, ISA. (Pitt43)

<sup>8</sup> The sale of lot 186 apparently fell through, since it was recorded again as a new sale on April 11, 1925 for less than half of the original price (\$850 down to \$400). Board Minutes, Aug. 21, 1924 and April 11, 1925, Book 7, May 10, 1923 to Jan. 12, 1926, AR 39, Records of the Idaho State Land Department, ISA. (Pitt43)

<sup>9</sup> Board Minutes, June 19, 1928, Book 8, Jan. 12, 1926 to June 19, 1928, AR 39, Records of the Idaho State Land Department, ISA. (Pitt44)

continued, “it will be only a few years until there will be a demand for back lots, provided provision is made for them to have easy access to the lake. For this reason in platting these lots, we provided open streets and beaches for public use.”<sup>10</sup> Thus, while the details of the cottage site program were still evolving, Nash’s statement makes clear the Board’s intention that the roads and the beaches remain open for the public.

Around the same time that Nash drafted his report, the PLCS subdivision was being resurveyed and re-platted. Multiple lots were added to the subdivision during the re-platting, while other existing lots were re-surveyed, resulting in the removal or relocation of some of the roads between subdivision lots. The re-survey of lots 14-28, for example, resulted in re-locating the road that originally accessed the shore and picnic grounds between lots 27 and 28 to a location on the north side of lot 28. Lots 53 and 54 were also re-surveyed and changed to reflect the removal of the road between them that had previously provided access to the lake. Lots originally numbered 188-191 (inclusive) on the original plat were eliminated. It is unclear what precipitated these re-surveys, but in addition to the re-survey of existing lots, another 70 lots were added to the subdivision, mostly on the “second tier,” or behind the lakeside lots, with new lots 188-199 added in the location of what later became known as the Cedar Knoll Acres addition. The Board approved the amended plat in October 1932, and it was recorded in Valley County that same month.<sup>11</sup> (See Figures 1 and 2 in Appendix 1.)

As the Great Depression dragged on, the sales and leasing activity related to these recreational lands was quite minimal. Those who had purchased lots and found themselves unable to make payments were granted a reprieve from a sympathetic Idaho Legislature, which passed a law allowing extensions for 1931 and 1932 payments.<sup>12</sup> But otherwise, very little private activity was seen on the lake during the years preceding World War II.

While the Depression wreaked havoc on many Idaho residents, it also created some breathing room that afforded the state government time to engage in planning activities that would set the new policy basis for future land use decisions around Payette Lake. Perhaps inspired by the renewed

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<sup>10</sup> 20th Biennial Report of the State Land Department of the State of Idaho, Dec. 1, 1928 to Oct. 30, 1930, 14 (Pitt262a)

<sup>11</sup> Amended Plat of State Land Payette Lake Cottage Sites, Oct. 15, 1932, Re-Survey Lots 14 to 28; 53 & 54; 153 to 164; 171 to 177; 187 to 191 all inc., Attorney General’s Office, Boise, ID; (Pitt37a) and Instrument No. 17146, Amended Plat of State Land Payette Lake Cottage Sites, Oct.15, 1932, Valley County Deeds, Book 15 (v. 2), 620-622, Valley County Courthouse, Cascade, ID. (Pitt159)

<sup>12</sup> Board Minutes, Feb. 2, 1932, Book 10, Jan. 6, 1931 – Feb. 15, 1933, AR 39, Records of the Idaho State Land Department, ISA. (Pitt46)

embrace of conservation policy exhibited by Franklin Roosevelt's administration, Idaho Secretary of State Franklin Girard (later, the state forester) urged the Land Board in 1934 to develop a policy regarding the sale of lake front property. A committee comprised of the state forester, state land commissioner, and unnamed Forest Service officials was appointed and directed to establish policies.<sup>13</sup>

In the years before the committee emerged with recommendations, several events occurred that demonstrated state officials' increasing concern with ensuring the greatest access to state lands for the greatest number of people. For one, a 1935 discussion at the Land Board targeted a proposed road to the east shore of north Idaho's Priest Lake to be built by one of more than 150 Civilian Conservation Corps camps in Idaho. Despite the outcry among private land owners who worried about their compromised privacy, Idaho State Forester Feary urged and obtained the Land Board's approval of the road so that the area would be more accessible to the public, demonstrating a changing philosophy related to lakefront public lands.<sup>14</sup> A year later, the commissioners unanimously voted to disapprove any more sales or leases on recreational sites at Payette Lakes until an examination and overall policy was made as to the best use for remaining lands.<sup>15</sup> That same year, 1936, Congress passed a law mandating (with state approval) studies and inventories of recreational areas across the country, a study that was carried out in Idaho by the State Forestry Department.<sup>16</sup> Concurrent to the ongoing studies, the Department of Agriculture's Forest Service produced a map of the land surrounding the lake that revealed the public's understanding of the reserved areas within the state developments. The map labeled five separate areas around the lake as "community beach," but did not distinguish between the community beaches located within state subdivisions (PLCS or the Pilgrim Cove subdivision) and those at the north end of the lake (what's known today as North Beach) and the east side of the lake, neither of which were located within any development. Use of the same term for all of these beaches suggests that the public's understanding of these areas and the roads used to access them was that they were intended for use by the

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<sup>13</sup> Board Minutes, May 19, 1934, Book 11, Feb. 15, 1933 - March 11, 1936, AR 39, Records of the Idaho State Land Department, ISA. (Pitt47c)

<sup>14</sup> Board Minutes, Sept. 5, 1935, Book 11, Feb. 15, 1933 - March 11, 1936, AR 39, Records of the Idaho State Land Department, ISA. (Pitt47d)

<sup>15</sup> Board Minutes, Sept. 12, 1936, Book 12, March 16, 1936 - Oct. 24, 1938, AR 39, Records of the Idaho State Land Department, ISA. (Pitt48c)

<sup>16</sup> Park, Parkway and Recreational Area programs, Study by the National Park Service, June 23, 1936, 49 Stat. 1894. (Pitt310a)

“community” or public at large, not just for those living or recreating in the subdivisions.<sup>17</sup> (See Figure 3 in Appendix 1.)

While the studies were ongoing, the Land Board met in April 1938 to discuss lakefront parcels. At that meeting, State Auditor Parsons recommended that the State Forester be directed to make a survey of state land lakefront rentals with the intent of raising such rental rates to be commensurate with similar land on the private market. Parsons' motion passed unanimously, and the Forester was directed to report back to the Land Board as soon as possible. At the same meeting, Parsons also introduced a resolution referring back to a section of Idaho Code that provided for the withdrawal for sale of state lands bordering on lakes, and noted that the “need and demand for recreational facilities is becoming more important daily.” The resolution further stated that the shorelines of Payette and Priest Lakes were “exceptionally attractive and particularly well suited to development for summer home sites, picnic areas, public camp grounds and parks,” and that the stated use was the most valuable use for the land.<sup>18</sup> Therefore, the Land Board should withdraw those lands from sale “and set [them] aside for development as summer homes and recreational grounds.” The resolution was passed and signed by each member of the Land Board, including Governor Barzilla Clark. A year later, the report on the state's recreational areas was made public, declaring Payette Lake to be the state's most important resource for public recreation.<sup>19</sup> Upon the report's release, members of the State Forestry Board – many of whom were also members of the State Land Board – embarked on a field trip up to view the lake.<sup>20</sup> Between the studies and the on-site visits by state leaders, a great deal of attention was being paid to this region of the Gem State, highlighting the value of the resource to the state's entire citizenry.

By the start of the 1940s, then, the Land Board's predilection toward policies that would protect the general public's recreational interest in the state land around Payette Lake was clear and remained consistent for the next several years. State Land Commissioner C. Van Clark explained in his

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<sup>17</sup> Idaho State Forest Payette Lake Unit, Master Plan, Payette Lake, 1937, L-Shaped Cage - Payette Lakes Map Drawer, Idaho State Department of Lands (hereafter IDL), Boise, ID. (Pitt199)

<sup>18</sup> Board Minutes, April 15, 1938, Book 12, March 16, 1936 – Oct. 24, 1938, AR 39, Records of the Idaho State Land Department, ISA. (Pitt48d)

<sup>19</sup> Idaho State Forestry Department, Preliminary Report of Park, Parkway, and Recreational Areas Study, Idaho, May 1939, Idaho State Documents, at ISA. (Pitt138a) The planning was originally intended to be implemented by the State Planning Board, but in 1938, Governor Barzilla Clark authorized the Forestry Department to do the work. Barzilla Clark to Franklin Girard, Feb. 5, 1938, Forestry Department II, Box 10, in the Papers of Barzilla Clark, AR2/16, ISA. (Pitt136a)

<sup>20</sup> Cooperative Board of Forestry Record of Trip, July 8 – 17, 1939, in Minutes of the Cooperative Board of Forestry, 1925-1967, folder B 12, 20093028, AR 39, Records of the Idaho State Land Department, ISA. (Pitt31a)

biennial report for 1940 that state land around lakeshores is “subject to lease but it is the intention of the Board that these recreational sites shall not be permitted to pass into private ownership but shall continue to be administered for the good of the citizenry, as well as of the school funds.”<sup>21</sup> Despite this stated policy, the Land Board did *not* act with unanimity when it came to proposed lakeshore lot sales in the various state subdivisions. As the economy picked up steam in the face of the country's entrance into World War II, the Land Board faced increased requests from citizens desiring to purchase their leased lots, and the Land Board's members did not always agree on a path forward. At first, they made efforts to compromise, since their previous policy had been not to sell at all. For example, on February 4, 1942, the Land Board met and discussed the applications of four people to purchase lots in the PLCS subdivision. The Land Board noted on the record that despite its policy not to approve any such sales, these lessees had made such major improvements, they “might as well accept” the applications to purchase. The commissioners' vote to sell, however, was balanced by their directive to the Land Commissioner to “set aside certain lots for the general use of the public.”<sup>22</sup> It is unclear how or if that directive was carried out.

Before long, the Land Board was granting land sales on a regular basis, although the votes were not unanimous and the deeds carried language restricting land along the lake shore. As the Land Board made more exceptions, greater numbers of people came to the Board asking for the right to purchase. It was a slippery slope. Secretary of State George Curtis, elected to three two-year terms between 1939 and 1945, dissented on virtually every proposed lot sale while in office, although the record does not provide an explanation for his stance.<sup>23</sup> Despite his dissents, the Land Board approved the sale of myriad lots in the Payette Lakes Cottage Site Subdivision during this era. Perhaps the language included in the deeds of this era – that the “reservation of land herein described does not extend toward Payette Lake beyond the high water line”<sup>24</sup> – was somehow a concession to him or, more likely, reflective of the Land Board's continued effort to reserve the lakeshore for the public. Regardless, the effect was to privatize much of the lake front in the 1940s.

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<sup>21</sup> C. Van Clark, 25th Biennial Report of the State Land Department of the State of Idaho 1938-1940, 9. (Pitt29a)

<sup>22</sup> Board Minutes, Feb. 4, 1942, Book 14, July 16, 1944 – July 4, 1947, IDL. (Pitt50a)

<sup>23</sup> Board Minutes, Dec. 29, 1942, Book 14, July 16, 1944 – July 4, 1947, IDL. (Pitt50k)

<sup>24</sup> All of the deeds granted in the 1940s included this language, which can be seen in Idaho State Deed 6119, to Arthur C. Jones, Nov. 19, 1942, for land located on Wagon Wheel Bay, lot 152 of the PLCS subdivision amended plat, in Section 28, Township 19 North, Range 3 East. Additionally, the land north of Wagon Wheel Bay, known as Sylvan Beach, was also sold during this era to the Boise Trust Company, the trustee for the Regan Estate. The new owners subdivided their land into lots for sale shortly after their purchase of lots 186 and 192 in 1942, and the resulting deeds contained this language as well. (Pitt309a)

## SECTION 2: PAYETTE LAKE COTTAGE SITES, 1947 – 1970

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Following the close of World War II, the Land Board's actions continued to effect a balance between public use and obtaining revenues when it came to cottage sites at Payette Lake. But as the postwar years wore on, the Land Board members changed, and the fight to keep state lands public faded in light of the creation of a State Parks Department. As the State redoubled its efforts to increase state park land, cottage site residents became less and less willing to share their reserved lands with the masses.

Upon the Republicans' sweep into statewide office in 1946, the newly appointed Land Commissioner, Edward Woozley, took action immediately to formalize the Board's policies and work toward generating additional money for the endowment fund. His 1947 "Statement of Policy" included specifics regarding recreational land, such as recommendations for a revolving fund for development and maintenance, additional small picnic and camp grounds in various locations, the appropriation of monies for roads, water, beaches, and waste water, and the surveying of lands along the shores of Payette and Priest lakes, which could "supply 500 additional lots for lease which would bring another \$15,000.00 in rentals each year." Of particular note, Woozley stated:

I believe most of our recreational lands should be only leased and that they should be maintained in State ownership for the use of future generations of Idaho people and not for the few who may have the means to purchase them at public auction now...Shore-lines should be preserved for the use of the general public and cottage site lessess [sic] and future surveys should be made starting at least 200 feet back from the beaches.<sup>25</sup>

The postwar turn inward toward family, together with the boom in recreational travel and a relatively healthy economy brought a "tremendous demand for recreational sites" to Idaho's lakeshores, and the Land Board concurred with Woozley that the population could support the platting of additional cottage sites.<sup>26</sup> He urged them to study the lands around Payette Lake and to tour the area with a view toward long range planning.<sup>27</sup>

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<sup>25</sup> Edward Woozley, Statement of Policy, Idaho State Land Department, 1947, 1947 Land Department, Departmental Files, Box 32 (1947), AR 4, Records of the Idaho Attorney General, ISA. ([Pitt125b](#))

<sup>26</sup> The Board adopted this policy in November 1947. Board Minutes, Nov. 10, 1947, Book 15, Jan. 28, 1947 – Jan. 6, 1953, IDL, Boise, ID. ([Pitt51h](#))

<sup>27</sup> Board Minutes, March 24, 1947, Book 15, Jan. 28, 1947 – Jan. 6, 1953, IDL, Boise, ID. ([Pitt51i](#))

That summer, members of the Land Board visited McCall and Payette Lake.<sup>28</sup> Following their visit, a memo was drafted (likely by the attorney general) describing the trip and “the local problem at McCall,” which was “to find and improve camp sites and public beaches for visitors.” Of particular note, the memo stated that the Land Board “would like to reserve all the present Beach Area so that new roads may be constructed farther back from the Lake,” making “available beaches [accessible to] be shared by many more people.” Also, “the State would retain its’ [sic] ownership.” In light of the strong economy, the Land Board feared that if the land was put up for sale at auction, too much of it would be bought by only those with means and who were interested in financial gain only. The memo concluded, “It is not contemplated therefore that any sale applications will be considered at the present,” but that the Land Board intended to initiate survey and development of “new roads, drinking water and sewage facilities, boat landings...” and so forth. Unfortunately, there was a lack of funds to establish a “development fund” to do the work.<sup>29</sup> At the Land Board meeting immediately following the McCall visit, members voted unanimously to write new leases with language that preserved the land 200 feet behind the high water line, and voted also to direct Woozley to begin surveying lots for lease on the west side of the lake between the south line of Section 32 and Wagon Wheel Bay.<sup>30</sup>

Such was the political setting when the next set of lots on the west side of Payette Lake piece of west-side land was platted for cottage sites. In August, the Land Board retained Johnson and Palmer Engineers of Boise to survey the new lots,<sup>31</sup> and by October, the plats were complete. In part, the new survey re-platted the lots that had been added to the subdivision in the amended plat of 1932, and dubbed the area Cedar Knoll Acres. The result of the survey was to reduce the total number of lots in this area of the subdivision from approximately 60 to only 41. In approving the new plat, the Land Board acknowledged that none of the lots in the 1932 amended plat had been leased or sold, and that their present action was intended to withdraw those lots “together with all donations and dedications as roads, alleys, commons and public grounds within the boundary of said area.” Tellingly, their acceptance of the new plat specifically included the new subdivision of lots shown on the plat, as well as an express intent to “dedicate the streets, roads, or alleys shown on this plat to the use of the public forever.”<sup>32</sup> The Pinecrest Addition, located to the south of Cedar Knoll Acres,

<sup>28</sup> Robert Ailshie to Edward Woozley, May 12, 1947, 1947 Land Department, Departmental Files, Box 31 (1947), AR 4, Records of the Idaho Attorney General, ISA. (Pitt124a)

<sup>29</sup> Undated/Unsigned memo, 1947 Land Department, Departmental Files, Box 32 (1947), AR 4, Records of the Idaho Attorney General, ISA. (Pitt125a)

<sup>30</sup> Board Minutes, July 9, 1947, Book 15, Jan. 28, 1947 – Jan. 6, 1953, IDL, Boise, ID. (Pitt51a)

<sup>31</sup> Board Minutes, Aug. 20, 1947, Book 15, Jan. 28, 1947 – Jan. 6, 1953, IDL, Boise, ID. (Pitt51j)

<sup>32</sup> Official Plat, Cedar Knoll Acres, Oct. 24, 1947, Office of the Idaho Attorney General. (Pitt40a)

platted another 25 lots entirely on the “second tier,” behind lakefront lots 14-31 platted in 1924. The Board approved both plats on October 24, 1947.<sup>33</sup> (See Figures 4 and 5 in Appendix 1.)

In late 1948, the Land Department’s biennial report was issued, reiterating the Department’s policies regarding lakefront land. Among other things, Edward Wozzley explained the State’s intention that desirable recreational sites were not to be sold, but developed and leased, so that “future generations in Idaho will [not be] deprived of this natural heritage.” With regard to the cottage site program, Wozzley acknowledged that the previous sale and leasing of the more desirable beaches had hampered “the use of other lands located in such an area,” and recommended legislative appropriation to fund the Land Department’s efforts to survey areas, clear roads, and build water systems for new cottage site developments. He also boasted of the Department’s success with the Parole Board cooperative effort in which they coordinated labor to clear beaches and roads at Payette Lake. He closed by noting that “we must also keep in mind that certain of these recreational areas should be properly developed, maintained and operated by the State for the use of the general public without charge.”<sup>34</sup>

Despite the government effort to maintain public areas in the state subdivisions, private citizens who owned lots on Wagon Wheel Bay began to demonstrate their disagreement with the policies in the late 1940s. In August 1948, Wozzley put his development plans into action at the Community Beach located at the north end of the Payette Lake Cottage Site subdivision, adjacent to Wagon Wheel Bay. His plan for beach development there included parolee labor and work funded by an \$800 contribution from the State Land Board and another \$300 from the prisons. The work involved straightening a stream, clearing the beach, and constructing a parking area, all to put the Community Beach and parking area “in condition for lessees of the newly opened Cedar Knoll Acres subdivision to use.” Soon, Wozzley received complaints from adjacent lot owners, who felt that development of this beach would hurt their property values. Wozzley was assigned the task of talking with the objectors and showing them the work that was to be done.<sup>35</sup>

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<sup>33</sup> Board Minutes, Oct. 24, 1947, Book 15, Jan. 28, 1947 – Jan. 6, 1953, IDL, Boise, ID. (Pitt51c) The County recorded the plats almost two years later on April 12, 1949. It is not clear from the record why Valley County did not immediately record these plats. While there is rumor of some disagreement related to the roads, no evidence of court action was located in the record, and no mention was made in the local newspaper of the issue, either. Instrument No. 39771, Cedar Knoll Acres, Subdivision of Payette Lake Cottage Sites, Oct. 24, 1947 (Pitt156b); and Instrument No. 39770, Pinecrest Addition to Payette Lake Cottage Sites, Oct. 24, 1947, Valley County Courthouse, Cascade, ID. (Pitt156a)

<sup>34</sup> Edward Wozzley, 29<sup>th</sup> Biennial Report of the State Land Department, State of Idaho, 1946 – 1948, 8. (Pitt266a)

<sup>35</sup> Board Minutes, Aug. 31, 1948, Book 15, Jan. 28, 1947 – Jan. 6, 1953, IDL, Boise, ID. (Pitt51d)

Perhaps the meetings with landowners and their petitions of opposition made Woozley waver in his intent. The lot owners raised concerns that the work “would [make] a public beach,” and that there would be overcrowding on the Bay. Nevertheless, in a memo to members of the Land Board in September, Woozley recommended that the plans proceed, but stated that the area would be “as a reserve area for the lessees of lots in Cedar Knoll Acres.” Woozley noted that other beach locations had been investigated, but that they were not possible as they would require road construction to access (north end of lake) or had already been planned for picnic and camping development (peninsula). In closing, he reiterated that the area in question was to be a “reserve beach” and that the concerns of the abutting property owners would not materialize, as “we can always close the area if the owners of the lots entitled to use the beach do not respect the property of other owners.”<sup>36</sup> The Land Board heard the protests of adjacent land owners at their meeting on September 23, but voted to continue the work, explaining their belief that the landowners misunderstood the intent of the work being done.<sup>37</sup> By October, the work was completed to the Land Commissioner’s satisfaction, with a parking lot cleared near Warren Wagon Road, and roads cut in both the upper and lower parts of the subdivision, made to “wind picturesquely through the timber.”<sup>38</sup> However, the beach development continued to cause difficulties between the Land Board and the lot owners for many years to come.

1949 saw a reaffirmation of the Land Board’s intent to maintain the greatest public access possible to the shores of Payette Lake, although their intent with regard to reserve beaches was less clear. Early in the year, Woozley wrote to Attorney General Robert Smylie (later governor) to follow up on the issue of public use on Wagon Wheel Bay. He requested an opinion regarding whether the Land Board could dedicate certain state land as a recreational area, to which Smylie replied that he saw no “legal barrier” to such a dedication.<sup>39</sup> In fact, he specifically noted that the State Land Board had the authority to execute such a dedication for the “beneficial use by the public for all time” when state funds were expended for development purposes, and that he understood that the Board was transitioning from selling property at a fee to annually renting cabin sites around recreational areas.<sup>40</sup> That same year, the Land Board re-affirmed the policy it had adopted in November 1947

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<sup>36</sup> Memorandum to Land Board, Development of Community Beach at Payette Lakes, Sept. 14, 1948, in Land Board 1948, Departmental Files, Box 35 (1948), AR 4, Records of the Idaho Attorney General, ISA. ([Pitt127a](#))

<sup>37</sup> Board Minutes, Sept. 23, 1948, Book 15, Jan. 28, 1947 – Jan. 6, 1953, IDL, Boise, ID. ([Pitt51e](#))

<sup>38</sup> Board Minutes, Oct. 25, 1948, Book 15, Jan. 28, 1947 – Jan. 6, 1953, IDL, Boise, ID. ([Pitt51f](#))

<sup>39</sup> Robert E. Smylie to Edward Woozley, Mar. 29, 1949, Land Department 1949, Departmental Files Box 38 (1949) AR 4, Records of the Idaho Attorney General, ISA. ([Pitt137b](#))

<sup>40</sup> Robert Smylie to Edward Woozley and Roger L. Guernsey, Sept. 13, 1949, Land Department 1949, Departmental Files Box 38 (1949) AR 4, Records of the Idaho Attorney General, ISA. ([Pitt137a](#))

regarding the state lands (see above), and re-committed to its policy of not selling cottage sites. Although no more mention was made of the dedication idea, the 1949 state legislature began to see the need for funding, and appropriated \$25,000 for a Recreational and Land Improvement Fund, designed to be used by the Land Department to survey and build roads in various areas.<sup>41</sup> And, it seems clear that the Community Beach development and Wozzley's request for an opinion regarding a dedication of Wagon Wheel Bay were indications of the Board's and Department's intent to maintain public access.

While these transactions indicate the Board's commitment to maintaining maximum public access, Wozzley's biennial report covering 1948 to 1950 lacked similar clarity. He explained that in "a complete change of program and policy," the Land Board had chosen to withhold all recreational lands from sale, withhold "a 200-foot strip along lake shores and river banks," and develop "new subdivisions for summer home sites." However, he also stated that "we have several new areas open for summer home development, by reserving particular beaches for the use of the people with back lots," with "certain other picnic and camping areas...provided for people who are not fortunate enough, or who do not desire, to lease lots." According to Wozzley, the endowment funds were expected to increase substantially from these changes.<sup>42</sup>

On the heels of Wozzley's 1950 report, the politics of the state were changing. Although the desire to develop state lands for recreational use continued for many years following the war, state leaders' focus turned from management of state lands by the Land Board to an effort to create a more formal system of state parks. The *Idaho Statesman* had been clamoring for such a system since the late 1930s, to no avail.<sup>43</sup> But by the late 1940s, Robert Smylie was working his way up the political ladder through the Attorney General's office, and he was intent on creating such a system. As Attorney General in 1953, he and Wozzley made up two votes on the Land Board and they successfully urged the creation of a Parks Division within the Land Department.<sup>44</sup> A year later, Smylie was elected governor, and made it a serious goal to obtain an independent department with a budget for state parks. In 1955, he ordered a survey to be done of the state's recreational

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<sup>41</sup> Edward Wozzley, 30th Biennial Report of the State Land Department, State of Idaho, 1948-1950, 31. (Pitt278a)

<sup>42</sup> Edward Wozzley, 30th Biennial Report of the State Land Department, State of Idaho, 1948-1950, 31. (Pitt278a)

<sup>43</sup> Thomas R. Cox, *The Park Builders: A History of State Parks in the Pacific Northwest* (Seattle: University of Washington Press, 2011), 107.

<sup>44</sup> Cox, 108.

resources, recommending a "comprehensive overall plan" for their "preservation and development."<sup>45</sup>

The 1950s and 1960s were a quiet time on the west side of Payette Lake, but changes to state land management and the increased focus on state parks altered how access to reserved areas within state subdivisions was conceptualized. Minor events transpired that underscored these changes. In particular, there was a change in leadership at the helm of the Department of Lands in 1954 when Woolley resigned to take a federal job directing the Bureau of Land Management under President Dwight Eisenhower's new Secretary of the Interior. The change in state personnel offered the opportunity to see how cottage site information had been passed down, and the new commissioner, Arthur Wilson, approached things differently than Woolley. Plans for the Pilgrim Cove subdivision on the southeast shore evolved in the wake of the recent land survey there and consequently had an impact on the thinking about public reserves on the lake's west side, as well. A September 1955 letter from new State Land Commissioner Arthur Wilson concerning the public park area at Pilgrim Cove explained that, by a Land Board Order in June 1950, the public park at Pilgrim Cove had been set aside as a picnic and boating area for the lessees of those lots in the area which did not border the lake shore. Wilson further explained that:

when the lots on the West side of the lake [PLCS] were surveyed for lease or sale purposes, there was no provision made for access to the lake...and when the back lots were leased it was difficult for the lessees to get to the shoreline...in order to avoid this situation, when the Pilgrim Cove area was resurveyed, a beach area was reserved especially for the lessees, which makes the lots more attractive for leasing and thereby the State derives more revenue.<sup>46</sup>

It is unclear why he believed access was difficult for lessees of back lots, unless the platted roads themselves were unimproved.<sup>47</sup> Perhaps the reference was to the fact that no beachfront development had taken place (except that done by the parolees at Wagon Wheel Bay Community Beach), and no docks installed. All of that would change soon. Meanwhile, the state was busy ironing out the details of its leasing program at the level of both the Land Board as well as the legislature, and the Land Board and Governor Smylie devoted a great deal of time planning for state parks and solving concerns over access and leasing issues at Priest Lake.

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<sup>45</sup> Cox, 110.

<sup>46</sup> Arthur Wilson to Orville H. Roberts, Sept. 16, 1955, in Land Department - 1955 (1), Box 4, Papers of Governor Robert B. Smylie, AR 2/24, ISA. (Pitt219a)

<sup>47</sup> The record indicates that Valley County did very little or no maintenance on these roads. See Section 3 for more detail on this point.

In McCall, the Land Board focused on lands located on the peninsula in the lake. The lands were designated as park areas in 1957, although they did not officially become a state park until 1965.<sup>48</sup> A section in the 1958 biennial report for the Department of Lands underscored the state's focus on state parks. Among all the activities summarized, the section on "The State Parks Program" was of particular note, since it covered discussion of all recreational areas and there was no other discussion in the report of cottage sites. In this section, Wilson mentioned that long-range planning was underway "for adequate development of the park and recreational requirements of our people and the visitors within our borders" and that "already public use has made the facilities that have been provided inadequate." The report included a Policy Statement recently adopted by Idaho Department of Lands and the Land Board indicating that "development of summer homes in State parks is not encouraged. This is an extravagant use of State lands permitting a few to benefit from the resources, but depriving the masses. In those areas where this development already exists, its expansion will be limited." The policy statement also directed that in cases where State parks were located on lakes, "a strip of at least 200 feet wide, measured horizontally from the high water surface shall be maintained for public use. Only such development as is needed for safety, comfort and sanitation will be permitted in this strip."<sup>49</sup> However, in spite of the commitment to maximum public use by certain Department of Lands staff, increasing pressure to halt such access grew from lessees and lakefront lot owners. As park land increased, the pressure to close these areas off to the public increased, as well.

Gradually, the Land Board became apprised of efforts by cottage site residents to shut down public access routes that had been platted and dedicated in earlier years. In 1967, a tour of the Payette Lake was made by members of the subcommittee on Natural Resources, a report of which was then conveyed to the State Land Commissioner. The report noted that the group's effort to find the "access areas that were designated for public use" had failed, since "most of them seem to have been blocked off."<sup>50</sup> Just a few months later, the newly appointed Commissioner Gordon Trombley of the Idaho Department of Public Lands<sup>51</sup> and Parks Department Director Wilhelm Beckert attempted to address the problem by sending a memorandum to all the cottage site lease holders in the Payette Lakes Area. This memo stated:

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<sup>48</sup> Board Minutes, March 13, 1973, Book 19, Jan. 14, 1969 - April 22, 1975, IDL, Boise, ID. (Pitt56f)

<sup>49</sup> Arthur Wilson, Thirty-Fourth Biennial Report of the State Land Department, State of Idaho, 1956-1958, 30. (Pitt276a)

<sup>50</sup> Area Forester Miller to Land Commissioner, Nov. 17, 1967, in Payette Lakes Proposed 1700 Acre Sale, Isolated File Cabinet, 3rd Drawer from top, IDL, Boise, ID. (Pitt106a)

<sup>51</sup> There were major organizational changes happening at the state level during this decade. Eventually this department became the Department of Lands, and was merged with the Forestry Department.

Recently we have been led to believe that some misunderstanding may exist concerning the status of these sites” and that “although the sites are prominently located in cottage site areas they were and are designed to provide public access to Payette Lake. They are not intended to be for the exclusive use of summer home residents.”<sup>52</sup>

Trombley and Beckert acknowledged that “in some instances adequate signing, roads, and parking have not been provided in the past,” but that the lessees should expect such infrastructure to be planned in the “not too distant future.” They concluded the memo by stating “we are sure that you concur with us...that if these areas are more adequately developed they will better serve the general public, and cottage site holders who wish to take advantage of them.”<sup>53</sup>

Thus, by the end of the 1960s, it seemed there was a belief among the actual lessees, perhaps because of Wilson’s policies and the rise of the State Parks program, that the reserved areas within PLCS – and the access roads designed to reach them – had been reserved for the lessees and not for the public at large, despite the clear intent expressed by Land Board members consistently over the previous 30 years. Pressure to manage them as such mounted as tensions arose from disputes over access and use of recreational amenities in Wagon Wheel Bay. These clashes would eventually come to a head on the west side of Payette Lake in the 1970s and 1980s.

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<sup>52</sup> Gordon Trombley and Wilhelm Beckert to Cottage Site Lease Holders – Payette Lakes Area, April 22, 1968, in Payette Lakes Proposed 1700 Acre Sale, Isolated File Cabinet, 3rd Drawer from top, IDL, Boise, ID. (Pitt106b)

<sup>53</sup> Gordon Trombley and Wilhelm Beckert to Cottage Site Lease Holders – Payette Lakes Area, April 22, 1968, in Payette Lakes Proposed 1700 Acre Sale, Isolated File Cabinet, 3rd Drawer from top, IDL, Boise, ID. (Pitt106b)

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### SECTION 3: PAYETTE LAKE COTTAGE SITES, 1970-2012

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In 1967, Idaho Attorney General Allan Shepard wrote to Governor Don Samuelson regarding a proposed land sale at the north end of Payette Lake. "A matter of public concern is the desirability of continued state ownership of cottage sites on the west side of Payette Lake," he began. However, he explained that while state ownership continued in many of the lots, they had "for all practical purposes...been in the category of private property" for many years. He continued: "I doubt there can be any serious contention that these lots should revert to public usage in the way of parks, public beaches or means of public access. In my opinion there is little, if any, desirability in continuing the fiction of public ownership of these lands."<sup>54</sup> Thus, as the 1970s dawned, the Land Board began to consider sales of the lots again, and the leasing program and desire for public access was threatened. Controversy with leaseholders and lot owners during the next 15 years altered the Land Board's policies regarding roads and beaches in the state's Payette Lake Cottage Site subdivision.

Two key incidents, in particular, help in dissecting the public view of and the Land Department and Land Board's interpretation of dedication language on the multiple west side plats in the last quarter of the 20<sup>th</sup> Century. Both sets of events suggest that, under pressure from cottage site lessees and lot owners, the Land Board made statements and began to manage the beaches and access roads for the cottage site lessees exclusively. However, the sequence of events and correspondence between players and internally within the Department of Lands demonstrate that many people, including those working for the State of Idaho, continued to believe the roads and reserve areas were intended for the general public, and that it was the lessees and lot owners who continually tried to assert otherwise.

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#### THE DOCK AND OTHER CONCERNS ON WAGON WHEEL BAY

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As public appreciation for wild places grew, discovery and use of Payette Lake increased in the late 1960s and 1970s. The increased use initially resulted in disagreements between cottage site lessees and lot owners. The first dispute related to a dock built in Wagon Wheel Bay in 1960, located at the north end of Payette Drive between lots 145 and 146. (See Figure 6 in Appendix 1.) Lessees in the Cedar Knoll Acres Addition had obtained permission for the dock from the Department of Lands, and proceeded to use the dock with other Cedar Knoll Acres lessees for the next decade. But in

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<sup>54</sup> Allan Shepard to Don Samuelson, April 28, 1967, Box 64, Land Board Material, 1967-1968, Papers of Governor Don Samuelson, AR 2/25, ISA. (Pitt241a)

1970, upon arrival in McCall for the season, the original dock permittee, Mrs. Wells, found that the owner of one of the adjacent lots had torn down the dock and constructed a new dock without permission from either the original dock permittees or from the Land Board. Subsequently, the builder of the newer dock informed several of the Cedar Knoll Acres lessees that they were not permitted to use it. In addition to having their dock access limited, Mrs. Wells claimed that she and other users of the access road also had been “under harassment the last couple of years” for simply using the road.<sup>55</sup> Mrs. Wells was not the only second-tier leaseholder to experience such problems. Frances Porter, a resident of the Pinecrest Addition at Payette Lake, wrote to the Idaho Land Commissioner to oppose the recent increase in lease rates and complain about lack of access to the waterfront. Porter reported that the road leading to the lake was “impassible” and that “the waterfront residents resent trespassers.” Porter asked, “why can’t we who have cabins back in the woods have access to the lake?”<sup>56</sup>

Although director Gordon Trombley’s response to Porter outlined “several unmarked...access points” near her lease site and drew her attention to the fact that Picnic Point Access was still available and had only been blocked “to prevent vehicle parking and camping on the area,” the issue was not so clear in all of the stakeholders’ minds.<sup>57</sup> The dock issue itself was ultimately worked out, first between the owners and the lessees when the Land Board implied if they were unable to work it out on their own then there would be no dock at all, and then when the State gave in and ordered the placement of two docks at access points located at the end of Payette Drive and the end of the paved Wagon Bay Road.<sup>58</sup> But the controversy spawned several internal memos and attorney opinions that illuminate the debate over the public nature of these access roads and beaches.

Meanwhile, the Land Board and other entities were also engaged in an effort to improve sewage disposal around the lake. The increased use and development at Payette Lake had resulted in a highly contaminated lake thanks to the pollution streaming into it. A 1966 proposal by local developers to build a resort on 1,700 acres on the north shore of the lake brought the issues to a head, and to address its own waste concerns, the Village of McCall installed a sewage system in

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<sup>55</sup> Mrs. E.G. Wells to Director of State Lands Gillette, July 14, 1976, Honorable John V. Evans - Regular Meeting Date: May 10, 1977, Series I Box 6, Papers of Governor John V. Evans, AR 2/27, ISA. (Pitt242a)

<sup>56</sup> Frances Porter to State Land Commissioner (no name given), Feb. 27, 1974, Cottage Site Lease Protests. Land Board Matters (Drawer 2), IDL, Boise, ID. (Pitt100a)

<sup>57</sup> G.C. Trombley to Frances Porter, Apr. 15, 1974, Cottage Site Lease Protests. Land Board Matters (Drawer 2), IDL, Boise, ID. (Pitt100b)

<sup>58</sup> Robert Coats to Archie Brandt, July 15, 1976, in Wagon Wheel Bay, Isolated File Cabinet, 3rd Drawer from top, IDL, Boise, ID. (Pitt102d); Chronology, Burns/Thomas Dock, May 23, 1977, in Land Board File. (Pitt104a)

1967. The Land Board recognized that year that it, too, needed to address the sewage and pollution problem on the land that remained in state hands.<sup>59</sup>

Because Attorney General Shepard was pushing to end the leasing program and convert the Payette Lake cottage sites to private ownership, Gordon Trombley, the Director of the Land Department, gave a presentation to the Land Board in 1967. Trombley began by presenting an ownership map which indicated approximately 150 sites still under lease. He also pointed out that there were several areas designated to the public use including a community beach, driveways, access roads, picnic grounds, and parks. Members asked Trombley several questions about the issue. In particular, Superintendent of Education D.F. Engelking inquired if the access roads were clearly marked. Trombley explained that "they're surveyed out and dedicated but whether or not they're in use, I couldn't say." Engelking emphasized that "this is something the Parks Board or someone ought to check into. I think sometimes we get criticized for not giving the public access when, actually, it's there, if people just know where to find it." No further discussion of the roads was had at that point, but Governor Don Samuelson suggested that all five Board members travel to the west side of Payette Lake for an on-site inspection of the land.<sup>60</sup>

Soon afterwards, the state made arrangements to install a sewage system. The complications related to installation of a sewage system revolved around who would pay, since a number of lots were privately owned while the State still maintained ownership of many others. Some Board members felt that the solution lay in selling the lots and divesting the State of the land. At a Board meeting in 1968, Governor Don Samuelson inquired if the State could sell lots with the understanding that buyers would need to put in a legal and legitimate sewage system, a proposal which both Superintendent of Public Instruction Engelking and Attorney General Shepard liked. Engelking also noted that it had been brought to his attention several times that it was difficult to keep "little access roads open and that it has been indicated that there is potential for sale of lots above the road." Engelking moved that the lots be offered for sale, and that the Land Commissioner be directed within a period of two or three months to make a study of the lots on the west side of the lake and present an orderly plan for disposal of the lots below the road. He also moved that the Land Commissioner plot out the available lots that might be for sale above the road, "including development of roads, access sites, etc. And present the matter back to the Land Board." The motion

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<sup>59</sup> Board Minutes, Feb. 23, 1967, Book 18, Sept. 8, 1964 - Dec. 17, 1968, IDL, Boise, ID. ([Pitt54l](#))

<sup>60</sup> Board Minutes, June 13, 1967, Book 18, Sept. 8, 1964 - Dec. 17, 1968, IDL, Boise, ID. ([Pitt54o](#))

carried unanimously.<sup>61</sup> It is important to note that throughout the process, Superintendent Engelking insisted on the maintenance of public access to the beaches, including the existing roads.<sup>62</sup>

The reader may recall from Section 2 of this report that Trombley and Parks Director Beckert had, around this time in 1968, penned a letter to cottage site lessees in regard to maintaining open access. In May, they received a response from attorney T.H. Eberle. He maintained that it was simply unfair for the State to allow these roads to be used by the public, since the State had not invested any funds in their development. Eberle claimed that none of the access roads leading to the lake – whether section line roads permitted for the county to use or roads platted with the subdivision – had “ever been developed through the expenditure of any public funds” and “most of them are merely rough one-way trails.”<sup>63</sup> He accused the Land Department and the Land Board of proposing “to put heavy public traffic over such roadways down to the lake.” Eberle acknowledged that “no one can state that these roads are not open for public use, being so platted” but followed that without sufficient improvements, it was irresponsible for the state to “encourage them to be used as public highways.” Underscoring the owners’ and lessees’ recognition of the new State Parks program and their opinion on how that program should relate to the public’s use of the west-side State lands, Eberle also stated:

This is not to misunderstand that the public needs access to Payette Lake, which it does. In fact the public has one of the finest portions of the lake reserved for it, the Ponderosa State Park Peninsula. There are many miles of waterfront available here without any possible conflict. It would be difficult to understand why the Park Department would wish to encroach on a beach, such as Wagon Wheel Creek point, with public access other than for the lots leased out behind, when there has been so little development for similar purposes ... [unreadable] the Ponderosa Peninsula.

Upon receiving Eberle’s letter, Trombley determined to bring the issue to the full Board. He forwarded Eberle’s letter to all members with a cover memo outlining the issue. He and his staff were conducting research into the Board minutes to make sure of the facts, but he stated that his department as well as individual Land Board members believed that “such reservation for access and certain beaches were for *all of the public to use*, as well as secondary lot owners and lessees.” [Emphasis added.] Trombley concluded his memo by warning that, “it appears that considerable opposition will develop if we continue to pursue the opening and identification of such corridors

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<sup>61</sup> Board Minutes, May 7, 1968, Book 18, Sept. 8, 1964 – Dec. 17, 1968, IDL, Boise, ID. (Pitt54y)

<sup>62</sup> Board Minutes, Sept. 23, 1969, Book 19, Jan. 14, 1969 – April 22, 1975, IDL, Boise, ID. (Pitt56g)

<sup>63</sup> Eberle was incorrect on this point, and here it is instructive to recall the funds spent on the Community Beach by the State and Parole Board in the 1940s.

and beach areas and we should, therefore, examine carefully what our continuing position should be.”<sup>64</sup> There is evidence that the Land Board may have, in light of Trombley’s warning, hired a consultant to research State Land ownership in Idaho. However, the record is silent upon what – if anything – they concluded.<sup>65</sup> Although Trombley continued to convey his belief regarding the intent of these areas, the Land Board and the Department of Lands would soon make a very big change.

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#### THE COMMUNITY BEACH AND A CHANGE IN DEPARTMENT POLICY

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By the late 1970s, the pollution issue had been resolved by the State through the installation of a sewage system. The system ran directly through the Community Beach at the north end of Wagon Wheel Bay, and the State’s handling of the construction opened a new opportunity for discussion over the intent of the beach. A landowner named Frederick Bagley owned lot 175, to the north of and adjacent to the PLCS Community Beach that had been part of the subdivision since its inception on the north. Bagley, a former state legislator (1967-1970), somehow managed to build a bunkhouse and a deck over the property line and onto the land designated as “Community Beach.”

The trespass discovery was made in the early 1980s, and to solve the problem, the State granted Bagley a non-assignable lease in 1985 for a piece of land located on the Community Beach parcel. However, a letter written by Bagley in the run-up to the lease granting is instructive as to the State’s management of the lands, and points again to the Land Board’s intent to maintain the roads and the reserve areas for public use.

The new sewage system had required construction through the Community Beach parcel. As Bagley put it, access to the beach lot *prior* to the sewer construction had been “blocked by wood post barriers and a sign as follows: Notice, Beyond this Point – No Overnight Camping, Foot Traffic Only, Fires in Fire Rings Only, by Order of the Land Commissioner.” Bagley tried to assert that the barrier and sign had been installed following complaints by residents about the “buses with large groups of day bathers” coming onto the lot, as well as “overnight camping and all night partying.” It is

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<sup>64</sup> T.H. Eberle to Gordon Trombley, May 20, 1968 (Pitt241c); Gordon Trombley, Memorandum to Land Board Members, May 21, 1968, Box 64, Land Board Material, 1967-1968, Papers of Governor Don Samuelson, AR 2/25, ISA. (Pitt241b)

<sup>65</sup> Citation to new information from Board Books, 1968. Source number to be added at a later date.

particularly instructive that the sign erected by the State in response to these complaints did *not* proclaim that the lot was to be used only by lessees and lot owners in the subdivision.<sup>66</sup>

Furthermore, when the sewer line construction was completed, the Department of Lands continued to treat this beach as a public use area and even planned for its expansion. Bryce Taylor of the Department of Lands authored an internal memo noting that the area looked “great” following a seeding of the area to grass after construction, and:

we now have a very useable beach area. Anticipating increased use, we have marked out an area to be used for parking so that we would not create a nuisance of cars parking on the roadway ...and in private driveways. We intend that the area will still be signed for day use only...We do not intend to advertise this beach for general use but we do want to encourage our lessees to use the area as it was intended. Should a problem of overuse occur, the barricade can easily be reinstalled at the entrance to this beach. I really don't think that will happen if our lessees will use the area but I am prepared to 'eat crow' and move the barrier to eliminate use if necessary.<sup>67</sup>

Bagley and his neighbors were aghast at the State's plans. Taylor's plans for the beach were bold, particularly in light of the State's recent change of heart.

As noted above, the issue over the docks as well as the Bagley controversy resulted in many legal opinions in the late 1970s and early 1980s. The Land Board unanimously adopted a policy statement on June 8, 1976 that suggested a change in direction. It stated that “platted access routes to all bodies of water within the State subdivisions be kept open for the use of all second and succeeding tier leaseholders or to the purchasers of such lots.”<sup>68</sup> The policy was refined further by the Land Department's attorney during this era, L. Mark Riddoch. He first stated his opinion on the ownership of the roads in 1979 and stuck with that legal position through his time on staff. It was Riddoch's legal opinions that marked the real turning point in management and administration of the access roads in the PLCS.

Riddoch's September 1979 opinion was offered in response to two questions posed by the Land Department related to access points. The questions were: “In State-developed subdivisions at Payette Lake, did the Board make a gift of the streets, alleys, and common areas to the county?”

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<sup>66</sup> Frederick R. Bagley to Bryce D. Taylor, Aug. 5, 1984, in Cottage Site LLC M-5015, Records of the Attorney General's Offices, Boise, ID. ([Pitt305a](#))

<sup>67</sup> Bryce Taylor to C-BNW (Cd'A), Aug. 8, 1984, in Cottage Site LLC M-5015, Records of the Attorney General's Offices, Boise, ID. ([Pitt305b](#))

<sup>68</sup> Board Minutes, June 8, 1976, Book 20, May 16, 1975 – Sept. 1, 1983, IDL, Boise, ID. ([Pitt57c](#)); Robert Coats to Archie Brandt, July 15, 1976, in Wagon Wheel Bay, Isolated File Cabinet, 3rd Drawer from top, IDL, Boise, ID. ([Pitt102d](#))

And, are the streets and alleys in the PLCS “open for use by the general public or restricted to use by the lot owners and lessees of the subdivision?” Simply put, Riddoch found that Valley County had never officially accepted the road dedication and that the state therefore still owned the roads. He concluded his opinion by stating that “the streets and alleys of the subdivisions are open to only the lot owners and lessees subject to the regulation of the board.” Furthermore, he argued that Valley County’s 1973 vacation of the road between lots 19 and 20 did not constitute County ownership of the roads, but was “rather a clear indication that the County does not want responsibility for maintenance and improvement of the streets.”<sup>69</sup>

However, other evidence did exist that demonstrated County involvement in the roads over the years. For instance, a 1947 petition to close the road that stemmed from Warren Wagon Road between lots 203 and 204 was presented to the Valley County Commissioners, who granted it on August 11.<sup>70</sup> Some years later in the early 1970s, Mr. Don Binning, the owner of lot 105 requested that the road between his lot and lot 106 be relocated in order that it did not encroach upon his land. (See Figure 6 in Appendix 1 for an overall view of the PLCS subdivision.) As part of that relocation/alignment, the State removed trees and re-graded the road. However, Valley County was also involved, bringing in “base material and road surface,” in order to make the road passable in all seasons.<sup>71</sup> Regardless, Riddoch remained committed to his opinion that the roads were intended only for the use of owners and lessees. His successor, Bob Becker, reviewed Riddoch’s opinion and concurred with it, adding that “the department can find no evidence that Valley County formally accepted the dedication, and the county has not conducted regular maintenance of the streets, roads and access ways. In fact, the county has conducted virtually no maintenance whatsoever outside of some minor snow removal and some minor repair work.”<sup>72</sup> Becker also stated that in spite of the plat language, the State could not legally convey title to the roads and other access ways by dedication, per the decision in *Tuttle v. County Commissioners of Grand County* (44 Colo. App. 334, 613 P2d 641, 1980).

The record indicates that Riddoch’s view has prevailed since the time he first expressed it. Bagley was granted a lease for Community Beach land in 1985, and has continually fought the State since

<sup>69</sup> Legal Counsel (LMR) to the State of Idaho-Department of Lands Assistant Director (LMR), Sept. 4, 1979, in Cottage Site LLC M-5015, Records of the Attorney General’s Offices, Boise, ID. (Pitt305c)

<sup>70</sup> Leslie Ankenman to Chris Korte, June 2, 1995, in Payette Lake Cottage Sites, Planning and Zoning Division, Valley County Courthouse, Cascade, ID. (Pitt148k)

<sup>71</sup> William A. Scribner to Mrs. George H. Binning, Oct. 21, 1974, in Department of Lands 1974, Box 76, Records of Governor Cecil D. Andrus, MSS 141, Boise State University Special Collections, Boise, ID. (Pitt283a)

<sup>72</sup> Bob Becker to Stan Hamilton, Sept. 19, 1986, in Cottage Site LLC M-5015, Records of the Attorney General’s Offices, Boise, ID. (Pitt305d)

that time, arguing for lower lease rates because of the encumbrance placed on the leased land by the plat language regarding public use dedication. The State has allowed Bagley to continue leasing the land through the years but has never agreed to a lower rate because of this language, indicating that its policy toward public use on the site has likely not changed.

## CONCLUSION

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The historical record makes clear that members of the Land Board and staff at the State Department of Lands considered the language on the various plats of Payette Lake Cottage Sites to mean what it said: that the roads and the reserve areas were intended to be used by the public forever. At the time the various subdivisions were platted – 1924, 1932, and 1947 – neither a State Parks Department nor an informal state park program existed. Correspondence, reports from the State Land Director, and meeting minutes from the Land Board all make it clear that the intent of the original language was to provide access to the lake for the general public.

It was not until after the platting of the Cedar Knoll Acres and Pinecrest Additions that interpretation of and action pursuant to the plat language became less clear. It is true that the actions of Land Board members and Department staff were inconsistent after this time, despite their consistent *effort* to continue to keep access available. The national focus on recreation and the rise of a State Parks Department in Idaho – first as a division within the Department of Lands and eventually as a standalone department – indicated a clear State policy directive to formally set aside land for the general public in the form of parks. The creation of parks, and in particular, Ponderosa State Park in McCall, provided lessees and lot owners in PLCS subdivision with the justification they needed to close off access to publicly designated lands within the subdivision.

The major change came in the late 1960s when the Land Board and Department of Lands staff recognized that it would face a great deal of opposition from lot owners and lessees who had been slowly making inroads on the issue of access for 20 years. Over the next decade, the Land Board heard from many residents of the area, and ultimately obtained an opinion from the Idaho Attorney General's office that firmly changed the interpretation of the plat language. Since that time, no major occurrences have altered the State's stance on the question of access to the Lake on the roads through Payette Lake Cottage Sites.

APPENDIX I

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Payette Lake Cottage Sites 1924 Plat

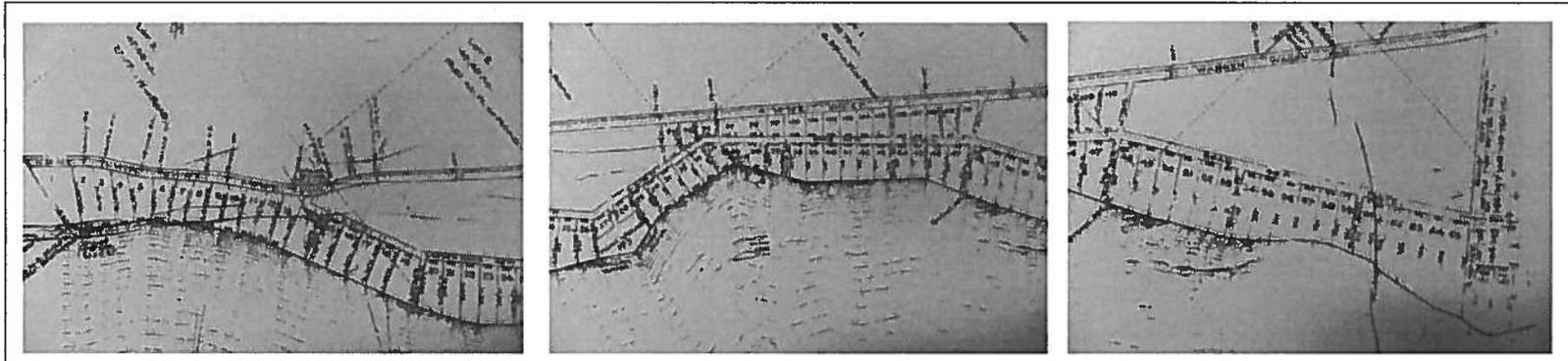


FIGURE 1: THE PAYETTE LAKE COTTAGE SITE SUBDIVISION WAS PLATTED ON JULY 2, 1924. NOTE: THE NORTHERN PORTION OF THE PLAT, WHICH INCLUDES THE AREA AROUND WAGON WHEEL BAY, HAS NOT BEEN LOCATED. (PITT38)

Payette Lake Cottage Sites 1932 Amended Plat

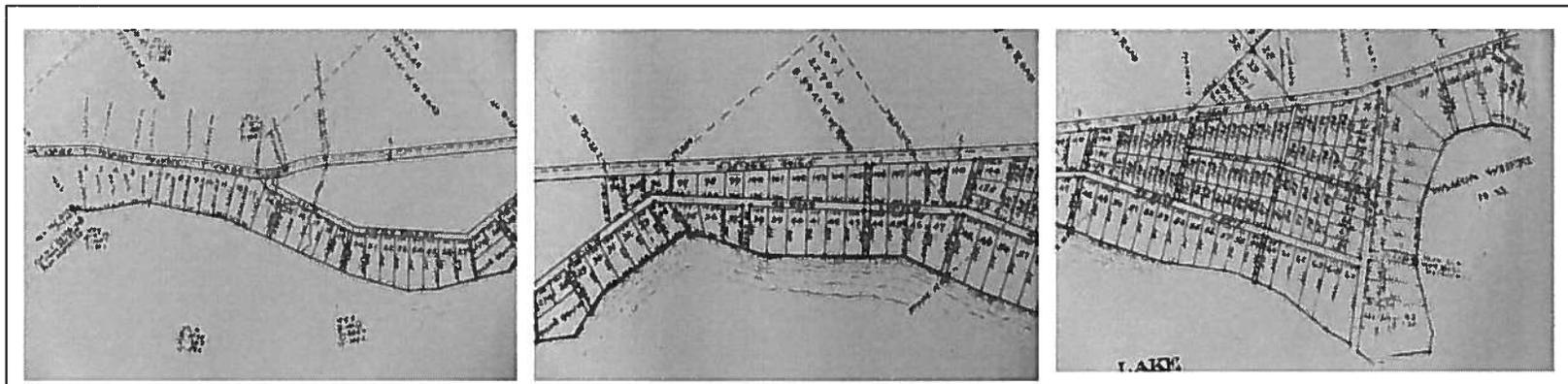


FIGURE 2: THE AMENDED PLAT OF THE PAYETTE LAKE COTTAGE SITES RE-SURVEYED LOTS 14 TO 28; 53 & 54; 153 TO 164; 171 TO 177; 187 TO 191 ALL INCLUSIVE. (PITT37)

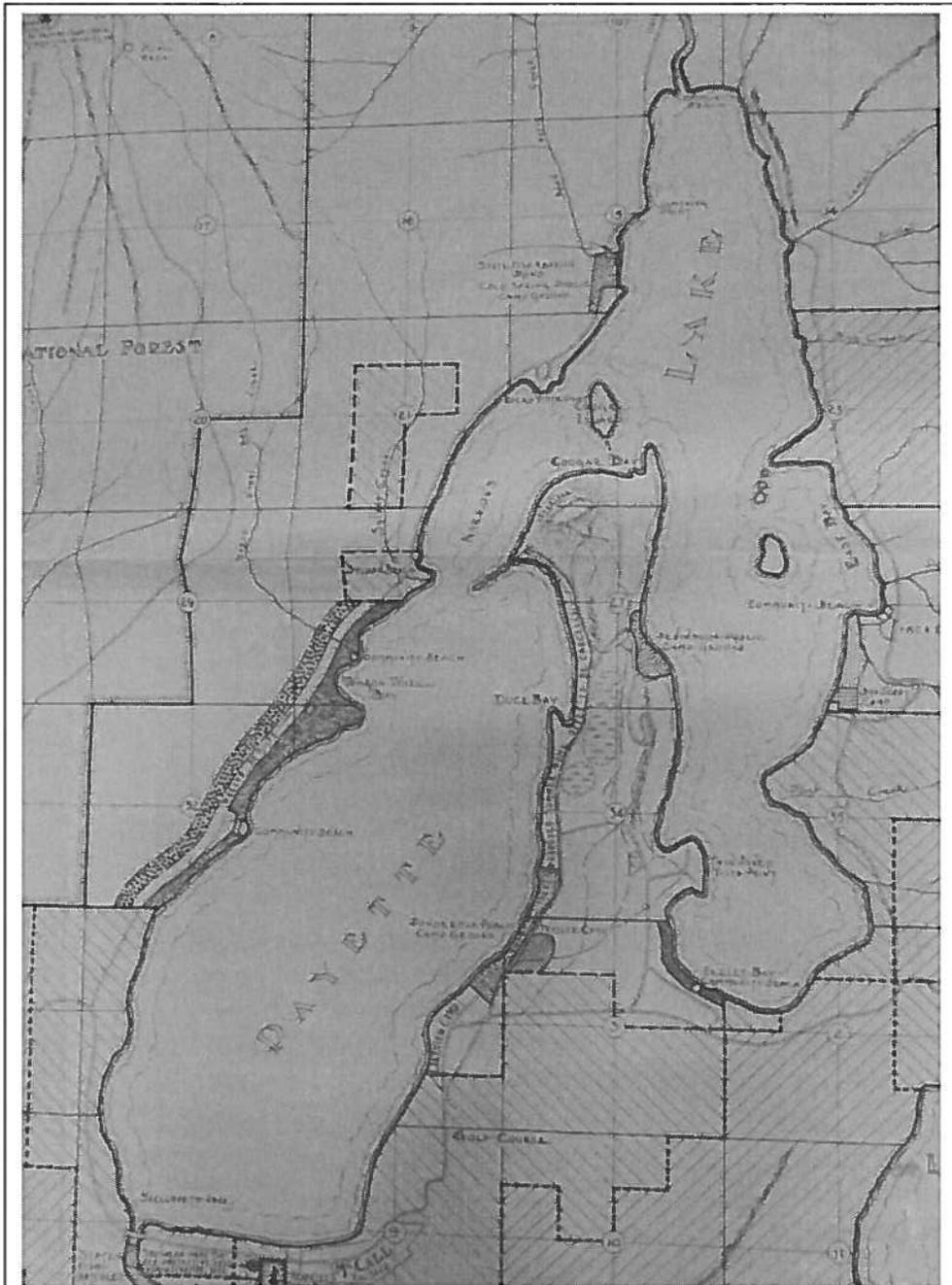


FIGURE 3 1937 MAP OF PAYETTE LAKE BY AGRICULTURE DEPARTMENT (PITT199)

Cedar Knoll Acres Subdivision of the Payette Lakes Cottage Sites, 1949

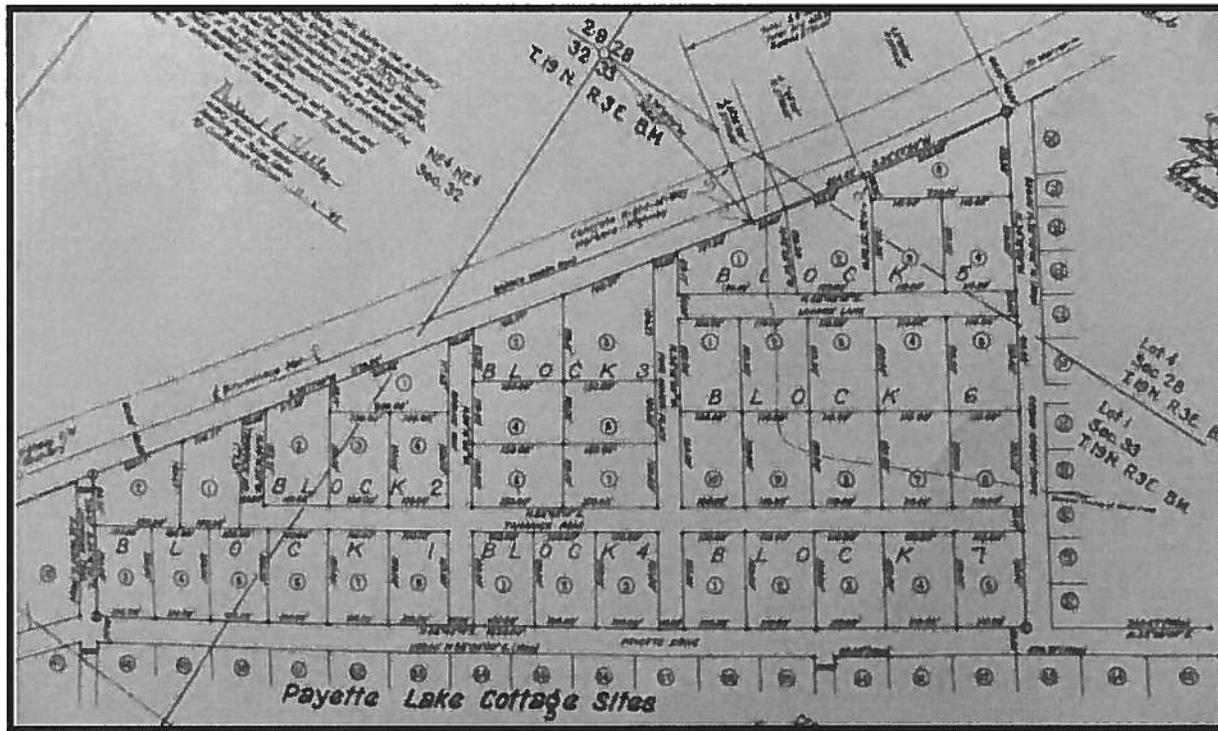


FIGURE 4 THE CEDAR KNOLLS ACRES SUBDIVISION WAS OFFICIALLY PLATTED ON APRIL 12, 1949. (PITT40)

Pinecrest Addition to Payette Lake Cottage Sites, 1947

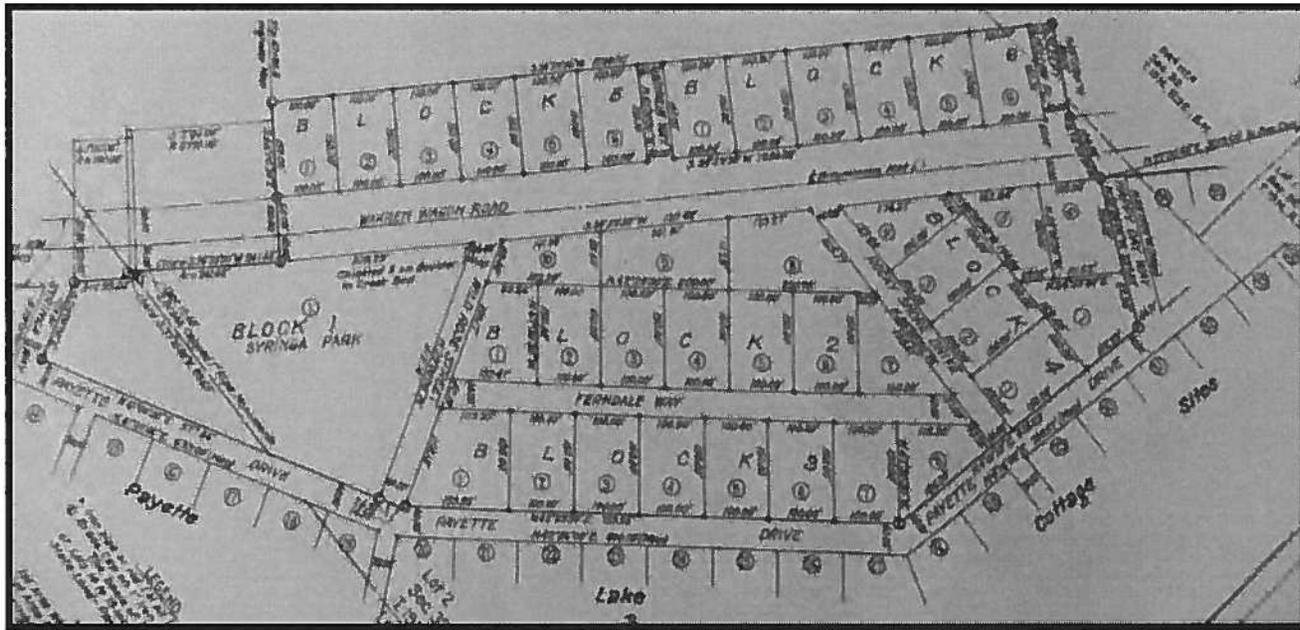


FIGURE 5 THE PINECREST ADDITION TO PAYETTE LAKE COTTAGE SITES SUBDIVISION WAS PLATTED ON OCTOBER 24, 1947. (PITT36)

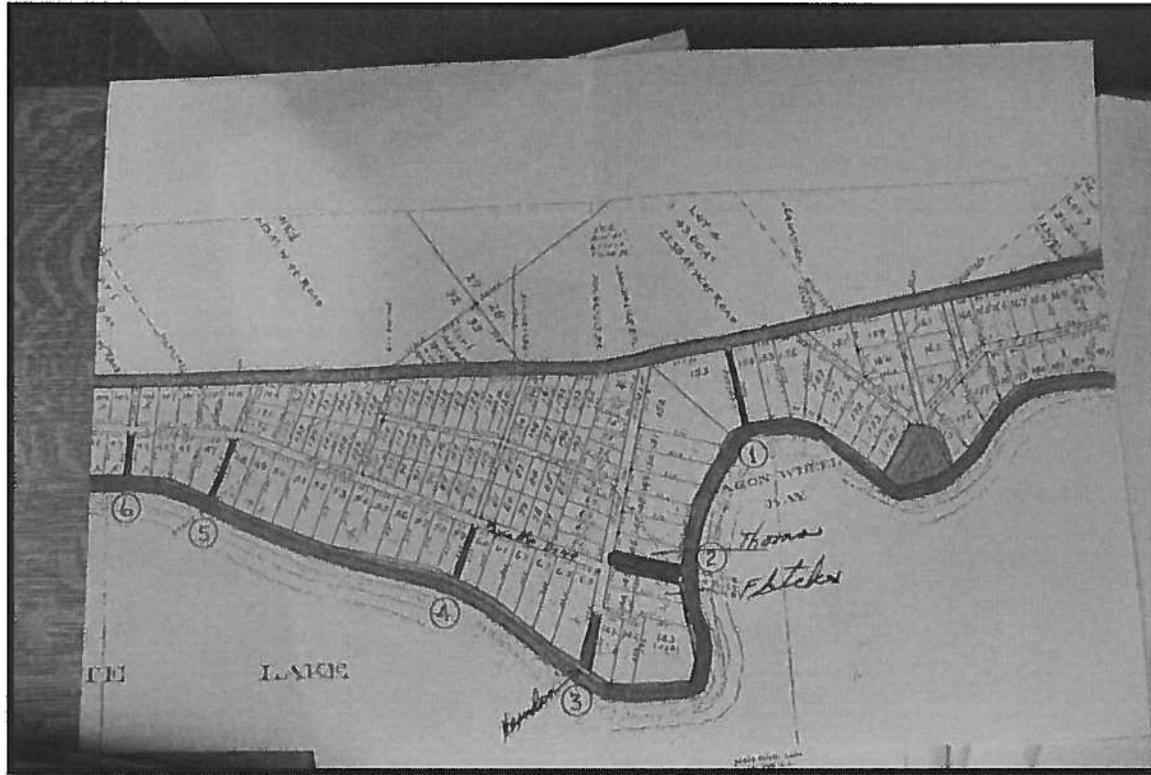


FIGURE 6: PLAT SHOWING ACCESS POINTS TO LAKE

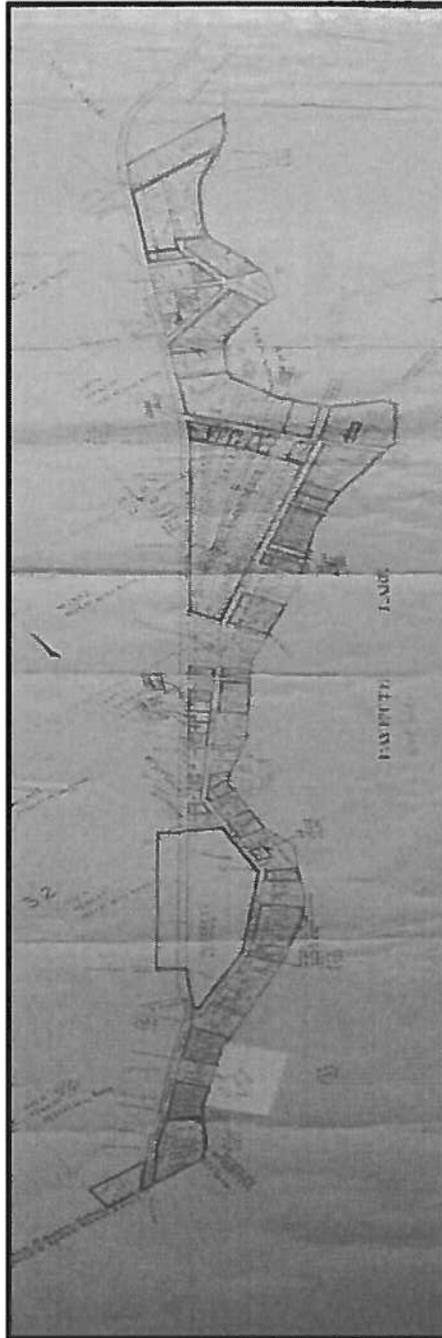


FIGURE 7 WORKING VERSION OF 1932 PLAT OF PLCS

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 APPENDIX II - TIMELINE
 

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- 1924 June: The state of Idaho platted Payette Lake Cottage Sites Subdivision (PLCS) on the west side of Payette Lake. The plat donated and dedicated "streets, roads, alleys, and commons and public grounds as shown on this plat to the use of the public forever."
- August: The Land Board approved the sale of five (5) PLCS lots on Wagon Wheel Bay.
- Idaho State Land Commissioner I.H. Nash recognized the recreational potential of Payette Lake in his official state report.
- 1928 July: The Land Board authorized another ten (10) lots on Wagon Wheel Bay be sold at public auction.
- 1930 The Annual Report of Lands Department commented that roads to the beach be held for the public use for those who could not afford leasing.
- 1932 February: In light of the depressed economy the Idaho Legislature passed a law allowing extensions for 1931 and 1932 cottage site payments.
- October: PLCS was replatted and lots 14-28, 53&54, 153-164, 171-177, 189-191 all inclusive were re-surveyed. Additionally lots 66-93, 111-140, and 188-199 (all inclusive) were added to the original plat.
- 1936 September: State Land Commissioners unanimously voted to disapprove any more sales or leases on recreational sites until an examination and overall policy was made available to the Board.
- Congress passed a law mandating (with state approval) studies and inventories of recreational areas across the country. The State Forestry Department carried out Idaho's study.
- 1937 The Department of Agriculture's Forest Service produced a map of Payette Lake which outlined five (5) community beaches.
- 1938 April: The State Land Board passed a resolution which maintained that the Board would withdraw lands along Payette and Priest Lakes from sale and instead establish summer home sites, picnic areas, as well as public camp grounds and parks.
- 1940 State Land Commissioner C. Van Clark noted in his biennial report that state land around lakeshores was not permitted to pass into private ownership.
- 1942 February: The State Land Board discussed and eventually approved the sale of four (4) cottage sites because the lessees had made major improvements.

- 1946 Idaho State Land Commissioner Edward Wozzley recommended in his "Statement of Policy" that funds be appropriated for the development and maintenance of roads, water, and beaches as well as picnic and camp grounds. He also maintained that lake shorelines should be preserved for the use of the general public.
- 1947 October: Pinecrest Addition and Cedar Knoll Acres Addition were platted into the PLCS subdivision. Both plats also dedicated streets, roads, or alleys, commons and public grounds to the use of the public forever.
- 1948 Land Commissioner Wozzley acknowledged that the previous sale and leasing of more desirable beaches hampered use of other lands in the vicinity. He also reaffirmed the Land Board's policy of not selling desirable recreational areas so that future generations could benefit.
- August: Wozzley acted upon his plan to develop a community beach adjacent to Wagon Wheel Bay.
- September: After an outcry from PLCS lot owners, Wozzley that the beach would be a reserve beach for the lessees of the Cedar Knoll Acres addition.
- 1949 March: The State Land Board once again amended the PLCS plat. Lots originally known as Lots 1—4 at the southern end of the PLCS subdivision were replatted.
- The Land Board re-committed itself to not selling cottage sites along Payette Lake.
- The Idaho State Legislature allocated the Department of Lands \$25,000 for a Recreational and Land Improvement Fund, designed to aid the Department in surveying and building roads.
- Valley County recorded the new PLCS plats.
- 1950 In the State Land Department's 30<sup>th</sup> Biennial Report, Land Commissioner Wozzley re-iterated that the Land Board was dedicated to withholding all recreational lands along Payette Lake from sale. However, he also stated that the Department had several new areas open for summer home development by reserving beaches for the use of back lot cottage site lessees.
- Newly appointed Land Commissioner Arthur Wilson asserted that by a Land Board Order in June 1950, the public park at Pilgrim Cove had been set aside for the use of lessees of those lots in the area which did not border the lakeshore.
- 1957 The State Land Board designated land around Payette Lake as park areas.
- 1958 The Department of Lands 1958 biennial report detailed the Department's focus on developing of state parks.
- 1965 Ponderosa State Park officially becomes a state park.
- 1967 November: After touring Payette Lake the members of the subcommittee on Natural Resources reported that they had failed to located access areas that were designed for public use because they had been blocked off.

The Land Board begins to address sewage and pollution problems occurring on the west side of Payette Lake.

Attorney General Shepard began pushing to end the state's leasing program and convert PLCS into private ownership.

1968 April: Newly appointed Land Commissioner Gordon Trombley and Parks Department Director Wilhelm Beckert wrote cottage site lessees and explained that the access points were designed to provide access to Payette Lake, and not intended to be exclusively for the use of summer home residents.

May: T.H. Eberle, an attorney, responded to Trombley and Beckert's letter and stated that it was unfair for the state to allow roads in the PLCS subdivision to be used by the public since the state had not invested any funds in their development.

May: Trombley alerted the Land Board that there would likely be considerable opposition if they Board continued to identify roads and beach areas as for the general public.

1970 A dispute occurred pitting PLCS lot owners against Cedar Knoll Acres lessees against each other. The controversy centered on allowing second tier lessees access to the shoreline.

1976 The Land Board unanimously adopted a policy statement which stated that platted access routes to all bodies of water within state subdivisions were for the use of all second and succeeding tier leaseholders.

1979 September: Department of Lands attorney L.Mark Riddoch stated in an opinion that Valley County never accepted the road dedication and that the state still owned the roads in PLCS. He maintained that the roads were intended for only lessees and lot owners.

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

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

**VALLEY COUNTY, IDAHO**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration")**, is made on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by the **State Board of Land Commissioners**, by and through the **Idaho Department of Lands** (the "**State Land Board**"), with reference to the following facts:

A. The State Land Board is the owner of \_\_\_\_\_ residential Lots located at Payette Lake, Valley County, Idaho, known as **AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES**. The land encumbered by this Declaration is more particularly described as follows:

All land currently owned by the State Land Board, located within the Plats of **AMENDED CEDAR KNOLL ACRES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; **AMENDED PINECREST ADDITION**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; and **SOUTHWEST PAYETTE COTTAGE SITES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_, records of Valley County, Idaho. Said land is identified more specifically by subdivision name, block and lot in **Exhibit "A"**.

Hereafter, the term "Owners" shall refer to the owners of the Lots bound by this Declaration together with the owners of such Lots which may hereafter be made subject to this Declaration by the deeded owners ("Pre-Existing Owners") of the Lots identified in **Exhibit "B"** and depicted on the Plats for purposes of identification ("Pre-Existing Lots"). The Pre-Existing Lots identified in Exhibit "B" are not currently owned by the State Land Board, and the Pre-Existing Owners have not yet agreed that Pre-Existing Lots which they own shall be subject to this Declaration. However, the Pre-Existing Owners may at any time subject their Pre-Existing Lots to this Declaration as provided in Section 2.3 below.

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 Payette Lakes Cottage Sites Owners Association, Inc., which Association will operate and maintain certain properties and facilities within the Plats and assume maintenance obligations by virtue of deeded ownership and an easement 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 and the State's Lessees as provided herein and in the Addendum hereto, their successors-in-interest and assigns, the 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. 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 Land Board and its Lessees.

1.2 Affirmative Vote of the Membership. The Affirmative Vote of a Majority of the Membership shall be achieved on any particular matter upon the vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Affirmative Vote of sixty-seven percent (67%) of the Membership shall be achieved on any particular matter upon the vote of at least sixty-seven percent (67%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Board shall have the right to submit any matter requiring Membership approval to the Membership by mailed ballot, in which case the approval of the matter shall require the specified percentage (i.e., 51% or 67%) of the total votes of the Membership.

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

1.4 Assessment. 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 Common Assessments, Special Assessments, Local Improvement

Assessments or Local Maintenance Assessments, as those terms are more specifically defined in the Bylaws.

1.5 Association. Association shall mean the Payette Lakes Cottage Sites Owners 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 as provided herein, and any successor-in-interest thereto.

1.6 Association Documents. Association Documents shall mean the various governing documents of the Association, including: (a) the Articles of Incorporation; (b) the Bylaws; (c) this Declaration; (d) all Rules and Regulations promulgated by the Board; and, (e) all amendments and supplements to any of the aforementioned documents.

1.7 Association Expenses. Association Expenses shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area, expenses incurred by the Association in meeting its obligations and in the administration of the Association, and any reasonable reserve for such purposes as determined by the Board. Association expenses may be levied and collected by the Board as Common Assessments, Special Assessments, Local Improvement Assessments or Local Maintenance Assessments.

1.8 Association Facilities. Association Facilities shall mean all property owned or leased by the Association or otherwise held or used by the Association, or which is under the Association's management or control by, through or under contractual arrangements, licenses or other arrangements, including property furnished by Declarant, real property or interests therein, improvements on real property, and personal property and equipment.

1.9 Benefitted Lots. Benefitted Lots shall mean groups of Lots which have like interests or needs, which Lots may already be grouped as a Neighborhood, which are so designated for the following purposes: (a) to determine, assess and budget Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) to determine, assess and budget Local Maintenance Assessments, as defined at Article 8 of the Bylaws; and/or, (c) to otherwise facilitate the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members.

1.10 Board or Board of Directors. The Board or Board of Directors shall be the Board of Directors of the Association, as it shall be constituted from time to time.

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

1.12 City. City shall mean the City of McCall.

1.13 City Code. City Code shall mean the McCall City Code.

1.14 Common Area. Common Area shall mean the property identified on the Plats as Common Area. Absent such designation, the term "Common Area" as used herein shall include but not necessarily be limited to all roads, easements, rights-of-way, and lake access lots which are shown on the Plats. Common Area shall also include additional property or property rights obtained by the Association in the future.

1.15 County. County shall mean Valley County, Idaho.

1.16 County Code. County Code shall mean the Valley County Land Use and Development Ordinance, as amended, superseded or repealed.

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

1.18 Lot. Lot shall include a platted parcel of land that is part of the Plats, other than Common Area, as well as all Pre-existing Lots which become subject to this Declaration as provided below in Article 2.

1.19 Member. Member shall mean a member of the Association, as further defined in Article 2. Every Owner of a Lot subject to this Declaration now or at a later time shall automatically be a Member of the Association, except where said Lot Owner is the State Land Board, in which case the Member shall be the Lessee of the Lot, if any, as provided in that certain Addendum being filed of record with this Declaration. Notwithstanding the foregoing, Pre-Existing Owners are not automatically Members, but may join voluntarily and may thereupon become a Member, as set forth in Section 2.3(c).

1.20 Mortgage. Mortgage shall mean a recorded mortgage, deed of trust, real estate contract, or other instrument creating a voluntary security interest in any Lot.

1.21 Mortgagee. Mortgagee shall mean a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, leasehold, or other holder of a perfected voluntary security interest in any Lot.

1.22 Neighborhood. Neighborhood shall mean a group of Lots designated by the Board as a separate Neighborhood for purposes of: (a) determining, assessing and budgeting Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) determining, assessing and budgeting Local Maintenance Assessments, as defined at Article 8 of the Bylaws; (c) electing Directors to the Board; (d) providing input and information to the Board with regard to proposed services, maintenance, improvements or other issues uniquely affecting the Neighborhood; and/or (e) otherwise facilitating the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members. The initially designated Neighborhoods are identified on the attached **Exhibit "C"**.

1.23 Owner or Owners. Owner or Owners shall include 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 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."

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

1.25 Plats. Plats shall refer to the recorded plats for AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION and SOUTHWEST PAYETTE COTTAGE SITES, and any amendments thereto.

1.26 Pre-Existing Owner or Pre-Existing Owners. Pre-Existing Owner or Pre-Existing Owners shall mean owners of Pre-Existing Lots.

1.27 Pre-Existing Lots. Pre-Existing Lots shall mean the Lots identified in attached Exhibit "B".

1.28 Project Documents. Project Documents shall mean the Plats and the Association Documents.

1.29 Property or Project. Property or Project shall mean all Lots subject to this Declaration as described in Exhibit A to this Declaration, and all common areas, easements and other Lots depicted on the Plats, together with all buildings, improvements and structures thereon.

1.30 State Land Board. The State Land Board shall mean the State Land Board, acting by and through the Idaho Department of Lands, collectively.

## **ARTICLE 2.** **ASSOCIATION MEMBERSHIP**

2.1 Organization of Association. The Association shall be incorporated under the name of Payette Lakes Cottage Sites Owners 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.

(a) Classes. There shall be two classes of membership in the Association, which shall consist of the following:

(i) Current Owners. The owners of the Lots which are depicted in the Plats, excluding Common Area and Lessees of Lots as provided in the attached Addendum; and

(ii) Pre-existing Owners-Permanent Memberships. Pre-existing Owners who elect to join the Association and subject their Lots to this Declaration and the Association Documents.

(iii) Pre-Existing Owners-Provisional Membership. Pre-Existing Owners who elect to join the Association as provided below.

(b) Automatic Membership. The Owner of a Lot, except a Pre-Existing Owner, 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association. The Lessees of Lots shall be considered Owners as provided in the Addendum.

(c) Voluntary Membership.

(i) Pre-existing Owners-Permanent Memberships. A Pre-Existing Owner may voluntarily become a Permanent Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter be subject to all terms and conditions of this Declaration, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. Once a Pre-Existing Owner submits its Pre-Existing Lot(s) to this Declaration, then the Pre-Existing Owner shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(ii) Pre-existing Owners-Provisional Memberships. A Pre-existing Owner may voluntarily become a Provisional Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement (the "Statement") signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter

be subject to all terms and conditions of this Declaration, subject to an option to withdraw as a Member, as described below, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. The Association shall provide the Statement for the Pre-existing Owner's use as aforesaid. A Pre-existing Owner desiring to utilize this Provisional Membership shall notify the Association of such election not later than one (1) year after the date on which the Declaration is filed of record with Valley County, Idaho. The failure to timely do so shall result in a waiver of the right to utilize the Provisional Membership. Once a Provisional Member submits its Pre-Existing Lot(s) to this Declaration, then the Provisional Member shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. The option to withdraw as a Member may be exercised at any time within five (5) years of the date of the Statement upon delivery of written notice to the Association in form provided for this purpose by the Association (the "Notice") of the exercise of the option to withdraw. Such Notice shall be delivered not less than one hundred eighty (180) days prior to the date of withdrawal. The Association shall then execute the Notice and cause it to be filed of record with Valley County. In the event the Provisional Member does not elect to exercise its option to withdraw as provided herein, then it shall be deemed a Permanent Member. The aforesaid option to withdraw shall be personal to the Provisional Member, and may not be exercised by any other person, entity, assignee or successor-in-interest. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(d) Rights and Duties of Memberships. The two above-described classes of Memberships shall equally enjoy the rights and privileges and be subject to the duties and obligations afforded by this Declaration and the Association Documents.

### 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 or used except for single-family residential purposes by the Owner, its family, and its guests and invitees, or by a single-family tenant. No more than one (1) Single-Family Dwelling and such associated accessory structures as are allowed by the County Code or City Code, whichever may be applicable to the Lot, shall be allowed on any Lot. All docks placed on or appurtenant to a Lot shall be in accordance with applicable laws. An Owner may not assign or convey a right of use of a dock to anyone other than the dock's permitted owners of record.

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 and the applicable County Code or City Code, meet applicable snow load requirements for Property (i.e., under the applicable County Code, City Code or building codes), and are installed on a permanent foundation shall be allowed.

3.4 Permits; Construction Standards. Each Owner shall comply with all applicable federal, state, and local laws, rules, codes 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 the County Code or City Code which is applicable to the Lot. Notwithstanding the foregoing, any structures or land uses which exist at the time of the recordation of this Declaration and which were approved by the State Land Board or which were in compliance with all applicable Codes when constructed are permitted to continue and shall be subject to the applicable code provisions for non-conforming uses or non-conforming structures.

3.5 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 in conformity with the International Urban-Wildlands Interface Fire Code.

3.6 Protection of Forest Resources. Other forest resources shall be protected, such as archeological resources, sensitive plant and animal species, water quality and fish habitat, as required by applicable federal, state, and local laws, rules, codes and regulations.

3.7 Fences. Fences on Lots shall comply with the provisions of the applicable County Code or City Code.

3.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance, as defined by Idaho law. All exterior heating and cooling devices must be screened from the view of neighboring properties and all reasonable measures must be taken by the Owners of such devices to mitigate noise to adjoining properties. Without waiving an Owner's rights to seek relief under Idaho law, for purposes of a demand that the Association take action, the Association shall have sole discretion to determine whether the subject activity constitutes a nuisance under the terms of this Section.

3.9 Household Pets. No animals, of any kind, except for household pets shall be raised, bred, or kept on any portion of the Property. Pets must be kept within the boundaries of the Lot unless accompanied by and under the positive control of the Owner. Consistent and/or chronic barking by dogs, or threatening or aggressive behavior by an animal, shall be considered a nuisance. The Board may create such additional Rules and Regulations with regard to household pets as it deems reasonable appropriate.

**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 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 and such Assessment may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. No Owner of a Lot may exempt himself or herself from liability for Assessments by waiver of the use or enjoyment of any of the Common Area (if any) or any other part of the Property, 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. However, neither sale nor transfer pursuant to mortgage foreclosure or by deed in lieu of foreclosure nor extinguishment, as aforesaid, shall affect or extinguish the personal liability of the Owner for unpaid Assessments.

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 which are unpaid at 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 which are then owing to 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. 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 or construction of improvements thereon, 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 non-judicial (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 or consent in writing to 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 Owner whose title is derived through foreclosure or otherwise.

**ARTICLE 6.**  
**COMMON AREA AND OWNERS' RIGHTS**

6.1 Common Area: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The vested property rights of Pre-existing Owners, the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of any recreational facilities which may be located within the Common Area; and,
- (d) The vested property rights of Pre-existing Owners, the right of the Board to suspend the right of an Owner to use any Common Area or any recreational facilities located within the Common Area (i) for any period during which any Assessment charged against such Owners Lot remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association, after notice and a hearing as provided in the Bylaws.

6.2 Use by Others. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees ("Sub-owners"), subject to reasonable Board regulation. All such Sub-Owners shall be subject to the provisions of Article 3 of this Declaration and to all applicable Rules and Regulations which are promulgated by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot, unless provided to the contrary in the Lease. An Owner shall be responsible and liable for the actions of its Sub-owners and for any violations by such Sub-owners of the terms of this Declaration and the Rules and Regulations which are promulgated by the Board.

6.3 Owners' Rights and Obligations Appurtenant. All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in the Association under this Declaration are hereby declared to be and shall be appurtenant to the title to the Lot owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Lot. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Lot shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.4 Limitation on Rights. Neither the Association nor any Owner shall have the right to grant any rights of use of the Common Area to the owners of property located outside of the Property or to members of the general public.

**ARTICLE 7.**  
**DURATION AND AMENDMENT**

7.1 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 0.

7.2 Amendment. Amendments to this Declaration may be proposed by the Board. Notice of the subject matter of any 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. The amendment shall be adopted upon the Affirmative Vote of sixty-seven percent (67%) of the Members.

7.3 Approval of Land Board. Notwithstanding the foregoing, the following special voting provisions shall apply: the State Land Board 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.

7.4 Certificate. 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 8.**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

8.1 Annexation. The Association may subject additional property which is located within the exterior boundaries of the Plats to the provisions of this Declaration with the consent of the owner of such property and the Affirmative Vote of a Majority of the Membership. Such annexation shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon recording unless otherwise provided therein.

8.2 Withdrawal. The Association may withdraw property from the provisions of this Declaration with the consent of the Owner of such property and the Affirmative Vote of a Majority of the Membership. Such withdrawal shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property being withdrawn.

**ARTICLE 9.**  
**GENERAL PROVISIONS**

9.1 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.

9.2 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 Plats, the Addendum, this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association.

9.3 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.

9.4 Effect of Provisions of Declaration. Each provision of this Declaration and the Bylaws, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration and the Bylaws, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration and the Bylaws: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner; (c) shall, as a personal covenant, be binding on such Owner and such Owner's respective heirs, personal representatives, successors and assigns; and, (d) shall be deemed an equitable servitude, running, in each case, as a burden with and upon the title to all Lots within the Property.

9.5 Enforcement and Remedies.

(a) In General. Each provision of this Declaration shall be enforceable by any Owner who has made written demand on the Association to enforce such provision and thirty (30) days have lapsed without appropriate action having been taken, by a proceeding for a prohibitive or mandatory injunction. In addition to any other remedy available at law or in any of the Association Documents, each provision of this Declaration with respect to an Owner or property of an Owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction and/or by a suit or action to recover damages, and/or, in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by exclusion of such Owner and such Owner's Lessees, Sub-owners and Guests from use of any Common Area or Association facility. If court proceedings are instituted in connection with the rights of enforcement and

remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including injunction bond premiums, and its attorneys' fees incurred, including fees incurred on appeal.

(b) Fines. In addition to the provisions of Section 9.5(a), the Board shall be entitled to impose fines and penalties for violations of this Declaration in amounts to be provided in the Rules and Regulations. Fines and penalties may be assessed only against a Member of Association, and only if the violator is the Member or a member of the Member's family or a Sub-owner, guest, invitee, lessee, contractor, subcontractor, employee or agent of the Member. Fines and penalties may be increased in the case of a continuing violation, where the Member has failed to abate the violation within the time allowed therefore by the Board in written notice to the Member. In the case of a single incident, the fine or penalty may not be assessed unless the Member has received at least one prior written notice from the Board that the violation may subject the Member to fine(s). Fines and penalties imposed pursuant to this Section may be collected as an assessment as provided in the Bylaws and this Declaration. Non-payment of assessments shall not subject a Member to fines; rather, the remedy therefore shall be as provided in the Bylaws and as may otherwise be provided in this Declaration.

9.6 Limited Liability. Neither the Board, nor any member, agent or employee of the Board, nor the Association, nor State Land Board, Director, agent or employee of the Idaho Department of Lands, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

9.7 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

9.8 Waiver. Failure by the Association to enforce any provisions of the Association Documents shall not operate as a waiver of any such provision or of the Association's right to enforce such provision or any other provision of this Declaration or the Association Documents.

9.9 Notice of Sale. Any Owner, with the exception of Lessees, desiring to sell or otherwise transfer title to his or her Lot shall give the Association at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the name of the closing agent for such transfer and the closing date of such transfer.

IN WITNESS WHEREOF, the State Land Board has caused this Declaration 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.



**EXHIBIT A**

(listing of replatted Endowment lands)

WORKING DRAFT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit A  
AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

**EXHIBIT B**

(listing of deeded lots not included in replatting activity)

WORKING DRAFT

**EXHIBIT C**  
(Initial Neighborhoods)

The Sylvan Beach Neighborhood Association will remain in place and will not be affected by this Declaration. The Sylvan Beach Neighborhood is described as follows: Originating at the northern boundary of the Amended Payette Lake Cottage Sites plat and extending south to the intersection of Warren Wagon Road and Grouse Lane, thence easterly along the southern boundary of Grouse Lane to the western boundary of Lot 177, Amended Payette Lake Cottage Sites, thence south along the western boundary of Lot 177 to the common boundary of Lots 176 and 177, thence easterly to the Lake along the common boundary of Lots 176 and 177.

The following six (6) Neighborhoods in the platted subdivisions will be initially created:

1. The Wagon Wheel Bay Neighborhood: Running from the southern boundary of the Sylvan Beach Neighborhood (which would be the northern boundary of the Wagon Wheel Bay Neighborhood) to a southern boundary described as follows: From Warren Wagon Road easterly along the south boundary of Cedar Crest Drive, to Payette Drive, thence northerly along the east boundary of Payette Drive, thence easterly to the Lake along the common boundary of Lots 64 and 65.
2. The Pine Haven Neighborhood: Running from the southern boundary of the Wagon Wheel Bay Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Pine Haven Place, thence easterly extending to the Lake across Payette Drive and along the northern boundary of Lot 57.
3. The Chipmunk Trail Neighborhood: Running from the southern boundary of the Pine Haven Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 4, Bl. 12, Southwest Payette Cottage Sites, thence easterly extending across Payette Drive and to the Lake along the southern boundary of Lot 3, Bl. 11.
4. The Squirrel Lane Neighborhood: Running from the southern boundary of the Chipmunk Trail Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 1, Bl. 1, Amended Pinecrest Addition, thence southerly along the west boundary of Lot 5, Bl. 1, thence easterly along the southern boundary of Lot 5, Bl. 1, extending across Payette Drive, thence northerly along the east boundary of Payette Drive to the common boundary of Lots 30 and 31, thence easterly along said common boundary to the Lake.

5. The Picnic Point Neighborhood: Running from the southern boundary of the Squirrel Lane Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Wild Rose Street, thence across Payette Drive to the eastern boundary of Payette Drive, thence northerly along the said eastern boundary of Payette Drive to the South boundary of Lot 1, Block 23, Southwest Payette Cottage Sites, thence easterly along said southern boundary of Lot 1, Block 23 to Payette Lake; also including the Lots on the west side of Warren Wagon Road.
6. The Wild Rose Neighborhood: Running from the southern boundary of the Picnic Point Neighborhood (which would be the northern boundary of this Neighborhood) to the southern boundary of the platted properties, excluding the property identified as "State Subdivision-Future Plat" on the State Subdivision – Southwest Payette Cottage Sites Plat.

WORKING DRAFT

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

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

**VALLEY COUNTY, IDAHO**

**TABLE OF CONTENTS**

ARTICLE 1. DEFINITIONS .....	2
1.1 Addendum.....	2
1.2 Affirmative Vote of the Membership .....	2
1.3 Articles .....	2
1.4 Assessment .....	2
1.5 Association.....	3
1.6 Association Documents.....	3
1.7 Association Expenses .....	3
1.8 Association Facilities.....	3
1.9 Benefitted Lots .....	3
1.10 Board or Board of Directors .....	3
1.11 Bylaws .....	3
1.12 City.....	3
1.13 City Code .....	3
1.14 Common Area.....	4
1.15 County .....	4
1.16 County Code.....	4
1.17 Declaration.....	4
1.18 Lot.....	4
1.19 Member.....	4
1.20 Mortgage.....	4
1.21 Mortgagee.....	4
1.22 Neighborhood .....	4
1.23 Owner or Owners.....	4
1.24 Person .....	5
1.25 Plats .....	5
1.26 Pre-Existing Owner or Pre-Existing Owners .....	5
1.27 Pre-Existing Lots.....	5
1.28 Project Documents .....	5
1.29 Property or Project.....	5
1.30 State Land Board .....	5
ARTICLE 2. ASSOCIATION MEMBERSHIP.....	5
2.1 Organization of Association .....	5
2.2 Duties and Powers .....	5
2.3 Membership .....	5
(a) One Class .....	5
(b) Automatic Membership .....	6

(c) Voluntary Membership ..... 6

ARTICLE 3. CONSTRUCTION STANDARDS AND USE RESTRICTIONS ..... 7

    3.1 Single-Family Residential Use ..... 7

    3.2 Mobile Homes ..... 8

    3.3 Manufactured or Modular Homes ..... 8

    3.4 Permits; Construction Standards ..... 8

    3.5 Fire Hazards ..... 8

    3.6 Protection of Forest Resources ..... 8

    3.7 Fences ..... 8

    3.8 No Noxious or Offensive Activity ..... 8

    3.9 Household Pets ..... 8

ARTICLE 4. ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS ..... 9

    4.1 Creation of the Lien and Personal Obligation of Assessments ..... 9

    4.2 Transfer of Lot by Sale or Foreclosure ..... 9

ARTICLE 5. RIGHTS OF MORTGAGEES ..... 9

    5.1 No Impairment ..... 10

    5.2 Subordination ..... 10

    5.3 Amendment of Declaration ..... 10

    5.4 Mortgagee Protection Clause ..... 10

ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS ..... 11

    6.1 Common Area ..... 11

    6.2 Use by Others ..... 11

    6.3 Owners' Rights and Obligations Appurtenant ..... 11

ARTICLE 7. DURATION AND AMENDMENT ..... 12

    7.1 Duration ..... 12

    7.2 Amendment ..... 12

    7.3 Approval of Director ..... 12

    7.4 Certificate ..... 12

ARTICLE 8. ANNEXATION AND WITHDRAWAL OF PROPERTY ..... 12

    8.1 Annexation ..... 12

    8.2 Withdrawal ..... 12

ARTICLE 9. GENERAL PROVISIONS ..... 13

    9.1 Invalidity of Any Provision ..... 13

    9.2 Conflict of Project Documents ..... 13

    9.3 Addendum ..... 13

    9.4 Effect of Provisions of Declaration ..... 13

    9.5 Enforcement and Remedies ..... 13

        (a) In General ..... 13

        (b) Fines ..... 14

    9.5 Limited Liability ..... 14

    9.6 Successors and Assigns ..... 14

    9.7 Waiver ..... 14

    9.8 Notice of Sale ..... 14

WORKING DRAFT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Table of Contents – Page iii  
AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

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

---

**VALLEY COUNTY, IDAHO**

WORKING DRAFT

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

**STATE SUBDIVISION – AMENDED CEDAR KNOLL ACRES, AMENDED  
PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES  
VALLEY COUNTY, IDAHO**

**THIS ADDENDUM TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (“Addendum”), is made on this \_\_\_\_ day of \_\_\_\_\_, 2013, 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 \_\_\_\_ day of \_\_\_\_\_, 2013 as Instrument No. \_\_\_\_\_, records of Valley 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 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 offered by the State and return the executed lease to the Idaho Department of Lands on or before \_\_\_\_\_, 2013, shall be deemed a Member of the Association upon the occurrence of the latter of the incorporation of the Association with the office of the Idaho Secretary of State, and the

execution of the 2014 lease. 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:

---

Secretary of State

---

Director, Idaho Department of Lands

\*\*\*\*\*

THE STATE OF IDAHO )

) ss.

COUNTY OF ADA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 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.

\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at \_\_\_\_\_,  
Idaho  
My Commission expires:

**BYLAWS  
OF  
PAYETTE LAKES COTTAGE SITES OWNERS ASSOCIATION, INC.**

**ARTICLE 1.  
PLAN OF OWNERSHIP**

Section 1. **Name and Location.** The name of this association ("Association") is the Payette Lakes Cottage Sites Owner's Association, Inc. The principal office of the Association shall be in Valley County, Idaho.

Section 2. **Definitions.** Each term in these Bylaws with its first letter capitalized shall have the meaning defined for such term in the Declaration of Covenants, Conditions and Restrictions for Amended Cedar Knoll Acres, Amended Pinecrest Addition and Southwest Payette Lakes Cottage Sites as it may be amended or supplemented (the "Declaration"), or as defined in these Bylaws.

**ARTICLE 2.  
MEMBERSHIP; MEETINGS AND VOTING RIGHTS**

Section 1. **Membership.** Membership shall be as provided in the Declaration and these Bylaws.

Section 2. **Record Date.** The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any other information or material, or in order to make a determination of membership, for any purpose other than assessments which are provided for in Article 8 herein. The Members existing on any such record date shall be deemed Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice or information or material with respect to the same matter and for any adjournment of the same meeting.

A record date shall not be more than fifty (50) days prior to the date on which the particular action requiring determination of membership is proposed or expected to be taken or to occur.

If no record date is established for a meeting, the date on which written notice of such meeting is first given to any member shall be deemed the record date for the meeting.

Section 3. **Quorum.** Except as otherwise provided in the Articles or these Bylaws, the presence in person or by proxy of Members who are entitled to vote twenty percent (20%) of the total votes of the Association Membership shall constitute a quorum for the Association. The presence in person or by proxy of Members who are

SJM 7-10-13 clean

entitled to vote twenty percent (20%) of the total votes of a Neighborhood shall constitute a quorum for the Neighborhood.

Section 4. Proxies. Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution, and every proxy shall automatically cease at such time as the Member granting the proxy no longer qualifies as a Member of the Association.

Section 5. Majority Vote. At any meeting of Members where a vote is required and at which a Quorum has been established, the affirmative vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy shall be the act of the Members, unless the vote of a greater number is required by law, the Articles, the Declaration or these Bylaws as from time to time in force and effect.

Section 6. Membership Meetings.

(a) Annual Meeting. The annual meeting of the Members, except as necessary to appoint the initial Board and except for the initial annual meeting of the Members in 2014, shall be held in the month of August in each year, or at such other date designated by the Board, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. The first annual meeting of the Members shall be held in 2014 as early as can reasonably be scheduled. Annual meetings of each of the Neighborhoods shall be held immediately in advance of the annual Membership meeting.

(b) Special Meetings. Special meetings of the Members for any purpose, unless otherwise prescribed by statute, may be called by the president or by the Board, and shall be called by the president at the request of the two or more Directors or Members entitled to cast fifteen percent (15%) or more of the total votes of the Association Membership. A Special Meeting of a Neighborhood may be called by the president or by the Board, and shall be called by the president at the request of Members entitled to cast thirty percent (30%) or more of the total votes of the Neighborhood's Members.

(c) Place Of Meeting. The Board shall designate a place in the County as the place for any annual meeting or for any special meeting of the Members called by the Board. If no designation is made, or if a special meeting shall be called otherwise than by the Board, the place of meeting shall be the principal office of the Association.

(d) Notice Of Meeting. Written or printed notice of any meeting of the Members stating the place, day and hour of the meeting, the purpose or purposes for which the meeting is called, and a description of matters on which a vote of the Membership will be taken shall be delivered personally, by mail, by

SJM 7-10-13 clean

facsimile or by electronic transmission to each Member entitled to vote at such meeting not less than thirty (30) nor more than fifty (50) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears in the records of the Association, with postage thereon prepaid. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at corporate expense.

(e) Informal Action By Members. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if all of the Members entitled to vote with respect to the subject matter thereof are given notice of the subject matter pursuant to Subsection (d) above; and, the action or proposition is approved in writing by Members representing at least eighty percent (80%) of the voting power of the Association or, in the case of a Neighborhood, of the Neighborhood. Approval of a subject matter by such method shall have the same force and effect as approval pursuant to a vote taken at a meeting of such Members.

(f) Adjournment. In the absence of a quorum at a Members' meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date.

(g) Rules at Meetings. Except as otherwise provided in these Bylaws, the Articles or the Declaration, all meetings of the Members shall be governed by Roberts Revised Rules of Order.

### **ARTICLE 3. BOARD OF DIRECTORS**

Section 1. Initial Board 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.

SJM 7-10-13 clean

Section 2. Number and Term of Directors. Commencing with the first annual meeting, the Board shall consist of seven (7) Directors, who shall be Owners and who shall be elected at the first annual meeting of the Members as follows:

(a) One (1) Director shall be elected by the Affirmative Vote of a Majority of the Members of each of the following Neighborhoods: The Wagon Wheel Bay Neighborhood, the Pine Haven Neighborhood, the Chipmunk Trail Neighborhood, the Squirrel Lane Neighborhood, the Picnic Point Neighborhood, and the Wild Rose Neighborhood (the "Neighborhood Directors"); and,

(b) One (1) Director shall be elected by the Affirmative Vote of a Majority of the Members of the Association (the "At Large Director")

(c) Except for the initial Directors, who shall serve until the first meeting of the Members of the Association, the Directors shall serve concurrent terms of two (2) years.

Section 3. Election of Board of Directors.

(a) Nomination. Nominations for election to the Board of Directors may be made from the floor at the annual meeting of the Association. Additionally, the Board may appoint a Nominating Committee, which shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. If the Board determines to appoint a Nominating Committee, the Committee shall be appointed at least forty-five (45) days prior to each annual meeting of the Members, to serve until the close of such annual meeting, and shall make as many nominations for election to the Board of Directors as it shall, in its discretion, determine, but not less than the number of vacancies that are to be filled.

(b) Election of Directors. Elections of Board members shall be by secret written ballot. All elections shall be conducted by noncumulative voting.

Section 4. Resignations, Removal and Vacancies. Any Director may resign at any time by giving written notice to the president or the secretary of the Association. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Neighborhood Director may be removed from office either with or without cause at any time by the affirmative vote of at least seventy-five percent (75 %) of the Members of such Neighborhood who are present in person or by proxy at an annual Membership Meeting or at a Special Meeting of the Neighborhood. The At Large Director may be removed from office either with or without cause at any time by the affirmative vote of at least seventy-five percent (75 %) of the Members who are present in person or by proxy at an annual Membership Meeting or at a Special Meeting of the Membership. Any vacancy occurring in the Board by reason of resignation, removal or

SJM 7-10-13 clean

death of any Director shall be filled by the affirmative vote of a majority of the Directors then in office. In the case of the resignation, removal or death of a Neighborhood Director, the vacancy shall be filled by a Member of the Neighborhood. Any director appointed to fill any vacancy in the Board shall serve until the expiration of the term of his or her predecessor.

Section 5. Regular and Special Meetings. There shall be not less than one "in person" regular meeting of the Board per year. Additional meetings may be held telephonically or by comparable technological conferencing. Any business may be transacted at a regular meeting. The regular meeting of the Board for the election of officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Members, or any special meeting of Members at which a Board is elected. The Board may also determine that other regular meetings do not require call or formal notice. Special meetings of the Board may be held at any place within Idaho at any time when called by the president, or by three (3) or more Directors, upon at least seven (7) days prior notice of the time and place thereof being given to each Director by delivery to the director, by mailing, by facsimile or electronic transmission, and addressed to him at his post office address as it appears on the books of the Association. Notices shall state the purposes of the meeting. No notice of any adjourned meeting of the directors shall be required. Special meetings may be held telephonically or by comparable technological conferencing.

Section 6. Quorum. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws, the Articles or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 7. Waiver of Notice, Action by Consent of Directors. Before, at or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him or her except when a Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the directors.

Section 8. Adjournment; Executive Session. The Board may, with the approval of a majority of a quorum of the Directors, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the

SJM 7-10-13 clean

Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 9. Board Meetings Open to Members. Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Association Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized by the vote of a majority of a quorum of the Board.

**ARTICLE 4.**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

The Board shall have the powers and duties necessary for the administration of the affairs of the Association. Without limitation on the generality of the foregoing powers and duties, the Board shall be vested with, and responsible for, the following powers and duties:

Section 1. To select, appoint, supervise, and remove all officers, agents and employees of the Association; to prescribe such powers and duties for them as may be consistent with law, and with the Articles, the Declaration and these Bylaws; and to require from them security for faithful service when deemed advisable by the Board;

Section 2. To enforce the applicable provisions of the Declaration, Articles, these Bylaws and other instruments relating to the ownership, management and control of the Property;

Section 3. To adopt and publish Rules and Regulations governing the use of any Common Area and Association Facilities, and the personal conduct of the Members and their tenants, guests and invitees thereon, and to establish procedures and penalties for the infraction thereof, subject to approval of the membership;

Section 4. To pay all taxes and assessments which are, or could become, a lien on any Common Area or a portion thereof;

Section 5. To contract for casualty, liability and other insurance on behalf of the Association as required or permitted in the Declaration and as otherwise deemed prudent by the Board, including but not limited to Directors and Officers Liability Insurance, unless the cost of which is deemed prohibitive by the Board;

SJM 7-10-13 clean

Section 6. To cause any Common Area to be maintained or improved and to contract for goods and/or services for any Common Area or for the Association;

Section 7. To delegate its powers to committees, officers or employees of the Association, or to a management company pursuant to a written contract, as expressly authorized by the Articles, Declaration and these Bylaws;

Section 8. To keep complete and accurate books and records of the receipts and expenditures of the Association, specifying and itemizing the maintenance and repair expenses incurred, and to prepare budgets and financial statements for the Association as required in these Bylaws in accordance with good accounting procedures; to provide for independent audits as required by law and these Bylaws;

Section 9. To initiate and execute disciplinary proceedings against Members of the Association for violations of the provisions of the Articles, Declaration, these Bylaws and such rules as may be promulgated by the Board, in accordance with procedures set forth in these Bylaws:

Section 10. To borrow money and incur indebtedness for purposes of the Association, and to cause to be executed and delivered therefore, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefore, subject to the approval requirements of the Articles, these Bylaws, or the law;

Section 11. To fix and collect Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments, according to the Declaration and these Bylaws, and, if deemed appropriate in the Board's discretion, and in addition to any other remedies available to the Board by law or in equity, to record a Notice of Assessment Lien and foreclose the lien against any Lot for which an Assessment is not paid within thirty (30) days after the due date, or bring an action at law against the Owner personally obligated to pay such Assessment;

Section 12. To prepare and file annual tax returns with the federal and state government, as required by law, and to make such elections as may be necessary to reduce or eliminate the tax liability of the Association. Without limiting the generality of the foregoing, the Board may, on behalf of the Association, elect to be taxed under Section 528 of the Internal Revenue Code or any successor or similar statute conferring income tax benefits on homeowners associations;

SJM 7-10-13 clean

Section 13. To enter into, make, amend, perform and carry out, or cancel and rescind, contracts, leases, permits, management agreements, and concession agreements for any lawful purposes pertaining to its business.

Section 14. To establish bank accounts for the common treasury and for all separate funds which are required or may be deemed advisable by the Board.

Section 15. To acquire, by gift, purchase, lease, trade or any other method, own, operate, build, manage, maintain, rent, sell, develop, encumber, and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein, all in accordance with the Association Documents.

Section 16. To veto any action taken or contemplated to be taken by any other Neighborhood within the Property, which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Association Documents. The Association also shall have the power and shall have broad discretion to require specific action to be taken by a Neighborhood in connection with any of its obligations and responsibilities. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by a Neighborhood, and (b) delegate budgeting duties and require that a proposed budget include certain items and that specific expenditures be made.

Section 17. To adopt rules and protocol regarding the establishment, operation and functioning of Neighborhood Committees.

Section 18. To modify the boundaries of Neighborhoods, create new Neighborhoods, or merge Neighborhoods, with the approval of the Membership.

Section 19. The foregoing enumeration of specific powers shall not limit or restrict in any manner the general powers of the Association and the enjoyment and exercise thereof as now or hereafter conferred by the laws of Idaho.

Section 20. The foregoing enumeration of specific powers shall not limit or restrict in any manner the implied powers of the Association and the enjoyment and exercise thereof as now or hereafter may be reasonably required to carry out the functions provided herein or in any of the Association Documents or to enforce the provisions of any of the Association Documents.

Section 21. The following provisions are inserted for the management of the business and for the conduct of the affairs of the Association, and are in furtherance of and not in limitation or exclusion of the powers granted herein or by law:

SJM 7-10-13 clean

(a) Execution of Instruments. Authority to convey or encumber the property of the Association and to execute any deed, contract or other instrument on behalf of the Association is vested in the president or any vice president. All instruments conveying or encumbering such property (whether or not executed as such attorney-in-fact) shall be executed by the president or vice president and attested by the secretary or an assistant secretary of the Association.

(b) Director and Officer Conflicts of Interest. No contract or other transaction between the Association and one or more of its Directors or Officers, or any other corporation, firm, association, or entity in which one or more of its directors are Directors or Officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such Director or Officer are present at the meeting of the Board or a committee thereof which authorizes, approves or ratifies such contract or transaction or because such Director's or Directors' votes are counted for such purposes, if:

(i) The fact of such relationship or interest is disclosed or known to the Board or committee which authorizes, approves, or ratifies the contract or transaction, and the contract or transaction is authorized, approved or ratified by a vote or consent sufficient for the purpose without counting the vote or consent of such interested Director; or

(ii) The contract or transaction is fair and reasonable to the Association and the fact of such relationship or interest is fully and fairly disclosed or known to the Board.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

(c) Liability Insurance. The Association may insure its officers and directors against certain losses which such persons may incur because of their acts or omissions as officers or directors, including, but not limited to, losses resulting from judgments, settlements and costs of litigation. Such insurance shall be limited to reasonable amounts of coverage for such officers and directors.

(d) Limitation of Liability. No Member of the Association shall be personally liable for any debt or other obligation of the Association, and no property within the Project shall be subject to any lien to enforce the collection of any debt or other obligation of the Association, except liens

SJM 7-10-13 clean

for unpaid assessments made in accordance with the Articles, these Bylaws and the Association Documents.

## **ARTICLE 5. OFFICERS**

Section 1. Officers. The officers of the Association shall be a president, one or more vice presidents, a secretary and a treasurer. Such officers shall be elected by majority vote of the Board. The Board may appoint such other officers, assistant officers, committees and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board, such officer, agent or employee shall follow the orders and instructions of the president or his designee.

Section 2. Removal Of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and a successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 3. Vacancies. A vacancy in any office, however occurring, may be filled by the Board for the unexpired portion of the term.

Section 4. President. The president shall be the chief executive officer of the Association. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents and employees.

Section 5. Vice Presidents. The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Board. In the absence of the president, the vice president designated by the Board or (if there be no such designation) designated in writing by the president shall have the powers and perform the duties of the president. If no such designation shall be made, all vice presidents may exercise such powers and perform such duties.

Section 6. Secretary. The secretary shall:

(a) Keep the minutes of the proceedings of the members, executive committee, subcommittees, and Board;

(b) See that all notices are duly given in accordance with the provisions of these Bylaws, the Articles, the Declaration and as required by law;

SJM 7-10-13 clean

(c) Be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board;

(d) Keep at the registered office or principal place of business of the Association a record containing the names and registered addresses of all members, the designation of the property owned or leased by each member, and, if such property is mortgaged and the mortgagee has given the Association notice thereof, the name and address of the mortgagee;

(e) In general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board, assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

Section 7. Treasurer. The treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board. The treasurer shall receive and give receipts for moneys paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office of the treasurer and, upon request of the Board, shall make such reports to it as may be required at any time. The treasurer shall have such other powers and perform such other duties as may be from time to time prescribed by the Board or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

Section 8. Daily Management of the Association. The Board shall have the authority to hire such employees and agents as it determines are necessary to manage the functions of the Association and to conduct the day to day management of the Association subject to the supervision of the Board and its officers.

## ARTICLE 6.

### BUDGETS, FINANCIAL STATEMENTS, BOOKS AND RECORDS

Section 1. Budgets and Financial Statements. Financial statements and pro forma operating budgets for the Association shall be regularly prepared (at least annually) and copies shall be distributed to each Member of the Association.

Section 2. Fiscal Year. The fiscal year of the Association shall be as designated by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

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Section 3. Inspection of Association's Books and Records. The inspection of Association books and records is governed by Idaho Code § 30-3-131.

Section 4. Statement of Account. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Lot Owner shall be furnished a statement of his account setting forth the amount of any unpaid Assessments or other charges due and owing from such Owner.

## **ARTICLE 7. OBLIGATIONS OF THE MEMBERS**

Section 1. Assessments. Each Member shall be obligated to pay and shall pay to the Association any Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments which are levied by the Board in accordance with Article 8 and the Association Documents with respect to such Owner's Lot.

Section 2. Time for Payment. The amount of any Assessment, charge for interest or otherwise, fine, penalty or other amount payable by any Owner or with respect to such Owner's Lessees, Sub-owners, Guests or Lot shall become due and payable as specified in Article 8 hereof or by the Board. Any such amount which is delinquent shall bear interest at the default rate which shall be periodically set by the Board (the "Default Rate").

Section 3. Lien for Assessments and Other Amounts. All Assessments, together with interest from the due date of such assessment at the Default Rate, late charges, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the Assessment is made until paid, as more particularly provided in Article 8 hereof. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title. Each Member hereby waives, renounces and releases all rights to a homestead exemption, and any redemption period to the extent allowed by law, which it may acquire by statute or by operation of law.

Section 4. Compliance With Association Documents. Each Member shall comply with all provisions of the Association Documents as from time to time in force and effect. In addition to all other remedies, the membership rights and privileges of any Member or guest, including, but not limited to, the right to vote and the right to use Common Area and Association Facilities, may be suspended by action of the Board during the period when any Assessments or other amounts due relating to such

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Member's Lot remains unpaid; but, upon payment of such Assessments or other amounts, such rights and privileges shall be automatically restored. If the Board has adopted and published rules and regulations governing the use of Common Area and Association Facilities and the personal conduct of any person related thereto, subject to the vested property rights of Pre-existing Owners, the Board may, in its discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty (30) days, or if such person is in a continuous violation of such rules and regulations for a period during the violation and continuing for thirty (30) days after such time as the violation ceases.

Section 5. Enforcement of Assessments.

(a) Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Member. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than ten (10) days from the date of the mailing of the notice by which the default must be cured; and, (d) that the failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for Assessment against the Lot of the Member and the exercise by the Board of any other remedies either provided herein or allowed by law, including an action against the Member personally, for the delinquent Assessment. In such case, and as a condition of the cure of the delinquent Assessment, the Member may be obligated by the Board, at the Board's sole discretion, to additionally pay all costs of enforcement, including without limitation reasonable attorneys' fees, costs and related expenses and to pay interest at the Default Rate, from the date on which the Assessment was due, as well as a reasonable late charge to be determined by the Board.

(b) Enforcement of Assessments. Each Member is and shall be deemed to covenant and agree to pay to the Association each and every Assessment provided for in these Bylaws; and agrees to the enforcement of all such Assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of the Association Documents, each Member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Member. In addition to any other remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the Member to pay the Assessments provided for in this Declaration, and each of them, in any manner provided by law in equity, or without any limitation of the foregoing, by either or both of the following procedures, non-exclusively:

SJM 7-10-13 clean

(i) Enforcement by Suit. By commencement of a suit at law against any Member or Members personally obligated to pay Assessments, for such delinquent Assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon and/or late charges as provided for herein, costs of collection, court costs and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Member. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

(ii) Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all Assessments levied against any and all Members, together with interest thereon as provided for herein, fines imposed for violation of the Association Documents, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. The Board or its duly authorized representative may file and record a Notice of Delinquent Assessment on behalf of the Association against the Lot of the defaulting Owner who has not cured the default as provided in Section 5(a) above. The amount of the Assessment, plus any costs of collection, expenses attorneys' fees and interest assessed in accordance with these Bylaws shall be a lien on the Owner's Lot from and after the time the Association records the Notice of Delinquent Assessment. Such Notice shall be executed and acknowledged by any officer of the Association and shall contain substantially the following:

1. The claim of lien made pursuant to these Bylaws;
2. The name of the record Owner;
3. The legal description of the Lot against which claim of lien is made;
4. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorneys' fees and any other sums allowed in any Association Document (with any proper offset allowed); and,
5. The name and address of the trustee authorized by the Association to enforce the lien by public sale.

Upon recordation, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot

SJM 7-10-13 clean

against which such assessment was levied, together with all improvements thereon and appurtenances thereto. Such lien shall have priority over all liens or claims created subsequent to the recordation of the Notice. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by the Idaho Code for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any Officer or Director of the Association, or any Title Company authorized to do business in Idaho as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Members and shall secure payment of all sums set forth in the Notice, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said Notice.

The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

The sale or transfer of any Lot shall not affect the continued validity or enforceability of the lien, which shall run with and burden the Lot, nor shall it relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Assessments on such Lot due prior to such acquisition of title. Such unpaid Assessments shall be collectible from all Members subject to Assessment pursuant to these Bylaws, including such acquirer, its successors and assigns. The Owner of a Lot which is sold with unpaid Assessments shall also continue to be personally liable therefore.

Each Owner hereby expressly waives any objection to the enforcement and foreclosure of Assessment liens in this manner. Upon the timely curing of any default for which a Notice was filed by the Board, the Board shall cause an officer of the Association to record an appropriate release of such Notice in the Office of the County Recorder of Valley County, Idaho. No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by non-use or

SJM 7-10-13 clean

abandonment of his or her Lot or any of the Common Area or Association Facilities.

Section 6. Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Member an Assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay Assessments. In such event, each Member shall continue to pay Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments on the same basis as for the last year for which an Assessment was made, if any, until a new Assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

**ARTICLE 8  
ASSESSMENTS**

Diagram 8.1 provides a summary of assessments, as more fully and completely described in this Article 9 below.

ASSESSMENT SUMMARY	
Assessment Type	Description
COMMON ASSESSMENTS	Levied in an equal amount for each Lot.
SPECIAL ASSESSMENTS	Levied in the event that the Board determines that other Assessments will be inadequate to meet an unanticipated expense which cannot be deferred to the next budget year.
LOCAL IMPROVEMENT ASSESSMENTS	Desired improvements; allocated to only those Lots which benefit from the improvement; must be approved by at least 2/3 of owners of Benefited Lots (only the Owners of the Benefited Lots vote).
LOCAL MAINTENANCE ASSESSMENTS	Benefiting a specific Neighborhood or group of Members; allocated to only those Lots and/or Neighborhoods which benefit from the repair and maintenance.

Diagram 8.1

Section 1. Common Assessments. Common Assessments shall be calculated and levied as an equal amount per Lot, which equal amount per Lot shall be the "Common Assessment Rate". Based on budget estimates, the Board shall determine and set forth in its annual budget the Common Assessment Rate required to produce the total Common Assessments set forth in such budget. The annual budget shall be reviewed at the annual membership meeting. The provisions of this Section 1 cannot be amended except by the Affirmative Vote of sixty-seven percent (67%) of the Membership.

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Section 2. Payment of Common Assessments. Each Common Assessment shall become due and payable, in its entirety on or before December 1, or such other date as the Board may reasonably determine. In addition to any other remedy provided herein, in any other Association Document, or by law, any portion of any Common Assessment not paid when due and payable shall become a lien on and against all of the real property owned by such Owner, including any Lots owned by such Owner other than the Lot with respect to which the Common Assessment has not been fully paid. The Board, in its sole discretion, in cases of extreme hardship may release any such lien if it receives other security for the payment of the delinquent Common Assessment which it deems sufficient to protect the interest of the Association. Notwithstanding the foregoing, any Lot which is exempt from taxation pursuant to Title 63, Chapter 6 of the Idaho Code as amended (or any comparable statute), or any property, real or personal, owned by the Association may be granted an exemption from the Common Assessment by the Board; provided that the Board specifically approves such exemption in each particular case. The Board shall have the discretion to make the Common Assessments due and payable annually, quarterly or monthly.

Section 3. Special Assessments. The Board may levy in any fiscal year one or more Special Assessments, applicable to that year only, in the event that the Board determines that other Assessments will be inadequate to meet an unanticipated expense which cannot be deferred to the next budget year. Approval of a majority of the Board shall be required for the levy of a Special Assessment. Such a vote shall be held at a meeting of the Board at which a quorum is present. Notice of such meeting shall set forth the purpose therefore and shall be sent to all Directors and all Members not less than fifteen days nor more than sixty days in advance of such meeting. Any such Assessment which is so approved shall be levied in proportion to the benefits received. Special Assessments shall be calculated and levied as an equal amount per Lot, unless the purpose of the Special Assessment is to cover shortfalls in Local Maintenance or Local Improvement Assessments, in which case the Special Assessment shall be calculated and levied by such method that the Board finds will result in the Special Assessment being equitable in proportion to benefits received. The date or dates that any such Special Assessment is due and payable shall be set forth in the resolution of the Board authorizing such Assessment.

Section 4. Local Improvement Assessments. If, in the judgment of the Board, certain improvements within the Project are desirable, and those improvements will especially benefit certain Lots, and if all or a part of the costs of those improvements should in fairness be paid for by the Owners of the Benefited Lots, the Board may propose a Local Improvement Assessment or the Owners of Benefited Lots may request a Local Improvement Assessment. With respect to each proposed Local Improvement Assessment, the Board shall specify the nature of the proposed improvement, shall designate the Benefited Lots which will be especially benefited by the improvement, and shall recommend a Local Improvement Assessment calculated to meet the costs applicable to the local improvement, with the Board specifying the amounts of such Assessments, the dates for payment of such Assessments, and the

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portion, if any, of the costs of any improvement that will be borne by the Association. The Local Improvement Assessment shall then be submitted to a vote of the Owners of the Benefited Lots, at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to the Owners of the Benefited Lots at least 30 days in advance (unless each such Owner waives such notice). If at least two-thirds (2/3) of the Owners of the Benefited Lots approve the Local Improvement Assessment at such a meeting, the Local Improvement Assessment shall take effect.

Section 5. Apportionment of Local Improvement Assessments. Local Improvement Assessments shall be assessed in proportion to the benefits received. The Board shall make such assessments by any apportionment method that the Board finds will result in Assessments being equitable in proportion to benefits received.

Section 6. Disposition of Funds Raised Through Local Improvement Assessments. All funds collected through the imposition of a Local Improvement Assessment shall be applied to the costs of making, contracting, and installing the local improvement for which such Assessment was imposed, except that any funds remaining unspent upon completion of such improvement shall be returned to the Owners of the Benefited Lots in the proportion on which such Lots were assessed.

Section 7. Local Maintenance Assessments. If, in the judgment of the Board, maintenance and repair of certain property within the Project is desirable, and such maintenance and repair will especially benefit certain lots, and if all or a part of the costs of those improvements should in fairness be paid for by the Owners of the Benefited Lots, the Board may propose a Local Maintenance Assessment or the Owners of Benefited Lots may request a Local Maintenance Assessment. With respect to each proposed Local Maintenance Assessment, the Board shall specify the nature of the proposed maintenance and/or repair, shall designate the Benefited Lots which will be especially benefited by such maintenance and/or repair, and shall recommend a Local Maintenance Assessment calculated to meet the costs applicable to the local maintenance, with the Board specifying the amounts of such Assessments, the dates for payment of such Assessments, and the portion, if any, of the costs of any maintenance and repair that will be borne by the Association. Prior to making a final decision regarding whether to impose the Local Maintenance Assessment, the Board shall provide the opportunity for Owners of the Benefited Lots to comment on the proposed Assessment at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to the Owners of the Benefited Lots at least 15 days in advance (unless each such Owner waives such notice).

Section 8. Apportionment of Local Maintenance Assessments. Local Maintenance Assessments shall be assessed in proportion to the benefits received. The Board shall make such Assessments by any apportionment method that the Board finds will result in Assessments being equitable in proportion to benefits received.

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Section 9. Disposition of Funds Raised Through Local Maintenance Assessments. All funds collected through the imposition of a Local Maintenance Assessment shall be applied to the costs of the maintenance and/or repairs for which such Assessment was imposed.

Section 10. Association Budget. At the first meeting of the Board following the adoption of the Association's fiscal year, the Board shall adopt an estimated budget for the remainder of that fiscal year. Such budget shall include: (A) the estimated costs and expenses and proposed capital expenditures which will be chargeable to the Association to fulfill its obligations under the Declaration, the Articles and the Bylaws as then in force and effect; (B) the estimated income and other funds which will be received by the Association; and (C) the estimated total amounts required to be raised by Common Assessments, Local Maintenance Assessments and/or Local Improvement Assessments to cover such costs, expenses and capital expenditures of the Association and to provide reasonable reserves. For each subsequent fiscal year the Board shall, prior to the beginning of each fiscal year, propose and tentatively adopt a similar budget, which shall also include all long-term or continuing commitments of the Association made in connection with or contemplated under any previously approved budget. The Board may delegate budgeting responsibilities to Neighborhoods and/or Benefited Lots, for Board review, for Local Improvement Assessments, Local Maintenance Assessments, and such other budget items as the Board may determine. The tentative budget for each subsequent fiscal year shall become final thirty (30) days after the distribution of the tentative budget to the Members. Except as emergencies may require the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association through Assessments, all other sources of income and borrowing.

## **ARTICLE 9 NEIGHBORHOODS**

Section 1. In General. Declarant has designated separate Neighborhoods within the Property, for purposes of electing Directors to the Association Board as provided at Article 3 above. A Neighborhood may act either directly with the Association, or through a Neighborhood Committee or Neighborhood Association established in accordance with this Article 9. Any Neighborhood can be later formally organized as a Committee or an Association by the Association Board. Until such time as a Neighborhood Committee or Association is organized, if at all, the members of the Neighborhood shall elect their designated Association Director(s) at the annual meeting of the Members of the Association. Other than the power to elect a Director, as provided herein, Neighborhoods shall have no autonomous power to act unilaterally or independent of formal Board approval.

Section 2. Neighborhood Committees and Associations. No Neighborhood Committee or Association shall have the power or the authority to levy assessments,

SJM 7-10-13 clean

unless specifically authorized in writing to do so by the Board, and any action of such Committee or Association shall be subject to the approval of the Association.

(a) Neighborhood Committees. In the event that a Neighborhood Committed is created, the Neighborhood shall elect a Neighborhood Committee. Such a Neighborhood Committee shall consist of three (3) to five (5) Members, as determined by at least a majority of the votes associated with the Lots in the Neighborhood. Neighborhood Committee members shall be elected for a term of one (1) year or until their successors are elected. In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice requirements applicable to the Board. At all Neighborhood Committee meetings, a majority of the committee members present in person or by proxy shall constitute a quorum for the transaction of business. Unless specifically provided to the contrary herein, decisions of the Neighborhood Committee shall be made by an affirmative vote of a majority of the committee members present at any meeting at which a quorum is present. Any vote for a Association Director shall be taken by all of the members of the Neighborhood, and not simply by vote of the committee members; and, quorum, voting, notice and meeting requirements for such a vote shall be those applicable to membership meetings herein. Meetings of a Neighborhood Committee shall be open to all Owners of Lots in the Neighborhood and their representatives, as well as to the Association Board. Minutes of all Neighborhood Committee Meetings shall be kept and a copy thereof provided to the Secretary of the Association, and to any member of the Neighborhood, upon request. It is intended that the Neighborhood Committee shall provide a mechanism for issues which are unique to the Neighborhood to be identified and, as necessary, presented to the Board of the Association.

(b) Neighborhood Associations. In the event that a Neighborhood Association is created, the Association Board shall adopt Articles of Incorporation and Bylaws which outline the regulation and the management of the affairs of the Neighborhood Association. The members of such Association shall be the members of the Neighborhood. Other than the power to elect a Director, as provided herein, such an Association shall have no autonomous power to act unilaterally or independent of formal Board approval.

#### **ARTICLE 10. AMENDMENT OF BYLAWS**

The Affirmative Vote of 67% of the Membership shall be required to make, amend and repeal the Bylaws of the Association at any regular meeting of the Membership or at any special meeting called for that purpose at which a quorum is represented.

SJM 7-10-13 clean

**ADOPTION OF BYLAWS**

We, the undersigned, being all of the Directors of the Payette Lakes Cottage Sites Owner's Association, Inc., do hereby assent to the within and foregoing Bylaws and hereby adopt the same as the Bylaws of said Association.

EXECUTED by the undersigned on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, the duly elected and acting Secretary of the Payette Lakes Cottage Sites Owner's Association, Inc., do hereby certify:

That the within and foregoing Bylaws were adopted as the Bylaws of said Association on this \_\_\_\_ day of \_\_\_\_\_, 2013, and that the same do constitute the Bylaws of said Association.

EXECUTED by the undersigned on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Secretary

**BYLAWS  
OF  
PAYETTE LAKES COTTAGE SITES OWNER'S ASSOCIATION, INC.**

**TABLE OF CONTENTS**

ARTICLE 1. PLAN OF OWNERSHIP .....	1
Section 1. Name and Location .....	1
Section 2. Definitions .....	1
ARTICLE 2. MEMBERSHIP; MEETINGS AND VOTING RIGHTS.....	1
Section 1. Membership.....	1
Section 2. Record Date .....	1
Section 3. Quorum .....	1
Section 4. Proxies .....	2
Section 5. Majority Vote .....	2
Section 6. Membership Meetings .....	2
(a) Annual Meeting .....	2
(b) Special Meetings.....	2
(c) Place Of Meeting .....	2
(d) Notice Of Meeting .....	2
(e) Informal Action By Members.....	3
(f) Adjournment.....	3
(g) Rules at Meetings .....	3
ARTICLE 3. BOARD OF DIRECTORS .....	3
Section 1. Number and Term of Directors .....	3
Section 1. Number and Term of Directors .....	4
Section 2. Election of Board of Directors.....	4
(a) Nomination.....	4
(b) Election of Directors.....	4
Section 3. Resignations, Removal and Vacancies .....	4
Section 4. Regular and Special Meetings.....	5
Section 5. Quorum .....	5
Section 6. Waiver of Notice, Action by Consent of Directors.....	5
Section 7. Adjournment; Executive Session.....	5
Section 8. Board Meetings Open to Members.....	6
ARTICLE 4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.....	6
ARTICLE 5. OFFICERS .....	10
Section 1. Officers.....	10
Section 2. Removal Of Officers .....	10
Section 3. Vacancies.....	10
Section 4. President .....	10
Section 5. Vice Presidents .....	10
Section 6. Secretary.....	10

SJM 7-10-13 clean

Section 7. Treasurer..... 11

Section 8. Daily Management of the Association ..... 11

ARTICLE 6. BUDGETS, FINANCIAL STATEMENTS, BOOKS AND RECORDS ..... 11

Section 1. Budgets and Financial Statements..... 11

Section 2. Fiscal Year ..... 11

Section 3. Inspection of Association's Books and Records ..... 12

Section 4. Statement of Account ..... 12

ARTICLE 7. OBLIGATIONS OF THE MEMBERS..... 12

Section 1. Assessments ..... 12

Section 2. Time for Payment ..... 12

Section 3. Lien for Assessments and Other Amounts ..... 12

Section 4. Compliance With Association Documents ..... 12

Section 5. Enforcement of Assessments ..... 13

    (a) Notice of Default and Acceleration of Assessments..... 13

    (b) Enforcement of Assessments ..... 13

        (i) Enforcement by Suit ..... 14

        (ii) Enforcement by Lien..... 14

Section 6. Failure to Assess..... 16

ARTICLE 8. ASSESSMENTS ..... 16

Section 1. Common Assessments ..... 16

Section 2. Payment of Common Assessments ..... 17

Section 3. Special Assessments ..... 17

Section 4. Local Improvement Assessments..... 17

Section 5. Apportionment of Local Improvement Assessments ..... 18

Section 6. Disposition of Funds Raised Through Local Improvement Assessments 18

Section 7. Local Maintenance Assessments ..... 18

Section 8. Apportionment of Local Maintenance Assessments..... 18

Section 9. Disposition of Funds Raised Through Local Maintenance Assessments 19

Section 10. Association Budget ..... 19

ARTICLE 9. NEIGHBORHOODS ..... 19

Section 1. In General ..... 19

Section 2. Neighborhood Committees and Associations..... 19

    (a) Neighborhood Committees ..... 20

    (b) Neighborhood Associations ..... 20

ARTICLE 10. AMENDMENT OF BYLAWS ..... 20

ADOPTION OF BYLAWS..... 21

EXHIBIT 3 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 3 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT



**STATE BOARD OF LAND COMMISSIONERS**  
 C. L. "Butch" Otter, Governor and President of the Board  
 Ben Ysursa, Secretary of State  
 Lawrence G. Wasden, Attorney General  
 Brandon D. Woolf, State Controller  
 Tom Luna, Superintendent of Public Instruction

Tom Schultz, Secretary to the Board

Proposed Amended FINAL Agenda  
 State Board of Land Commissioners' Regular Meeting  
 August 20, 2013 – 9:00 AM  
 Capitol Auditorium (WW02), Lower Level, West Wing, 700 W Jefferson St, Boise

**1. Director's Report**

- A. Interest Rate on Department Transactions – August 2013
- B. Timber Sale Activity and Information Report – July 2013
- C. Division of Lands and Waterways Activity and Information Report – July 2013
- D. Legal Matter Summary – July 2013
- E. Fire Season Report – July 2013

**• CONSENT**

**2. Timber Sales for Approval – Staffed by Eric Besaw, Regional Operations Chief-North, and Kurt Houston, Regional Operations Chief-South**

NORTH OPERATIONS

				<u>COUNTY</u>	<u>AREA OFFICE</u>
A. Bodenstein Ton	CR-20-0308	13,826	TON	Bonner	Pend Oreille (Sandpoint)
B. Burma Seconds	CR-30-0591	3,840	MBF	Clearwater	St. Joe (St. Maries)
C. East Elk	CR-30-0609	7,385	MBF	Shoshone	St. Joe (St. Maries)
D. Spring Smith	CR-31-0025	2,615	MBF	Shoshone	Mica (Coeur d'Alene)

SOUTH OPERATIONS

				<u>COUNTY</u>	<u>AREA OFFICE</u>
E. West Baldy Bear	CR-40-1101	6,345	MBF	Clearwater	Clearwater (Orofino)
F. North Shanghai	CR-40-1141	2,675	MBF	Clearwater	Clearwater (Orofino)
G. Upper Suttler Ton	CR-42-5064	33,902	TON	Idaho	Maggie Creek (Kamiah)

**3. Auction Results for Cropland Lease C800029 – Staffed by Diane French, Program Manager [Interim]-Grazing, Ag, Conservation**

**4. Request Approval to Dispose of Fish and Game Surplus Property-Lawman Ranch Site – Staffed by Kevin Graham, Right of Way Agent-South, and Greg Servheen and Steve Elam, Idaho Department of Fish and Game**

**5. Contract Modification to Burnt Grade Timber Sale – Staffed by David Groeschl, State Forester/Deputy Director-Forestry and Fire**

This certifies that this is a true and correct copy of this document, the original of which is on file with the Idaho Department of Lands (IDL).

*Kurt Miller* 3-18-2019  
 IDL Representative Date

6. **Approval of Minutes** – July 16, 2013 Regular Meeting (Boise)

- **REGULAR**

7. **Endowment Fund Investment Board Manager's Report** – *Presented by Larry Johnson, EFIB Manager of Investments*

- A. Manager's Report
- B. Investment Report
- C. FY2015 Distributions and Transfers

8. **FY2015 Budget Enhancements** – *Presented by Patrick Hodges, Division Administrator-Support Services*

9. **Payette Lake 2013 Voluntary Auction** – *Presented by Kate Langford, Bureau Chief-Strategic Business*

10. **Pilgrim Cove CC&Rs** – *Presented by Kate Langford, Bureau Chief-Strategic Business*

- **INFORMATION**

11. **Southwest Payette CC&Rs / Association Bylaws** – *Presented by Kate Langford, Bureau Chief-Strategic Business*

- **EXECUTIVE SESSION**

- A. Idaho Code 67-2345(1)(b) – to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student. [TOPIC: Performance Evaluation – Director, Department of Lands]

- |  |
|--|
| <ul style="list-style-type: none"><li><input type="checkbox"/> A <b>FINAL AGENDA</b> will be available at the Idaho Department of Lands, 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho, two (2) days preceding the meeting. If you have questions or would like to arrange auxiliary aides or services for persons with disabilities, please contact Dept. of Lands at (208) 334-0242. Accommodations for auxiliary aides or services must be made no less than five (5) working days in advance of the meeting.</li><li><input type="checkbox"/> The <b>CONSENT AGENDA</b> addresses routine items the board may approve without discussion.</li><li><input type="checkbox"/> The <b>REGULAR AGENDA</b> addresses policy and program items the board may wish to discuss prior to making a formal recommendation.</li><li><input type="checkbox"/> The <b>INFORMATION AGENDA</b> provides information only.</li><li><input type="checkbox"/> The <b>EXECUTIVE SESSION</b> is a special <u>closed</u> session to consider confidential matters pursuant to Idaho Code § 67-2345.</li><li><input type="checkbox"/> An item may be moved from one agenda to another by the Board.</li><li><input type="checkbox"/> The agenda is subject to change.</li></ul> |
|--|

EXHIBIT 4 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

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STATE BOARD OF LAND COMMISSIONERS  
August 20, 2013  
Information Item

SUBJECT

Southwest Payette Covenants, Conditions and Restrictions

BACKGROUND

At the July 2013 Land Board meeting the Department presented a lot solutions package for the Southwest Payette area which, when implemented, will transfer ownership of roads and common areas to an association. Draft Covenants, Conditions and Restrictions (CC&R) and Draft Association By-laws were developed for consideration by lessees and deeded owners in this area. (Attachment 1-3) A comment period on the draft CC&Rs was directed by the Board.

DISCUSSION

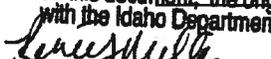
Over 130 compact discs containing draft CC&R documents were sent out on July 17, 2013, to all lessees and deeded owners. Thus far twenty (20) responses have been received. (Attachment 4) Comments received fall into one of four main categories: supporting the CC&Rs, opposing the CC&Rs, those requesting the comment period be extended and requests to redefine some of the initial neighborhoods described in the draft CC&R documents.

In response to these comments the Department recommends extending the comment period for thirty (30) days. During this time the Department will coordinate with respondents requesting additional information and alterations in the initial neighborhood boundaries. The results of the extended comment period and a recommendation from the Department would then be presented to the Land Board.

ATTACHMENTS

1. Draft SW Payette Declaration of Covenants, Conditions & Restrictions
2. Draft SW Payette Addendum of Covenants, Conditions & Restrictions
3. Draft SW Payette Association By-Laws
4. Letters Responding to Comment Period as of August 15, 2013
  - a. K. Smith email, 7/23/13
  - b. C. Carley, 8/1/13
  - c. C. Umbach, 8/6/13
  - d. R. Nahas, 8/6/13
  - e. Citizens for Payette Lake, 8/8/13 - Declaration Redline
  - f. J. Dahl, 8/8/13
  - g. A. Timothy, 8/9/13
  - h. F. Stoppello email, 8/12/13

This certifies that this is a true and correct copy of this document, the original of which is on file with the Idaho Department of Lands (IDL).

  
IDL Representative

3-18-2019  
Date

State Board of Land Commissioners  
Southwest Payette Covenants, Conditions and Restrictions r1  
Regular Land Board Meeting – August 20, 2013  
Page 1 of 2

- i. D. Bagley, email/letter, 8/10/13
- j. G. Johnson, 8/10/13
- k. P. Wilcomb, 8/10/13
- l. M. Wilcomb, 8/10/13
- m. C. Umbach, 8/12/13
- n. C. Umbach, rescinded letter (4c), 8/12/13
- o. Lessees of Grouse Lane, Sharlie Way & Sharlie Lane, 8/13/13
- p. F. Stoppello, 8/12/13
- q. J. Gorrissen (Sharlie-Grouse Neighborhood) 8/12/13
- r. D. Gross, 8/13/13
- s. D. Nelson email, 8/14/13
- t. P. Shalz email, 8/15/13

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

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

**VALLEY COUNTY, IDAHO**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** ("Declaration"), is made on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by the **State Board of Land Commissioners**, by and through the **Idaho Department of Lands** (the "State Land Board"), with reference to the following facts:

A. The State Land Board is the owner of \_\_\_\_\_ residential Lots located at Payette Lake, Valley County, Idaho, known as **AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES**. The land encumbered by this Declaration is more particularly described as follows:

All land currently owned by the State Land Board, located within the Plats of **AMENDED CEDAR KNOLL ACRES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; **AMENDED PINECREST ADDITION**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; and **SOUTHWEST PAYETTE COTTAGE SITES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_, records of Valley County, Idaho. Said land is identified more specifically by subdivision name, block and lot in **Exhibit "A"**.

Hereafter, the term "Owners" shall refer to the owners of the Lots bound by this Declaration together with the owners of such Lots which may hereafter be made subject to this Declaration by the deeded owners ("Pre-Existing Owners") of the Lots identified in **Exhibit "B"** and depicted on the Plats for purposes of identification ("Pre-Existing Lots"). The Pre-Existing Lots identified in Exhibit "B" are not currently owned by the State Land Board, and the Pre-Existing Owners have not yet agreed that Pre-Existing Lots which they own shall be subject to this Declaration. However, the Pre-Existing Owners may at any time subject their Pre-Existing Lots to this Declaration as provided in Section 2.3 below.

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 Payette Lakes Cottage Sites Owners Association, Inc., which Association will operate and maintain certain properties and facilities within the Plats and assume maintenance obligations by virtue of deeded ownership and an easement 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 and the State's Lessees as provided herein and in the Addendum hereto, their successors-in-interest and assigns, the 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. 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 Land Board and its Lessees.

1.2 Affirmative Vote of the Membership. The Affirmative Vote of a Majority of the Membership shall be achieved on any particular matter upon the vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Affirmative Vote of sixty-seven percent (67%) of the Membership shall be achieved on any particular matter upon the vote of at least sixty-seven percent (67%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Board shall have the right to submit any matter requiring Membership approval to the Membership by mailed ballot, in which case the approval of the matter shall require the specified percentage (i.e., 51% or 67%) of the total votes of the Membership.

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

1.4 Assessment. 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 Common Assessments, Special Assessments, Local Improvement Assessments or Local Maintenance Assessments, as those terms are more specifically defined in the Bylaws.

1.5 Association. Association shall mean the Payette Lakes Cottage Sites Owners 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 as provided herein, and any successor-in-interest thereto.

1.6 Association Documents. Association Documents shall mean the various governing documents of the Association, including: (a) the Articles of Incorporation; (b) the Bylaws; (c) this Declaration; (d) all Rules and Regulations promulgated by the Board; and, (e) all amendments and supplements to any of the aforementioned documents.

1.7 Association Expenses. Association Expenses shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area, expenses incurred by the Association in meeting its obligations and in the administration of the Association, and any reasonable reserve for such purposes as determined by the Board. Association expenses may be levied and collected by the Board as Common Assessments, Special Assessments, Local Improvement Assessments or Local Maintenance Assessments.

1.8 Association Facilities. Association Facilities shall mean all property owned or leased by the Association or otherwise held or used by the Association, or which is under the Association's management or control by, through or under contractual arrangements, licenses or other arrangements, including property furnished by Declarant, real property or interests therein, improvements on real property, and personal property and equipment.

1.9 Benefitted Lots. Benefitted Lots shall mean groups of Lots which have like interests or needs, which Lots may already be grouped as a Neighborhood, which are so designated for the following purposes: (a) to determine, assess and budget Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) to determine, assess and budget Local Maintenance Assessments, as defined at Article 8 of the Bylaws; and/or, (c) to otherwise facilitate the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members.

1.10 Board or Board of Directors. The Board or Board of Directors shall be the Board of Directors of the Association, as it shall be constituted from time to time.

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

1.12 City. City shall mean the City of McCall.

1.13 City Code. City Code shall mean the McCall City Code.

1.14 Common Area. Common Area shall mean the property identified on the Plats as Common Area. Absent such designation, the term "Common Area" as used herein shall include but not necessarily be limited to all roads, easements, rights-of-way, and lake access lots which are shown on the Plats. Common Area shall also include additional property or property rights obtained by the Association in the future.

1.15 County. County shall mean Valley County, Idaho.

1.16 County Code. County Code shall mean the Valley County Land Use and Development Ordinance, as amended, superseded or repealed.

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

1.18 Lot. Lot shall include a platted parcel of land that is part of the Plats, other than Common Area, as well as all Pre-existing Lots which become subject to this Declaration as provided below in Article 2.

1.19 Member. Member shall mean a member of the Association, as further defined in Article 2. Every Owner of a Lot subject to this Declaration now or at a later time shall automatically be a Member of the Association, except where said Lot Owner is the State Land Board, in which case the Member shall be the Lessee of the Lot, if any, as provided in that certain Addendum being filed of record with this Declaration. Notwithstanding the foregoing, Pre-Existing Owners are not automatically Members, but may join voluntarily and may thereupon become a Member, as set forth in Section 2.3(c).

1.20 Mortgage. Mortgage shall mean a recorded mortgage, deed of trust, real estate contract, or other instrument creating a voluntary security interest in any Lot.

1.21 Mortgagee. Mortgagee shall mean a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, leasehold, or other holder of a perfected voluntary security interest in any Lot.

1.22 Neighborhood. Neighborhood shall mean a group of Lots designated by the Board as a separate Neighborhood for purposes of: (a) determining, assessing and budgeting Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) determining, assessing and budgeting Local Maintenance Assessments, as defined at Article 8 of the Bylaws; (c) electing Directors to the Board; (d) providing input and information to the Board with regard to proposed services, maintenance, improvements or other issues uniquely affecting the Neighborhood; and/or (e) otherwise facilitating the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members. The initially designated Neighborhoods are identified on the attached **Exhibit "C"**.

1.23 Owner or Owners. Owner or Owners shall include 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 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."

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

1.25 Plats. Plats shall refer to the recorded plats for AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION and SOUTHWEST PAYETTE COTTAGE SITES, and any amendments thereto.

1.26 Pre-Existing Owner or Pre-Existing Owners. Pre-Existing Owner or Pre-Existing Owners shall mean owners of Pre-Existing Lots.

1.27 Pre-Existing Lots. Pre-Existing Lots shall mean the Lots identified in attached Exhibit "B".

1.28 Project Documents. Project Documents shall mean the Plats and the Association Documents.

1.29 Property or Project. Property or Project shall mean all Lots subject to this Declaration as described in Exhibit A to this Declaration, and all common areas, easements and other Lots depicted on the Plats, together with all buildings, improvements and structures thereon.

1.30 State Land Board. The State Land Board shall mean the State Land Board, acting by and through the Idaho Department of Lands, collectively.

## **ARTICLE 2.**

### **ASSOCIATION MEMBERSHIP**

2.1 Organization of Association. The Association shall be incorporated under the name of Payette Lakes Cottage Sites Owners 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.

(a) Classes. There shall be two classes of membership in the Association, which shall consist of the following:

(i) Current Owners. The owners of the Lots which are depicted in the Plats, excluding Common Area and Lessees of Lots as provided in the attached Addendum; and

(ii) Pre-existing Owners-Permanent Memberships. Pre-existing Owners who elect to join the Association and subject their Lots to this Declaration and the Association Documents.

(iii) Pre-Existing Owners-Provisional Membership. Pre-Existing Owners who elect to join the Association as provided below.

(b) Automatic Membership. The Owner of a Lot, except a Pre-Existing Owner, 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association. The Lessees of Lots shall be considered Owners as provided in the Addendum.

(c) Voluntary Membership.

(i) Pre-existing Owners-Permanent Memberships. A Pre-Existing Owner may voluntarily become a Permanent Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter be subject to all terms and conditions of this Declaration, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. Once a Pre-Existing Owner submits its Pre-Existing Lot(s) to this Declaration, then the Pre-Existing Owner shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(ii) Pre-existing Owners-Provisional Memberships. A Pre-existing Owner may voluntarily become a Provisional Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement (the "Statement") signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter be subject to all terms and conditions of this Declaration, subject to an option to withdraw as a Member, as described below, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. The Association shall provide the Statement for the Pre-existing Owner's use as aforesaid. A Pre-existing Owner desiring to utilize this Provisional Membership shall notify the Association of such election not later than one (1) year after the date on which the Declaration is filed of record with Valley County, Idaho. The failure to timely do so shall result in a waiver of the right to utilize the Provisional Membership. Once a Provisional Member submits its Pre-Existing Lot(s) to this Declaration, then the Provisional Member shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. The option to withdraw as a Member may be exercised at any time within five (5) years of the date of the Statement upon delivery of written notice to the Association in form provided for this purpose by the Association (the "Notice") of the exercise of the option to withdraw. Such Notice shall be delivered not less than one hundred eighty (180) days prior to the date of withdrawal. The Association shall then execute the

Notice and cause it to be filed of record with Valley County. In the event the Provisional Member does not elect to exercise its option to withdraw as provided herein, then it shall be deemed a Permanent Member. The aforesaid option to withdraw shall be personal to the Provisional Member, and may not be exercised by any other person, entity, assignee or successor-in-interest. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(d) Rights and Duties of Memberships. The two above-described classes of Memberships shall equally enjoy the rights and privileges and be subject to the duties and obligations afforded by this Declaration and the Association Documents.

### **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 or used except for single-family residential purposes by the Owner, its family, and its guests and invitees, or by a single-family tenant. No more than one (1) Single-Family Dwelling and such associated accessory structures as are allowed by the County Code or City Code, whichever may be applicable to the Lot, shall be allowed on any Lot. All docks placed on or appurtenant to a Lot shall be in accordance with applicable laws. An Owner may not assign or convey a right of use of a dock to anyone other than the dock's permitted owners of record.

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 and the applicable County Code or City Code, meet applicable snow load requirements for Property (i.e., under the applicable County Code, City Code or building codes), and are installed on a permanent foundation shall be allowed.

3.4 Permits; Construction Standards. Each Owner shall comply with all applicable federal, state, and local laws, rules, codes 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 the County Code or City Code which is applicable to the Lot. Notwithstanding the foregoing, any structures or land uses which exist at the time of the recordation of this Declaration and which were approved by the State Land Board or which were in compliance with all applicable Codes when constructed are permitted to continue and shall be subject to the applicable code provisions for non-conforming uses or non-conforming structures.

3.5 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 in conformity with the International Urban-Wildlands Interface Fire Code.

3.6 Protection of Forest Resources. Other forest resources shall be protected, such as archeological resources, sensitive plant and animal species, water quality and fish habitat, as required by applicable federal, state, and local laws, rules, codes and regulations.

3.7 Fences. Fences on Lots shall comply with the provisions of the applicable County Code or City Code.

3.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance, as defined by Idaho law. All exterior heating and cooling devices must be screened from the view of neighboring properties and all reasonable measures must be taken by the Owners of such devices to mitigate noise to adjoining properties. Without waiving an Owner's rights to seek relief under Idaho law, for purposes of a demand that the Association take action, the Association shall have sole discretion to determine whether the subject activity constitutes a nuisance under the terms of this Section.

3.9 Household Pets. No animals, of any kind, except for household pets shall be raised, bred, or kept on any portion of the Property. Pets must be kept within the boundaries of the Lot unless accompanied by and under the positive control of the Owner. Consistent and/or chronic barking by dogs, or threatening or aggressive behavior by an animal, shall be considered a nuisance. The Board may create such additional Rules and Regulations with regard to household pets as it deems reasonable appropriate.

#### **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 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 and such Assessment may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. No Owner of a Lot may exempt himself or herself from liability for Assessments by waiver of the use or enjoyment of any of the Common Area (if any) or any other part of the Property, 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. However, neither sale nor transfer pursuant to mortgage foreclosure or by deed in lieu of foreclosure nor extinguishment, as aforesaid, shall affect or extinguish the personal liability of the Owner for unpaid Assessments.

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 which are unpaid at 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 which are then owing to 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. 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 or construction of improvements thereon, 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 non-judicial (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 or consent in writing to 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 Owner whose title is derived through foreclosure or otherwise.

## **ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS**

6.1 Common Area: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The vested property rights of Pre-existing Owners, the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of any recreational facilities which may be located within the Common Area; and,
- (d) The vested property rights of Pre-existing Owners, the right of the Board to suspend the right of an Owner to use any Common Area or any recreational facilities located within the Common Area (i) for any period during which any Assessment charged against such Owners Lot remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association, after notice and a hearing as provided in the Bylaws.

6.2 Use by Others. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees ("Sub-

owners”), subject to reasonable Board regulation. All such Sub-Owners shall be subject to the provisions of Article 3 of this Declaration and to all applicable Rules and Regulations which are promulgated by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot, unless provided to the contrary in the Lease. An Owner shall be responsible and liable for the actions of its Sub-owners and for any violations by such Sub-owners of the terms of this Declaration and the Rules and Regulations which are promulgated by the Board.

6.3 Owners’ Rights and Obligations Appurtenant. All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in the Association under this Declaration are hereby declared to be and shall be appurtenant to the title to the Lot owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner’s Lot. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Lot shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.4 Limitation on Rights. Neither the Association nor any Owner shall have the right to grant any rights of use of the Common Area to the owners of property located outside of the Property or to members of the general public.

## **ARTICLE 7. DURATION AND AMENDMENT**

7.1 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 0.

7.2 Amendment. Amendments to this Declaration may be proposed by the Board. Notice of the subject matter of any 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. The amendment shall be adopted upon the Affirmative Vote of sixty-seven percent (67%) of the Members.

7.3 Approval of Land Board. Notwithstanding the foregoing, the following special voting provisions shall apply: the State Land Board 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.

7.4 Certificate. 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 8.**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

8.1 Annexation. The Association may subject additional property which is located within the exterior boundaries of the Plats to the provisions of this Declaration with the consent of the owner of such property and the Affirmative Vote of a Majority of the Membership. Such annexation shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon recording unless otherwise provided therein.

8.2 Withdrawal. The Association may withdraw property from the provisions of this Declaration with the consent of the Owner of such property and the Affirmative Vote of a Majority of the Membership. Such withdrawal shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property being withdrawn.

**ARTICLE 9.**  
**GENERAL PROVISIONS**

9.1 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.

9.2 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 Plats, the Addendum, this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association.

9.3 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.

9.4 Effect of Provisions of Declaration. Each provision of this Declaration and the Bylaws, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration and the Bylaws, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration and the Bylaws: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner; (c) shall, as a personal covenant, be binding on such Owner and such Owner's respective heirs, personal representatives,

successors and assigns; and, (d) shall be deemed an equitable servitude, running, in each case, as a burden with and upon the title to all Lots within the Property.

#### 9.5 Enforcement and Remedies.

(a) In General. Each provision of this Declaration shall be enforceable by any Owner who has made written demand on the Association to enforce such provision and thirty (30) days have lapsed without appropriate action having been taken, by a proceeding for a prohibitive or mandatory injunction. In addition to any other remedy available at law or in any of the Association Documents, each provision of this Declaration with respect to an Owner or property of an Owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction and/or by a suit or action to recover damages, and/or, in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by exclusion of such Owner and such Owner's Lessees, Sub-owners and Guests from use of any Common Area or Association facility. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including injunction bond premiums, and its attorneys' fees incurred, including fees incurred on appeal.

(b) Fines. In addition to the provisions of Section 9.5(a), the Board shall be entitled to impose fines and penalties for violations of this Declaration in amounts to be provided in the Rules and Regulations. Fines and penalties may be assessed only against a Member of Association, and only if the violator is the Member or a member of the Member's family or a Sub-owner, guest, invitee, lessee, contractor, subcontractor, employee or agent of the Member. Fines and penalties may be increased in the case of a continuing violation, where the Member has failed to abate the violation within the time allowed therefore by the Board in written notice to the Member. In the case of a single incident, the fine or penalty may not be assessed unless the Member has received at least one prior written notice from the Board that the violation may subject the Member to fine(s). Fines and penalties imposed pursuant to this Section may be collected as an assessment as provided in the Bylaws and this Declaration. Non-payment of assessments shall not subject a Member to fines; rather, the remedy therefore shall be as provided in the Bylaws and as may otherwise be provided in this Declaration.

9.6 Limited Liability. Neither the Board, nor any member, agent or employee of the Board, nor the Association, nor State Land Board, Director, agent or employee of the Idaho Department of Lands, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

9.7 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

9.8 Waiver. Failure by the Association to enforce any provisions of the Association Documents shall not operate as a waiver of any such provision or of the

Association's right to enforce such provision or any other provision of this Declaration or the Association Documents.

9.9 Notice of Sale. Any Owner, with the exception of Lessees, desiring to sell or otherwise transfer title to his or her Lot shall give the Association at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the name of the closing agent for such transfer and the closing date of such transfer.

IN WITNESS WHEREOF, the State Land Board has caused this Declaration 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

\*\*\*\*\*

THE STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, 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.

\_\_\_\_\_  
NOTARY PUBLIC FOR STATE OF IDAHO  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

DRAFT

**EXHIBIT A**

(listing of replatted Endowment lands)

DRAFT

**EXHIBIT B**

(listing of deeded lots not included in replatting activity)

DRAFT

**EXHIBIT C**  
(Initial Neighborhoods)

The Sylvan Beach Neighborhood Association will remain in place and will not be affected by this Declaration. The Sylvan Beach Neighborhood is described as follows: Originating at the northern boundary of the Amended Payette Lake Cottage Sites plat and extending south to the intersection of Warren Wagon Road and Grouse Lane, thence easterly along the southern boundary of Grouse Lane to the western boundary of Lot 177, Amended Payette Lake Cottage Sites, thence south along the western boundary of Lot 177 to the common boundary of Lots 176 and 177, thence easterly to the Lake along the common boundary of Lots 176 and 177.

The following six (6) Neighborhoods in the platted subdivisions will be initially created:

1. The Wagon Wheel Bay Neighborhood: Running from the southern boundary of the Sylvan Beach Neighborhood (which would be the northern boundary of the Wagon Wheel Bay Neighborhood) to a southern boundary described as follows: From Warren Wagon Road easterly along the south boundary of Cedar Crest Drive, to Payette Drive, thence northerly along the east boundary of Payette Drive, thence easterly to the Lake along the common boundary of Lots 64 and 65.
2. The Pine Haven Neighborhood: Running from the southern boundary of the Wagon Wheel Bay Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Pine Haven Place, thence easterly extending to the Lake across Payette Drive and along the northern boundary of Lot 57.
3. The Chipmunk Trail Neighborhood: Running from the southern boundary of the Pine Haven Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 4, Bl. 12, Southwest Payette Cottage Sites, thence easterly extending across Payette Drive and to the Lake along the southern boundary of Lot 3, Bl. 11.
4. The Squirrel Lane Neighborhood: Running from the southern boundary of the Chipmunk Trail Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 1, Bl. 1, Amended Pinecrest Addition, thence southerly along the west boundary of Lot 5, Bl. 1, thence easterly along the southern boundary of Lot 5, Bl. 1, extending across Payette Drive, thence northerly along the east boundary of Payette Drive to the common boundary of Lots 30 and 31, thence easterly along said common boundary to the Lake.

5. The Picnic Point Neighborhood: Running from the southern boundary of the Squirrel Lane Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Wild Rose Street, thence across Payette Drive to the eastern boundary of Payette Drive, thence northerly along the said eastern boundary of Payette Drive to the South boundary of Lot 1, Block 23, Southwest Payette Cottage Sites, thence easterly along said southern boundary of Lot 1, Block 23 to Payette Lake; also including the Lots on the west side of Warren Wagon Road.
6. The Wild Rose Neighborhood: Running from the southern boundary of the Picnic Point Neighborhood (which would be the northern boundary of this Neighborhood) to the southern boundary of the platted properties, excluding the property identified as "State Subdivision-Future Plat" on the State Subdivision – Southwest Payette Cottage Sites Plat.

DRAFT

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

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

**VALLEY COUNTY, IDAHO**

**TABLE OF CONTENTS**

ARTICLE 1. DEFINITIONS .....	2
1.1 Addendum.....	2
1.2 Affirmative Vote of the Membership .....	2
1.3 Articles .....	2
1.4 Assessment .....	2
1.5 Association.....	2
1.6 Association Documents.....	3
1.7 Association Expenses .....	3
1.8 Association Facilities.....	3
1.9 Benefitted Lots .....	3
1.10 Board or Board of Directors .....	3
1.11 Bylaws .....	3
1.12 City.....	3
1.13 City Code .....	3
1.14 Common Area.....	3
1.15 County .....	3
1.16 County Code.....	3
1.17 Declaration.....	4
1.18 Lot.....	4
1.19 Member.....	4
1.20 Mortgage.....	4
1.21 Mortgagee.....	4
1.22 Neighborhood .....	4
1.23 Owner or Owners.....	4
1.24 Person .....	4
1.25 Plats.....	4
1.26 Pre-Existing Owner or Pre-Existing Owners .....	5
1.27 Pre-Existing Lots.....	5
1.28 Project Documents .....	5
1.29 Property or Project.....	5
1.30 State Land Board.....	5
ARTICLE 2. ASSOCIATION MEMBERSHIP.....	5
2.1 Organization of Association .....	5
2.2 Duties and Powers .....	5
2.3 Membership .....	5
(a) One Class .....	5
(b) Automatic Membership .....	5
(c) Voluntary Membership .....	6

ARTICLE 3. CONSTRUCTION STANDARDS AND USE RESTRICTIONS ..... 7

    3.1 Single-Family Residential Use ..... 7

    3.2 Mobile Homes ..... 7

    3.3 Manufactured or Modular Homes ..... 7

    3.4 Permits; Construction Standards ..... 7

    3.5 Fire Hazards ..... 8

    3.6 Protection of Forest Resources ..... 8

    3.7 Fences ..... 8

    3.8 No Noxious or Offensive Activity ..... 8

    3.9 Household Pets ..... 8

ARTICLE 4. ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS ..... 8

    4.1 Creation of the Lien and Personal Obligation of Assessments ..... 8

    4.2 Transfer of Lot by Sale or Foreclosure ..... 8

ARTICLE 5. RIGHTS OF MORTGAGEES ..... 9

    5.1 No Impairment ..... 9

    5.2 Subordination ..... 9

    5.3 Amendment of Declaration ..... 10

    5.4 Mortgagee Protection Clause ..... 10

ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS ..... 10

    6.1 Common Area ..... 10

    6.2 Use by Others ..... 10

    6.3 Owners' Rights and Obligations Appurtenant ..... 11

ARTICLE 7. DURATION AND AMENDMENT ..... 11

    7.1 Duration ..... 11

    7.2 Amendment ..... 11

    7.3 Approval of Director ..... 11

    7.4 Certificate ..... 11

ARTICLE 8. ANNEXATION AND WITHDRAWAL OF PROPERTY ..... 12

    8.1 Annexation ..... 12

    8.2 Withdrawal ..... 12

ARTICLE 9. GENERAL PROVISIONS ..... 12

    9.1 Invalidity of Any Provision ..... 12

    9.2 Conflict of Project Documents ..... 12

    9.3 Addendum ..... 12

    9.4 Effect of Provisions of Declaration ..... 12

    9.5 Enforcement and Remedies ..... 13

        (a) In General ..... 13

        (b) Fines ..... 13

    9.5 Limited Liability ..... 13

    9.6 Successors and Assigns ..... 13

    9.7 Waiver ..... 13

    9.8 Notice of Sale ..... 14

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

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**VALLEY COUNTY, IDAHO**

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

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

**VALLEY COUNTY, IDAHO**

**THIS ADDENDUM TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (“Addendum”), is made on this \_\_\_ day of \_\_\_\_\_, 2013, 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 \_\_\_ day of \_\_\_\_\_, 2013 as Instrument No. \_\_\_\_\_, records of Valley 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 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 offered by the State and return the executed lease to the Idaho Department of Lands on or before \_\_\_\_\_, 2013, shall be deemed a Member of the Association upon the occurrence of the latter of the incorporation of the Association with the office of the Idaho Secretary of State, and the

execution of the 2014 lease. 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

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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 \_\_\_\_\_ day of \_\_\_\_\_, 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.

\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at \_\_\_\_\_,  
Idaho  
My Commission expires:

DRAFT

**BYLAWS  
OF  
PAYETTE LAKES COTTAGE SITES OWNERS ASSOCIATION, INC.**

**ARTICLE 1.  
PLAN OF OWNERSHIP**

Section 1. Name and Location. The name of this association ("Association") is the Payette Lakes Cottage Sites Owner's Association, Inc. The principal office of the Association shall be in Valley County, Idaho.

Section 2. Definitions. Each term in these Bylaws with its first letter capitalized shall have the meaning defined for such term in the Declaration of Covenants, Conditions and Restrictions for Amended Cedar Knoll Acres, Amended Pinecrest Addition and Southwest Payette Lakes Cottage Sites as it may be amended or supplemented (the "Declaration"), or as defined in these Bylaws.

**ARTICLE 2.  
MEMBERSHIP; MEETINGS AND VOTING RIGHTS**

Section 1. Membership. Membership shall be as provided in the Declaration and these Bylaws.

Section 2. Record Date. The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any other information or material, or in order to make a determination of membership, for any purpose other than assessments which are provided for in Article 8 herein. The Members existing on any such record date shall be deemed Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice or information or material with respect to the same matter and for any adjournment of the same meeting.

A record date shall not be more than fifty (50) days prior to the date on which the particular action requiring determination of membership is proposed or expected to be taken or to occur.

If no record date is established for a meeting, the date on which written notice of such meeting is first given to any member shall be deemed the record date for the meeting.

Section 3. Quorum. Except as otherwise provided in the Articles or these Bylaws, the presence in person or by proxy of Members who are entitled to vote twenty percent (20%) of the total votes of the Association Membership shall constitute a quorum for the Association. The presence in person or by proxy of Members who are entitled to vote twenty percent (20%) of the total votes of a Neighborhood shall constitute a quorum for the Neighborhood.

Section 4. Proxies. Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution, and every proxy shall automatically cease at such time as the Member granting the proxy no longer qualifies as a Member of the Association.

Section 5. Majority Vote. At any meeting of Members where a vote is required and at which a Quorum has been established, the affirmative vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy shall be the act of the Members, unless the vote of a greater number is required by law, the Articles, the Declaration or these Bylaws as from time to time in force and effect.

Section 6. Membership Meetings.

(a) Annual Meeting. The annual meeting of the Members, except as necessary to appoint the initial Board and except for the initial annual meeting of the Members in 2014, shall be held in the month of August in each year, or at such other date designated by the Board, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. The first annual meeting of the Members shall be held in 2014 as early as can reasonably be scheduled. Annual meetings of each of the Neighborhoods shall be held immediately in advance of the annual Membership meeting.

(b) Special Meetings. Special meetings of the Members for any purpose, unless otherwise prescribed by statute, may be called by the president or by the Board, and shall be called by the president at the request of the two or more Directors or Members entitled to cast fifteen percent (15%) or more of the total votes of the Association Membership. A Special Meeting of a Neighborhood may be called by the president or by the Board, and shall be called by the president at the request of Members entitled to cast thirty percent (30%) or more of the total votes of the Neighborhood's Members.

(c) Place Of Meeting. The Board shall designate a place in the County as the place for any annual meeting or for any special meeting of the Members called by the Board. If no designation is made, or if a special meeting shall be called otherwise than by the Board, the place of meeting shall be the principal office of the Association.

(d) Notice Of Meeting. Written or printed notice of any meeting of the Members stating the place, day and hour of the meeting, the purpose or purposes for which the meeting is called, and a description of matters on which a vote of the Membership will be taken shall be delivered personally, by mail, by facsimile or by electronic transmission to each Member entitled to vote at such meeting not less than thirty (30) nor more than fifty (50) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as

it appears in the records of the Association, with postage thereon prepaid. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at corporate expense.

(e) Informal Action By Members. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if all of the Members entitled to vote with respect to the subject matter thereof are given notice of the subject matter pursuant to Subsection (d) above; and, the action or proposition is approved in writing by Members representing at least eighty percent (80%) of the voting power of the Association or, in the case of a Neighborhood, of the Neighborhood. Approval of a subject matter by such method shall have the same force and effect as approval pursuant to a vote taken at a meeting of such Members.

(f) Adjournment. In the absence of a quorum at a Members' meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date.

(g) Rules at Meetings. Except as otherwise provided in these Bylaws, the Articles or the Declaration, all meetings of the Members shall be governed by Roberts Revised Rules of Order.

### **ARTICLE 3. BOARD OF DIRECTORS**

Section 1. Initial Board 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.

Section 2. Number and Term of Directors. Commencing with the first annual meeting, the Board shall consist of seven (7) Directors, who shall be Owners and who shall be elected at the first annual meeting of the Members as follows:

(a) One (1) Director shall be elected by the Affirmative Vote of a Majority of the Members of each of the following Neighborhoods: The Wagon

Wheel Bay Neighborhood, the Pine Haven Neighborhood, the Chipmunk Trail Neighborhood, the Squirrel Lane Neighborhood, the Picnic Point Neighborhood, and the Wild Rose Neighborhood (the "Neighborhood Directors"); and,

(b) One (1) Director shall be elected by the Affirmative Vote of a Majority of the Members of the Association (the "At Large Director")

(c) Except for the initial Directors, who shall serve until the first meeting of the Members of the Association, the Directors shall serve concurrent terms of two (2) years.

**Section 3. Election of Board of Directors.**

(a) Nomination. Nominations for election to the Board of Directors may be made from the floor at the annual meeting of the Association. Additionally, the Board may appoint a Nominating Committee, which shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. If the Board determines to appoint a Nominating Committee, the Committee shall be appointed at least forty-five (45) days prior to each annual meeting of the Members, to serve until the close of such annual meeting, and shall make as many nominations for election to the Board of Directors as it shall, in its discretion, determine, but not less than the number of vacancies that are to be filled.

(b) Election of Directors. Elections of Board members shall be by secret written ballot. All elections shall be conducted by noncumulative voting.

**Section 4. Resignations, Removal and Vacancies.** Any Director may resign at any time by giving written notice to the president or the secretary of the Association. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Neighborhood Director may be removed from office either with or without cause at any time by the affirmative vote of at least seventy-five percent (75 %) of the Members of such Neighborhood who are present in person or by proxy at an annual Membership Meeting or at a Special Meeting of the Neighborhood. The At Large Director may be removed from office either with or without cause at any time by the affirmative vote of at least seventy-five percent (75 %) of the Members who are present in person or by proxy at an annual Membership Meeting or at a Special Meeting of the Membership. Any vacancy occurring in the Board by reason of resignation, removal or death of any Director shall be filled by the affirmative vote of a majority of the Directors then in office. In the case of the resignation, removal or death of a Neighborhood Director, the vacancy shall be filled by a Member of the Neighborhood. Any director appointed to fill any vacancy in the Board shall serve until the expiration of the term of his or her predecessor.

**Section 5. Regular and Special Meetings.** There shall be not less than one "in person" regular meeting of the Board per year. Additional meetings may be held

telephonically or by comparable technological conferencing. Any business may be transacted at a regular meeting. The regular meeting of the Board for the election of officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Members, or any special meeting of Members at which a Board is elected. The Board may also determine that other regular meetings do not require call or formal notice. Special meetings of the Board may be held at any place within Idaho at any time when called by the president, or by three (3) or more Directors, upon at least seven (7) days prior notice of the time and place thereof being given to each Director by delivery to the director, by mailing, by facsimile or electronic transmission, and addressed to him at his post office address as it appears on the books of the Association. Notices shall state the purposes of the meeting. No notice of any adjourned meeting of the directors shall be required. Special meetings may be held telephonically or by comparable technological conferencing.

Section 6. Quorum. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws, the Articles or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 7. Waiver of Notice, Action by Consent of Directors. Before, at or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him or her except when a Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the directors.

Section 8. Adjournment; Executive Session. The Board may, with the approval of a majority of a quorum of the Directors, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 9. Board Meetings Open to Members. Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Association Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized by the vote of a majority of a quorum of the Board.

**ARTICLE 4.**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

The Board shall have the powers and duties necessary for the administration of the affairs of the Association. Without limitation on the generality of the foregoing powers and duties, the Board shall be vested with, and responsible for, the following powers and duties:

Section 1. To select, appoint, supervise, and remove all officers, agents and employees of the Association; to prescribe such powers and duties for them as may be consistent with law, and with the Articles, the Declaration and these Bylaws; and to require from them security for faithful service when deemed advisable by the Board;

Section 2. To enforce the applicable provisions of the Declaration, Articles, these Bylaws and other instruments relating to the ownership, management and control of the Property;

Section 3. To adopt and publish Rules and Regulations governing the use of any Common Area and Association Facilities, and the personal conduct of the Members and their tenants, guests and invitees thereon, and to establish procedures and penalties for the infraction thereof, subject to approval of the membership;

Section 4. To pay all taxes and assessments which are, or could become, a lien on any Common Area or a portion thereof;

Section 5. To contract for casualty, liability and other insurance on behalf of the Association as required or permitted in the Declaration and as otherwise deemed prudent by the Board, including but not limited to Directors and Officers Liability Insurance, unless the cost of which is deemed prohibitive by the Board;

Section 6. To cause any Common Area to be maintained or improved and to contract for goods and/or services for any Common Area or for the Association;

Section 7. To delegate its powers to committees, officers or employees of the Association, or to a management company pursuant to a written contract, as expressly authorized by the Articles, Declaration and these Bylaws;

Section 8. To keep complete and accurate books and records of the receipts and expenditures of the Association, specifying and itemizing the maintenance and repair expenses incurred, and to prepare budgets and financial statements for the Association as required in these Bylaws in accordance with good accounting procedures; to provide for independent audits as required by law and these Bylaws;

Section 9. To initiate and execute disciplinary proceedings against Members of the Association for violations of the provisions of the Articles, Declaration, these Bylaws and such rules as may be promulgated by the Board, in accordance with procedures set forth in these Bylaws:

Section 10. To borrow money and incur indebtedness for purposes of the Association, and to cause to be executed and delivered therefore, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefore, subject to the approval requirements of the Articles, these Bylaws, or the law;

Section 11. To fix and collect Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments, according to the Declaration and these Bylaws, and, if deemed appropriate in the Board's discretion, and in addition to any other remedies available to the Board by law or in equity, to record a Notice of Assessment Lien and foreclose the lien against any Lot for which an Assessment is not paid within thirty (30) days after the due date, or bring an action at law against the Owner personally obligated to pay such Assessment;

Section 12. To prepare and file annual tax returns with the federal and state government, as required by law, and to make such elections as may be necessary to reduce or eliminate the tax liability of the Association. Without limiting the generality of the foregoing, the Board may, on behalf of the Association, elect to be taxed under Section 528 of the Internal Revenue Code or any successor or similar statute conferring income tax benefits on homeowners associations;

Section 13. To enter into, make, amend, perform and carry out, or cancel and rescind, contracts, leases, permits, management agreements, and concession agreements for any lawful purposes pertaining to its business.

Section 14. To establish bank accounts for the common treasury and for all separate funds which are required or may be deemed advisable by the Board.

Section 15. To acquire, by gift, purchase, lease, trade or any other method, own, operate, build, manage, maintain, rent, sell, develop, encumber, and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein, all in accordance with the Association Documents.

Section 16. To veto any action taken or contemplated to be taken by any other Neighborhood within the Property, which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Association Documents. The Association also shall have the power and

shall have broad discretion to require specific action to be taken by a Neighborhood in connection with any of its obligations and responsibilities. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by a Neighborhood, and (b) delegate budgeting duties and require that a proposed budget include certain items and that specific expenditures be made.

Section 17. To adopt rules and protocol regarding the establishment, operation and functioning of Neighborhood Committees.

Section 18. To modify the boundaries of Neighborhoods, create new Neighborhoods, or merge Neighborhoods, with the approval of the Membership.

Section 19. The foregoing enumeration of specific powers shall not limit or restrict in any manner the general powers of the Association and the enjoyment and exercise thereof as now or hereafter conferred by the laws of Idaho.

Section 20. The foregoing enumeration of specific powers shall not limit or restrict in any manner the implied powers of the Association and the enjoyment and exercise thereof as now or hereafter may be reasonably required to carry out the functions provided herein or in any of the Association Documents or to enforce the provisions of any of the Association Documents.

Section 21. The following provisions are inserted for the management of the business and for the conduct of the affairs of the Association, and are in furtherance of and not in limitation or exclusion of the powers granted herein or by law:

(a) Execution of Instruments. Authority to convey or encumber the property of the Association and to execute any deed, contract or other instrument on behalf of the Association is vested in the president or any vice president. All instruments conveying or encumbering such property (whether or not executed as such attorney-in-fact) shall be executed by the president or vice president and attested by the secretary or an assistant secretary of the Association.

(b) Director and Officer Conflicts of Interest. No contract or other transaction between the Association and one or more of its Directors or Officers, or any other corporation, firm, association, or entity in which one or more of its directors are Directors or Officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such Director or Officer are present at the meeting of the Board or a committee thereof which authorizes, approves or ratifies such contract or transaction or because such Director's or Directors' votes are counted for such purposes, if:

(i) The fact of such relationship or interest is disclosed or known to the Board or committee which authorizes, approves, or ratifies the contract or transaction, and the contract or transaction is authorized, approved or ratified by a vote or consent sufficient for the purpose without counting the vote or consent of such interested Director; or

(ii) The contract or transaction is fair and reasonable to the Association and the fact of such relationship or interest is fully and fairly disclosed or known to the Board.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

(c) Liability Insurance. The Association may insure its officers and directors against certain losses which such persons may incur because of their acts or omissions as officers or directors, including, but not limited to, losses resulting from judgments, settlements and costs of litigation. Such insurance shall be limited to reasonable amounts of coverage for such officers and directors.

(d) Limitation of Liability. No Member of the Association shall be personally liable for any debt or other obligation of the Association, and no property within the Project shall be subject to any lien to enforce the collection of any debt or other obligation of the Association, except liens for unpaid assessments made in accordance with the Articles, these Bylaws and the Association Documents.

## **ARTICLE 5. OFFICERS**

Section 1. Officers. The officers of the Association shall be a president, one or more vice presidents, a secretary and a treasurer. Such officers shall be elected by majority vote of the Board. The Board may appoint such other officers, assistant officers, committees and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board, such officer, agent or employee shall follow the orders and instructions of the president or his designee.

Section 2. Removal Of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and a

successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 3. Vacancies. A vacancy in any office, however occurring, may be filled by the Board for the unexpired portion of the term.

Section 4. President. The president shall be the chief executive officer of the Association. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents and employees.

Section 5. Vice Presidents. The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Board. In the absence of the president, the vice president designated by the Board or (if there be no such designation) designated in writing by the president shall have the powers and perform the duties of the president. If no such designation shall be made, all vice presidents may exercise such powers and perform such duties.

Section 6. Secretary. The secretary shall:

(a) Keep the minutes of the proceedings of the members, executive committee, subcommittees, and Board;

(b) See that all notices are duly given in accordance with the provisions of these Bylaws, the Articles, the Declaration and as required by law;

(c) Be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board;

(d) Keep at the registered office or principal place of business of the Association a record containing the names and registered addresses of all members, the designation of the property owned or leased by each member, and, if such property is mortgaged and the mortgagee has given the Association notice thereof, the name and address of the mortgagee;

(e) In general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board, assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

Section 7. Treasurer. The treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board. The treasurer shall receive and give receipts for moneys paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office

of the treasurer and, upon request of the Board, shall make such reports to it as may be required at any time. The treasurer shall have such other powers and perform such other duties as may be from time to time prescribed by the Board or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

Section 8. Daily Management of the Association. The Board shall have the authority to hire such employees and agents as it determines are necessary to manage the functions of the Association and to conduct the day to day management of the Association subject to the supervision of the Board and its officers.

**ARTICLE 6.**  
**BUDGETS, FINANCIAL STATEMENTS, BOOKS AND RECORDS**

Section 1. Budgets and Financial Statements. Financial statements and pro forma operating budgets for the Association shall be regularly prepared (at least annually) and copies shall be distributed to each Member of the Association.

Section 2. Fiscal Year. The fiscal year of the Association shall be as designated by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 3. Inspection of Association's Books and Records. The inspection of Association books and records is governed by Idaho Code § 30-3-131.

Section 4. Statement of Account. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Lot Owner shall be furnished a statement of his account setting forth the amount of any unpaid Assessments or other charges due and owing from such Owner.

**ARTICLE 7.**  
**OBLIGATIONS OF THE MEMBERS**

Section 1. Assessments. Each Member shall be obligated to pay and shall pay to the Association any Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments which are levied by the Board in accordance with Article 8 and the Association Documents with respect to such Owner's Lot.

Section 2. Time for Payment. The amount of any Assessment, charge for interest or otherwise, fine, penalty or other amount payable by any Owner or with respect to such Owner's Lessees, Sub-owners, Guests or Lot shall become due and payable as specified in Article 8 hereof or by the Board. Any such amount which is delinquent shall bear interest at the default rate which shall be periodically set by the Board (the "Default Rate").

Section 3. Lien for Assessments and Other Amounts. All Assessments, together with interest from the due date of such assessment at the Default Rate, late charges, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the Assessment is made until paid, as more particularly provided in Article 8 hereof. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title. Each Member hereby waives, renounces and releases all rights to a homestead exemption, and any redemption period to the extent allowed by law, which it may acquire by statute or by operation of law.

Section 4. Compliance With Association Documents. Each Member shall comply with all provisions of the Association Documents as from time to time in force and effect. In addition to all other remedies, the membership rights and privileges of any Member or guest, including, but not limited to, the right to vote and the right to use Common Area and Association Facilities, may be suspended by action of the Board during the period when any Assessments or other amounts due relating to such Member's Lot remains unpaid; but, upon payment of such Assessments or other amounts, such rights and privileges shall be automatically restored. If the Board has adopted and published rules and regulations governing the use of Common Area and Association Facilities and the personal conduct of any person related thereto, subject to the vested property rights of Pre-existing Owners, the Board may, in its discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty (30) days, or if such person is in a continuous violation of such rules and regulations for a period during the violation and continuing for thirty (30) days after such time as the violation ceases.

Section 5. Enforcement of Assessments.

(a) Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Member. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than ten (10) days from the date of the mailing of the notice by which the default must be cured; and, (d) that the failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for Assessment against the Lot of the Member and the exercise by the Board of any other remedies either provided herein or allowed by law, including an action against the Member personally, for the delinquent Assessment. In such case, and as a condition of the cure of the delinquent Assessment, the Member may be obligated by the Board, at the Board's sole discretion, to additionally pay all costs of enforcement, including without limitation reasonable attorneys' fees, costs and related expenses and to pay interest at the Default Rate, from the date

on which the Assessment was due, as well as a reasonable late charge to be determined by the Board.

(b) Enforcement of Assessments. Each Member is and shall be deemed to covenant and agree to pay to the Association each and every Assessment provided for in these Bylaws; and agrees to the enforcement of all such Assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of the Association Documents, each Member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Member. In addition to any other remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the Member to pay the Assessments provided for in this Declaration, and each of them, in any manner provided by law in equity, or without any limitation of the foregoing, by either or both of the following procedures, non-exclusively:

(i) Enforcement by Suit. By commencement of a suit at law against any Member or Members personally obligated to pay Assessments, for such delinquent Assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon and/or late charges as provided for herein, costs of collection, court costs and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Member. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

(ii) Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all Assessments levied against any and all Members, together with interest thereon as provided for herein, fines imposed for violation of the Association Documents, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. The Board or its duly authorized representative may file and record a Notice of Delinquent Assessment on behalf of the Association against the Lot of the defaulting Owner who has not cured the default as provided in Section 5(a) above. The amount of the Assessment, plus any costs of collection, expenses attorneys' fees and interest assessed in accordance with these Bylaws shall be a lien on the Owner's Lot from and after the time the Association records the Notice of Delinquent Assessment. Such Notice shall be executed and acknowledged by any officer of the Association and shall contain substantially the following:

1. The claim of lien made pursuant to these Bylaws;

2. The name of the record Owner;
3. The legal description of the Lot against which claim of lien is made;
4. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorneys' fees and any other sums allowed in any Association Document (with any proper offset allowed); and,
5. The name and address of the trustee authorized by the Association to enforce the lien by public sale.

Upon recordation, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied, together with all improvements thereon and appurtenances thereto. Such lien shall have priority over all liens or claims created subsequent to the recordation of the Notice. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by the Idaho Code for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any Officer or Director of the Association, or any Title Company authorized to do business in Idaho as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Members and shall secure payment of all sums set forth in the Notice, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said Notice.

The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

The sale or transfer of any Lot shall not affect the continued validity or enforceability of the lien, which shall run with and burden the Lot, nor shall it relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Assessments on such Lot due

prior to such acquisition of title. Such unpaid Assessments shall be collectible from all Members subject to Assessment pursuant to these Bylaws, including such acquirer, its successors and assigns. The Owner of a Lot which is sold with unpaid Assessments shall also continue to be personally liable therefore.

Each Owner hereby expressly waives any objection to the enforcement and foreclosure of Assessment liens in this manner. Upon the timely curing of any default for which a Notice was filed by the Board, the Board shall cause an officer of the Association to record an appropriate release of such Notice in the Office of the County Recorder of Valley County, Idaho. No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by non-use or abandonment of his or her Lot or any of the Common Area or Association Facilities.

Section 6. Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Member an Assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay Assessments. In such event, each Member shall continue to pay Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments on the same basis as for the last year for which an Assessment was made, if any, until a new Assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

**ARTICLE 8  
ASSESSMENTS**

Diagram 8.1 provides a summary of assessments, as more fully and completely described in this Article 9 below.

ASSESSMENT SUMMARY	
Assessment Type	Description
COMMON ASSESSMENTS	Levied in an equal amount for each Lot.
SPECIAL ASSESSMENTS	Levied in the event that the Board determines that other Assessments will be inadequate to meet an unanticipated expense which cannot be deferred to the next budget year.
LOCAL IMPROVEMENT ASSESSMENTS	Desired improvements; allocated to only those Lots which benefit from the improvement; must be approved by at least 2/3 of owners of Benefited Lots (only the Owners of the Benefited Lots vote).
LOCAL MAINTENANCE ASSESSMENTS	Benefiting a specific Neighborhood or group of Members; allocated to only those Lots and/or Neighborhoods which benefit from the repair and maintenance.

## Diagram 8.1

Section 1. Common Assessments. Common Assessments shall be calculated and levied as an equal amount per Lot, which equal amount per Lot shall be the "Common Assessment Rate". Based on budget estimates, the Board shall determine and set forth in its annual budget the Common Assessment Rate required to produce the total Common Assessments set forth in such budget. The annual budget shall be reviewed at the annual membership meeting. The provisions of this Section 1 cannot be amended except by the Affirmative Vote of sixty-seven percent (67%) of the Membership.

Section 2. Payment of Common Assessments. Each Common Assessment shall become due and payable, in its entirety on or before December 1, or such other date as the Board may reasonably determine. In addition to any other remedy provided herein, in any other Association Document, or by law, any portion of any Common Assessment not paid when due and payable shall become a lien on and against all of the real property owned by such Owner, including any Lots owned by such Owner other than the Lot with respect to which the Common Assessment has not been fully paid. The Board, in its sole discretion, in cases of extreme hardship may release any such lien if it receives other security for the payment of the delinquent Common Assessment which it deems sufficient to protect the interest of the Association. Notwithstanding the foregoing, any Lot which is exempt from taxation pursuant to Title 63, Chapter 6 of the Idaho Code as amended (or any comparable statute), or any property, real or personal, owned by the Association may be granted an exemption from the Common Assessment by the Board; provided that the Board specifically approves such exemption in each particular case. The Board shall have the discretion to make the Common Assessments due and payable annually, quarterly or monthly.

Section 3. Special Assessments. The Board may levy in any fiscal year one or more Special Assessments, applicable to that year only, in the event that the Board determines that other Assessments will be inadequate to meet an unanticipated expense which cannot be deferred to the next budget year. Approval of a majority of the Board shall be required for the levy of a Special Assessment. Such a vote shall be held at a meeting of the Board at which a quorum is present. Notice of such meeting shall set forth the purpose therefore and shall be sent to all Directors and all Members not less than fifteen days nor more than sixty days in advance of such meeting. Any such Assessment which is so approved shall be levied in proportion to the benefits received. Special Assessments shall be calculated and levied as an equal amount per Lot, unless the purpose of the Special Assessment is to cover shortfalls in Local Maintenance or Local Improvement Assessments, in which case the Special Assessment shall be calculated and levied by such method that the Board finds will result in the Special Assessment being equitable in proportion to benefits received. The date or dates that any such Special Assessment is due and payable shall be set forth in the resolution of the Board authorizing such Assessment.

Section 4. Local Improvement Assessments. If, in the judgment of the Board, certain improvements within the Project are desirable, and those improvements will

especially benefit certain Lots, and if all or a part of the costs of those improvements should in fairness be paid for by the Owners of the Benefited Lots, the Board may propose a Local Improvement Assessment or the Owners of Benefited Lots may request a Local Improvement Assessment. With respect to each proposed Local Improvement Assessment, the Board shall specify the nature of the proposed improvement, shall designate the Benefited Lots which will be especially benefited by the improvement, and shall recommend a Local Improvement Assessment calculated to meet the costs applicable to the local improvement, with the Board specifying the amounts of such Assessments, the dates for payment of such Assessments, and the portion, if any, of the costs of any improvement that will be borne by the Association. The Local Improvement Assessment shall then be submitted to a vote of the Owners of the Benefited Lots, at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to the Owners of the Benefited Lots at least 30 days in advance (unless each such Owner waives such notice). If at least two-thirds (2/3) of the Owners of the Benefited Lots approve the Local Improvement Assessment at such a meeting, the Local Improvement Assessment shall take effect.

Section 5. Apportionment of Local Improvement Assessments. Local Improvement Assessments shall be assessed in proportion to the benefits received. The Board shall make such assessments by any apportionment method that the Board finds will result in Assessments being equitable in proportion to benefits received.

Section 6. Disposition of Funds Raised Through Local Improvement Assessments. All funds collected through the imposition of a Local Improvement Assessment shall be applied to the costs of making, contracting, and installing the local improvement for which such Assessment was imposed, except that any funds remaining unspent upon completion of such improvement shall be returned to the Owners of the Benefited Lots in the proportion on which such Lots were assessed.

Section 7. Local Maintenance Assessments. If, in the judgment of the Board, maintenance and repair of certain property within the Project is desirable, and such maintenance and repair will especially benefit certain lots, and if all or a part of the costs of those improvements should in fairness be paid for by the Owners of the Benefited Lots, the Board may propose a Local Maintenance Assessment or the Owners of Benefited Lots may request a Local Maintenance Assessment. With respect to each proposed Local Maintenance Assessment, the Board shall specify the nature of the proposed maintenance and/or repair, shall designate the Benefited Lots which will be especially benefited by such maintenance and/or repair, and shall recommend a Local Maintenance Assessment calculated to meet the costs applicable to the local maintenance, with the Board specifying the amounts of such Assessments, the dates for payment of such Assessments, and the portion, if any, of the costs of any maintenance and repair that will be borne by the Association. Prior to making a final decision regarding whether to impose the Local Maintenance Assessment, the Board shall provide the opportunity for Owners of the Benefited Lots to comment on the proposed Assessment at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to the Owners of the Benefited Lots at least 15 days in advance (unless each such Owner waives such notice).

Section 8. Apportionment of Local Maintenance Assessments. Local Maintenance Assessments shall be assessed in proportion to the benefits received. The Board shall make such Assessments by any apportionment method that the Board finds will result in Assessments being equitable in proportion to benefits received.

Section 9. Disposition of Funds Raised Through Local Maintenance Assessments. All funds collected through the imposition of a Local Maintenance Assessment shall be applied to the costs of the maintenance and/or repairs for which such Assessment was imposed.

Section 10. Association Budget. At the first meeting of the Board following the adoption of the Association's fiscal year, the Board shall adopt an estimated budget for the remainder of that fiscal year. Such budget shall include: (A) the estimated costs and expenses and proposed capital expenditures which will be chargeable to the Association to fulfill its obligations under the Declaration, the Articles and the Bylaws as then in force and effect; (B) the estimated income and other funds which will be received by the Association; and (C) the estimated total amounts required to be raised by Common Assessments, Local Maintenance Assessments and/or Local Improvement Assessments to cover such costs, expenses and capital expenditures of the Association and to provide reasonable reserves. For each subsequent fiscal year the Board shall, prior to the beginning of each fiscal year, propose and tentatively adopt a similar budget, which shall also include all long-term or continuing commitments of the Association made in connection with or contemplated under any previously approved budget. The Board may delegate budgeting responsibilities to Neighborhoods and/or Benefited Lots, for Board review, for Local Improvement Assessments, Local Maintenance Assessments, and such other budget items as the Board may determine. The tentative budget for each subsequent fiscal year shall become final thirty (30) days after the distribution of the tentative budget to the Members. Except as emergencies may require the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association through Assessments, all other sources of income and borrowing.

## **ARTICLE 9**

### **NEIGHBORHOODS**

Section 1. In General. Declarant has designated separate Neighborhoods within the Property, for purposes of electing Directors to the Association Board as provided at Article 3 above. A Neighborhood may act either directly with the Association, or through a Neighborhood Committee or Neighborhood Association established in accordance with this Article 9. Any Neighborhood can be later formally organized as a Committee or an Association by the Association Board. Until such time as a Neighborhood Committee or Association is organized, if at all, the members of the Neighborhood shall elect their designated Association Director(s) at the annual meeting of the Members of the Association. Other than the power to elect a Director, as provided herein, Neighborhoods shall have no autonomous power to act unilaterally or independent of formal Board approval.

Section 2. Neighborhood Committees and Associations. No Neighborhood Committee or Association shall have the power or the authority to levy assessments, unless specifically authorized in writing to do so by the Board, and any action of such Committee or Association shall be subject to the approval of the Association.

(a) Neighborhood Committees. In the event that a Neighborhood Committed is created, the Neighborhood shall elect a Neighborhood Committee. Such a Neighborhood Committee shall consist of three (3) to five (5) Members, as determined by at least a majority of the votes associated with the Lots in the Neighborhood. Neighborhood Committee members shall be elected for a term of one (1) year or until their successors are elected. In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice requirements applicable to the Board. At all Neighborhood Committee meetings, a majority of the committee members present in person or by proxy shall constitute a quorum for the transaction of business. Unless specifically provided to the contrary herein, decisions of the Neighborhood Committee shall be made by an affirmative vote of a majority of the committee members present at any meeting at which a quorum is present. Any vote for a Association Director shall be taken by all of the members of the Neighborhood, and not simply by vote of the committee members; and, quorum, voting, notice and meeting requirements for such a vote shall be those applicable to membership meetings herein. Meetings of a Neighborhood Committee shall be open to all Owners of Lots in the Neighborhood and their representatives, as well as to the Association Board. Minutes of all Neighborhood Committee Meetings shall be kept and a copy thereof provided to the Secretary of the Association, and to any member of the Neighborhood, upon request. It is intended that the Neighborhood Committee shall provide a mechanism for issues which are unique to the Neighborhood to be identified and, as necessary, presented to the Board of the Association.

(b) Neighborhood Associations. In the event that a Neighborhood Association is created, the Association Board shall adopt Articles of Incorporation and Bylaws which outline the regulation and the management of the affairs of the Neighborhood Association. The members of such Association shall be the members of the Neighborhood. Other than the power to elect a Director, as provided herein, such an Association shall have no autonomous power to act unilaterally or independent of formal Board approval.

#### **ARTICLE 10.**

#### **AMENDMENT OF BYLAWS**

The Affirmative Vote of 67% of the Membership shall be required to make, amend and repeal the Bylaws of the Association at any regular meeting of the Membership or at any special meeting called for that purpose at which a quorum is represented.

**ADOPTION OF BYLAWS**

We, the undersigned, being all of the Directors of the Payette Lakes Cottage Sites Owner's Association, Inc., do hereby assent to the within and foregoing Bylaws and hereby adopt the same as the Bylaws of said Association.

EXECUTED by the undersigned on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, the duly elected and acting Secretary of the Payette Lakes Cottage Sites Owner's Association, Inc., do hereby certify:

That the within and foregoing Bylaws were adopted as the Bylaws of said Association on this \_\_\_\_ day of \_\_\_\_\_, 2013, and that the same do constitute the Bylaws of said Association.

EXECUTED by the undersigned on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Secretary

**BYLAWS  
OF  
PAYETTE LAKES COTTAGE SITES OWNER'S ASSOCIATION, INC.**

**TABLE OF CONTENTS**

ARTICLE 1. PLAN OF OWNERSHIP .....	1
Section 1. Name and Location .....	1
Section 2. Definitions .....	1
ARTICLE 2. MEMBERSHIP; MEETINGS AND VOTING RIGHTS.....	1
Section 1. Membership.....	1
Section 2. Record Date .....	1
Section 3. Quorum .....	1
Section 4. Proxies .....	2
Section 5. Majority Vote .....	2
Section 6. Membership Meetings .....	2
(a) Annual Meeting .....	2
(b) Special Meetings.....	2
(c) Place Of Meeting .....	2
(d) Notice Of Meeting .....	2
(e) Informal Action By Members .....	3
(f) Adjournment.....	3
(g) Rules at Meetings .....	3
ARTICLE 3. BOARD OF DIRECTORS .....	3
Section 1. Number and Term of Directors .....	3
Section 1. Number and Term of Directors .....	3
Section 2. Election of Board of Directors .....	4
(a) Nomination.....	4
(b) Election of Directors.....	4
Section 3. Resignations, Removal and Vacancies .....	4
Section 4. Regular and Special Meetings.....	4
Section 5. Quorum .....	5
Section 6. Waiver of Notice, Action by Consent of Directors.....	5
Section 7. Adjournment; Executive Session.....	5
Section 8. Board Meetings Open to Members.....	5
ARTICLE 4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.....	6
ARTICLE 5. OFFICERS .....	9
Section 1. Officers.....	9
Section 2. Removal Of Officers .....	9
Section 3. Vacancies.....	10
Section 4. President .....	10
Section 5. Vice Presidents .....	10
Section 6. Secretary.....	10
Section 7. Treasurer.....	10
Section 8. Daily Management of the Association .....	11
ARTICLE 6. BUDGETS, FINANCIAL STATEMENTS, BOOKS AND RECORDS .....	11

Section 1. Budgets and Financial Statements..... 11

Section 2. Fiscal Year ..... 11

Section 3. Inspection of Association’s Books and Records ..... 11

Section 4. Statement of Account..... 11

ARTICLE 7. OBLIGATIONS OF THE MEMBERS..... 11

Section 1. Assessments..... 11

Section 2. Time for Payment..... 11

Section 3. Lien for Assessments and Other Amounts ..... 12

Section 4. Compliance With Association Documents..... 12

Section 5. Enforcement of Assessments..... 12

    (a) Notice of Default and Acceleration of Assessments..... 12

    (b) Enforcement of Assessments ..... 13

        (i) Enforcement by Suit ..... 13

        (ii) Enforcement by Lien..... 13

Section 6. Failure to Assess..... 15

ARTICLE 8. ASSESSMENTS ..... 15

Section 1. Common Assessments ..... 16

Section 2. Payment of Common Assessments ..... 16

Section 3. Special Assessments ..... 16

Section 4. Local Improvement Assessments..... 16

Section 5. Apportionment of Local Improvement Assessments ..... 17

Section 6. Disposition of Funds Raised Through Local Improvement Assessments 17

Section 7. Local Maintenance Assessments..... 17

Section 8. Apportionment of Local Maintenance Assessments..... 18

Section 9. Disposition of Funds Raised Through Local Maintenance Assessments 18

Section 10. Association Budget ..... 18

ARTICLE 9. NEIGHBORHOODS..... 18

Section 1. In General ..... 18

Section 2. Neighborhood Committees and Associations..... 19

    (a) Neighborhood Committees ..... 19

    (b) Neighborhood Associations ..... 19

ARTICLE 10. AMENDMENT OF BYLAWS ..... 19

ADOPTION OF BYLAWS..... 20

R500300 996 Happy Day Way

**From:** Ken Smith  
**To:** Cottage Site Plan  
**Subject:** Comments on Bylaws, first reading.  
**Date:** Tuesday, July 23, 2013 12:41:26 PM

---

1. "Common Areas" -- what are they, where are they, how are they defined?
2. The Board can borrow money? WHY?
3. Assessments (common, special, local improvement, local maintenance) -- seems overly complex and potentially divisive.
4. Section 15 - "To acquire..." What's that mean?
5. Section 17 - Neighborhood Committees -- drawn up and defined forever? by whom, when, how?
6. 7.4 - "Common area and Association Facilities..." like what?
7. "Vested property rights of pre-existing owners..." What does that mean? Seems like a (potential) exemption or free pass.
8. "Neighborhoods" and "Benefited Lots" WHO decides who benefits -- seems fraught w/ arguments and/or abuse..... FOR INSTANCE, "We've decided your roads need work but ours do not."

To try and build an ASSOCIATION which, from the onset, is a aggregation of potential differing neighborhoods w/ differing needs and differing histories seems problematic.

Ken Smith

ATTACHMENT 4a

DEPT. OF LANDS  
2013 AUG -2 AM 9:31  
BOISE, IDAHO

August 1, 2013

Tom Schultz, Director of the Idaho Department of Lands and Secretary to the Land Board  
P.O. Box 83720  
Statehouse, Boise, Idaho 83720

Dear: Mr Schultz

The Carley family has owned deeded property in McCall for over fifty years. We strongly encourage the IDL to proceed with replatting of the amended Payette Lakes Cottages. All of the people I have spoken with in this neighborhood support the ownership and control of the replatting. It makes no sense to us for the State of Idaho to bear the responsibility of our common access points. We are supportive of creating a home owner's association and dealing with the management of these newly deeded lands.

Please support our effort to properly manage the roads and access lands within our neighborhood.

Sincerely,

Clay Carley  
2202 Payette Dr.

ATTACHMENT 4b

August 6, 2013

Members of the Land Board  
c/o Tom Schultz, Director  
PO Box 83720  
Statehouse  
Boise, Idaho 83720

Good Morning –

We are writing to express our support for Payette Lakes Cottage Sites property owners association documents recently sent to us by the Idaho Department of Lands. We appreciate the fact that these documents will give stability in the future to our neighborhoods, and we encourage your timely acceptance of them.

Yours Sincerely,



Cutler and Nancy Umbach  
2380 Sharlie Lane  
PO Box 2329  
McCall, Idaho 83638

DEPT. OF LANDS  
2013 AUG - 7 AM 10:08  
BOISE, IDAHO

ATTACHMENT 4c

August 6, 2013

**Rafanelli  
& Nahas**

408 E. Parkcenter Blvd.  
Suite 330  
Boise, ID 83706

PH: 208.947.0407  
FAX: 208.947.0411

www.rfnah.com

Governor C.L. "Butch" Otter  
P.O. Box 83720  
Statehouse  
Boise, Idaho 83720.

Re. Southwest Payette Lots Solutions Package

Dear Governor Otter,

I am writing in support of the comprehensive set of agreements worked out by the staff of the Land Board and the Citizens for Payette Lake. My wife and I are homeowners in the Wagon Wheel Bay neighborhood and have been active in the local owners group working on these agreements.

The stability of the neighborhood and the future value of my lot and the lots held by the State depend on the smooth transition of ownership of the common areas to an Association of responsible land owners and lessees. Although, as an existing fee owner I cannot be compelled to join the new Association, I fully intend to join and will strongly encourage my neighbors to do so as well. These documents have been carefully drafted to encourage participation by everyone. It is essential that they be in place before the State begins selling additional lots.

The turmoil that has characterized the cottage lot lease program over the past few years has been unfortunate for all. If adopted by the Land Board, this package will mark a new era of stability for the neighborhood and will certainly enhance the ability of the State to get full value for its land in the coming years.

Respectfully,



Ronald C. Nahas

cc. Tom Schultz. Director of the Idaho Department of Lands

DEPT. OF LANDS  
2013 AUG -9 AM 9:25  
BOISE, IDAHO

ATTACHMENT 4d

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

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

**VALLEY COUNTY, IDAHO**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration")**, is made on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by the **State Board of Land Commissioners**, by and through the **Idaho Department of Lands** (the "**State Land Board**"), with reference to the following facts:

A. The State Land Board is the owner of \_\_\_\_\_ residential Lots located at Payette Lake, Valley County, Idaho, known as **AMENDED CEDAR KNOLLS ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES**. The land encumbered by this Declaration is more particularly described as follows:

All land currently owned by the State Land Board, located within the Plats of **AMENDED CEDAR KNOLLS ACRES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; **AMENDED PINECREST ADDITION**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; and **SOUTHWEST PAYETTE COTTAGE SITES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_, records of Valley County, Idaho. Said land is identified more specifically by subdivision name, block and lot in **Exhibit "A"**.

Hereafter, the term "Owners" shall refer to the owners of the Lots bound by this Declaration together with the owners of such Lots which may hereafter be made subject to this Declaration by the deeded owners ("Pre-Existing Owners") of the Lots identified in **Exhibit "B"** and depicted on the Plats for purposes of identification ("Pre-Existing Lots"). The Pre-Existing Lots identified in Exhibit "B" are not currently owned by the State Land Board, and the Pre-Existing Owners have not yet agreed that Pre-Existing Lots which they own shall be subject to this Declaration. However, the Pre-Existing Owners may at any time subject their Pre-Existing Lots to this Declaration as provided in Section 2.3 below.

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 Payette Lakes Cottage Sites Owners Association, Inc., which Association will operate and maintain certain properties and facilities within the Plats and assume maintenance obligations by virtue of deeded ownership and an easement 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 and the State's Lessees as provided herein and in the Addendum hereto, their successors-in-interest and assigns, the 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. 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 Land Board and its Lessees.

1.2 Affirmative Vote of the Membership. The Affirmative Vote of a Majority of the Membership shall be achieved on any particular matter upon the vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Affirmative Vote of sixty-seven percent (67%) of the Membership shall be achieved on any particular matter upon the vote of at least sixty-seven percent (67%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Board shall have the right to submit any matter requiring Membership approval to the Membership by mailed ballot, in which case the approval of the matter shall require the specified percentage (i.e., 51% or 67%) of the total votes of the Membership.

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

1.4 Assessment. 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 Common Assessments, Special Assessments, Local Improvement

Assessments or Local Maintenance Assessments, as those terms are more specifically defined in the Bylaws.

1.5 Association. Association shall mean the Payette Lakes Cottage Sites Owners 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 as provided herein, and any successor-in-interest thereto.

1.6 Association Documents. Association Documents shall mean the various governing documents of the Association, including: (a) the Articles of Incorporation; (b) the Bylaws; (c) this Declaration; (d) all Rules and Regulations promulgated by the Board; and, (e) all amendments and supplements to any of the aforementioned documents.

1.7 Association Expenses. Association Expenses shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area, expenses incurred by the Association in meeting its obligations and in the administration of the Association, and any reasonable reserve for such purposes as determined by the Board. Association expenses may be levied and collected by the Board as Common Assessments, Special Assessments, Local Improvement Assessments or Local Maintenance Assessments.

1.8 Association Facilities. Association Facilities shall mean all property owned or leased by the Association or otherwise held or used by the Association, or which is under the Association's management or control by, through or under contractual arrangements, licenses or other arrangements, including property furnished by Declarant, real property or interests therein, improvements on real property, and personal property and equipment.

1.9 Benefitted Lots. Benefitted Lots shall mean groups of Lots which have like interests or needs, which Lots may already be grouped as a Neighborhood, which are so designated for the following purposes: (a) to determine, assess and budget Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) to determine, assess and budget Local Maintenance Assessments, as defined at Article 8 of the Bylaws; and/or, (c) to otherwise facilitate the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members.

1.10 Board or Board of Directors. The Board or Board of Directors shall be the Board of Directors of the Association, as it shall be constituted from time to time.

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

1.12 City. City shall mean the City of McCall.

1.13 City Code. City Code shall mean the McCall City Code.

1.14 Common Area. Common Area shall mean the property identified on the Plats as Common Area. Absent such designation, the term "Common Area" as used herein shall include but not necessarily be limited to all roads, easements, rights-of-way, and lake access lots which are shown on the Plats. Common Area shall also include additional property or property rights obtained by the Association in the future.

1.15 County. County shall mean Valley County, Idaho.

1.16 County Code. County Code shall mean the Valley County Land Use and Development Ordinance, as amended, superseded or repealed.

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

1.18 Lot. Lot shall include a platted parcel of land that is part of the Plats, other than Common Area, as well as all Pre-existing Lots which become subject to this Declaration as provided below in Article 2.

1.19 Member. Member shall mean a member of the Association, as further defined in Article 2. Every Owner of a Lot subject to this Declaration now or at a later time shall automatically be a Member of the Association, except where said Lot Owner is the State Land Board, in which case the Member shall be the Lessee of the Lot, if any, as provided in that certain Addendum being filed of record with this Declaration. Notwithstanding the foregoing, Pre-Existing Owners are not automatically Members, but may join voluntarily and may thereupon become a Member, as set forth in Section 2.3(c).

1.20 Mortgage. Mortgage shall mean a recorded mortgage, deed of trust, real estate contract, or other instrument creating a voluntary security interest in any Lot.

1.21 Mortgagee. Mortgagee shall mean a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, leasehold, or other holder of a perfected voluntary security interest in any Lot.

1.22 Neighborhood. Neighborhood shall mean a group of Lots designated by the Board as a separate Neighborhood for purposes of: (a) determining, assessing and budgeting Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) determining, assessing and budgeting Local Maintenance Assessments, as defined at Article 8 of the Bylaws; (c) electing Directors to the Board; (d) providing input and information to the Board with regard to proposed services, maintenance, improvements or other issues uniquely affecting the Neighborhood; and/or (e) otherwise facilitating the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members. The initially designated Neighborhoods are identified on the attached **Exhibit "C"**.

1.23 Owner or Owners. Owner or Owners shall include 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 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."

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

1.25 Plats. Plats shall refer to the recorded plats for AMENDED CEDAR KNOLLS ACRES, AMENDED PINECREST ADDITION and SOUTHWEST PAYETTE COTTAGE SITES, and any amendments thereto.

1.26 Pre-Existing Owner or Pre-Existing Owners. Pre-Existing Owner or Pre-Existing Owners shall mean owners of Pre-Existing Lots.

1.27 Pre-Existing Lots. Pre-Existing Lots shall mean the Lots identified in attached Exhibit "B".

1.28 Project Documents. Project Documents shall mean the Plats and the Association Documents.

1.29 Property or Project. Property or Project shall mean all Lots subject to this Declaration as described in Exhibit A to this Declaration, and all common areas, easements and other Lots depicted on the Plats, together with all buildings, improvements and structures thereon.

1.30 State Land Board. The State Land Board shall mean the State Land Board, acting by and through the Idaho Department of Lands, collectively.

## **ARTICLE 2. ASSOCIATION MEMBERSHIP**

2.1 Organization of Association. The Association shall be incorporated under the name of Payette Lakes Cottage Sites Owners 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.

(a) Classes. There shall be two classes of membership in the Association, which shall consist of the following:

(i) Current Owners. The owners of the Lots which are depicted in the Plats, excluding Common Area and Lessees of Lots as provided in the attached Addendum; and

(ii) Pre-existing Owners-Permanent Memberships. Pre-existing Owners who elect to join the Association and subject their Lots to this Declaration and the Association Documents.

(iii) Pre-Existing Owners-Provisional Membership. Pre-Existing Owners who elect to join the Association as provided below.

(b) Automatic Membership. The Owner of a Lot, except a Pre-Existing Owner, 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association. The Lessees of Lots shall be considered Owners as provided in the Addendum.

(c) Voluntary Membership.

(i) Pre-existing Owners-Permanent Memberships. A Pre-Existing Owner may voluntarily become a Permanent Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter be subject to all terms and conditions of this Declaration, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. Once a Pre-Existing Owner submits its Pre-Existing Lot(s) to this Declaration, then the Pre-Existing Owner shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(ii) Pre-existing Owners-Provisional Memberships. A Pre-existing Owner may voluntarily become a Provisional Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement (the "Statement") signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter

be subject to all terms and conditions of this Declaration, subject to an option to withdraw as a Member, as described below, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. The Association shall provide the Statement for the Pre-existing Owner's use as aforesaid. A Pre-existing Owner desiring to utilize this Provisional Membership shall notify the Association of such election not later than one (1) year after the date on which the Declaration is filed of record with Valley County, Idaho. The failure to timely do so shall result in a waiver of the right to utilize the Provisional Membership. Once a Provisional Member submits its Pre-Existing Lot(s) to this Declaration, then the Provisional Member shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. The option to withdraw as a Member may be exercised at any time within five (5) years of the date of the Statement upon delivery of written notice to the Association in form provided for this purpose by the Association (the "Notice") of the exercise of the option to withdraw. Such Notice shall be delivered not less than one hundred eighty (180) days prior to the date of withdrawal. The Association shall then execute the Notice and cause it to be filed of record with Valley County. In the event the Provisional Member does not elect to exercise its option to withdraw as provided herein, then it shall be deemed a Permanent Member. The aforesaid option to withdraw shall be personal to the Provisional Member, and may not be exercised by any other person, entity, assignee or successor-in-interest. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(d) Rights and Duties of Memberships. The two above-described classes of Memberships shall equally enjoy the rights and privileges and be subject to the duties and obligations afforded by this Declaration and the Association Documents.

### 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 or used except for single-family residential purposes by the Owner, its family, and its guests and invitees, or by a single-family tenant. No more than one (1) Single-Family Dwelling and such associated accessory structures as are allowed by the County Code or City Code, whichever may be applicable to the Lot, shall be allowed on any Lot. All docks placed on or appurtenant to a Lot shall be in accordance with applicable laws. An Owner may not assign or convey a right of use of a dock to anyone other than the dock's permitted owners of record.

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 and the applicable County Code or City Code, meet applicable snow load requirements for Property (i.e., under the applicable County Code, City Code or building codes), and are installed on a permanent foundation shall be allowed.

3.4 Permits; Construction Standards. Each Owner shall comply with all applicable federal, state, and local laws, rules, codes 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 the County Code or City Code which is applicable to the Lot. Notwithstanding the foregoing, any structures or land uses which exist at the time of the recordation of this Declaration and which were approved by the State Land Board or which were in compliance with all applicable Codes when constructed are permitted to continue and shall be subject to the applicable code provisions for non-conforming uses or non-conforming structures.

3.5 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 in conformity with the International Urban-Wildlands Interface Fire Code.

3.6 Protection of Forest Resources. Other forest resources shall be protected, such as archeological resources, sensitive plant and animal species, water quality and fish habitat, as required by applicable federal, state, and local laws, rules, codes and regulations.

3.7 Fences. Fences on Lots shall comply with the provisions of the applicable County Code or City Code.

3.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance, as defined by Idaho law. All exterior heating and cooling devices must be screened from the view of neighboring properties and all reasonable measures must be taken by the Owners of such devices to mitigate noise to adjoining properties. Without waiving an Owner's rights to seek relief under Idaho law, for purposes of a demand that the Association take action, the Association shall have sole discretion to determine whether the subject activity constitutes a nuisance under the terms of this Section.

3.9 Household Pets. No animals, of any kind, except for household pets shall be raised, bred, or kept on any portion of the Property. Pets must be kept within the boundaries of the Lot unless accompanied by and under the positive control of the Owner. Consistent and/or chronic barking by dogs, or threatening or aggressive behavior by an animal, shall be considered a nuisance. The Board may create such additional Rules and Regulations with regard to household pets as it deems reasonable appropriate.

3.10 Non-conformities/Preexisting Structures. Any structure or improvement which is in place as of the date of recordation of this Declaration and which is not in conformity with any of the provisions of Article 3.2, 3.3, 3.4 or 3.7 above shall be deemed in all respects to be a conforming use under the provisions of this Declaration and may be maintained and repaired as a conforming use in its current condition. In the event that such structure or improvement is replaced, then the replacement shall conform to all provisions of this Declaration and existing zoning ordinances, as amended.

**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 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 and such Assessment may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. No Owner of a Lot may exempt himself or herself from liability for Assessments by waiver of the use or enjoyment of any of the Common Area (if any) or any other part of the Property, 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. However, neither sale nor transfer pursuant to mortgage foreclosure or by deed in lieu of foreclosure nor extinguishment, as aforesaid, shall affect or extinguish the personal liability of the Owner for unpaid Assessments.

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 which are unpaid at 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 which are then owing to 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. 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 or construction of improvements thereon, 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 non-judicial (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 or consent in writing to 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 Owner whose title is derived through foreclosure or otherwise.

## **ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS**

6.1 Common Area: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The vested property rights of Pre-existing Owners, the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of any recreational facilities which may be located within the Common Area; and,
- (d) The vested property rights of Pre-existing Owners, the right of the Board to suspend the right of an Owner to use any Common Area or any recreational facilities located within the Common Area (i) for any period during which any Assessment charged against such Owners Lot remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association, after notice and a hearing as provided in the Bylaws.

6.2 Use by Others. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees ("Sub-owners"), subject to reasonable Board regulation. All such Sub-Owners shall be subject to the provisions of Article 3 of this Declaration and to all applicable Rules and Regulations which are promulgated by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot, unless provided to the contrary in the Lease. An Owner shall be responsible and liable for the actions of its Sub-owners and for any violations by such Sub-owners of the terms of this Declaration and the Rules and Regulations which are promulgated by the Board.

6.3 Owners' Rights and Obligations Appurtenant. All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in the Association under this Declaration are hereby declared to be and

shall be appurtenant to the title to the Lot owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Lot. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Lot shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.4 Limitation on Rights. Neither the Association nor any Owner shall have the right to grant any rights of use of the Common Area to the owners of property located outside of the Property or to members of the general public.

#### **ARTICLE 7. DURATION AND AMENDMENT**

7.1 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 8~~ this Article 7.

7.2 Amendment. Amendments to this Declaration may be proposed by the Board. Notice of the subject matter of any 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. The amendment shall be adopted upon the Affirmative Vote of sixty-seven percent (67%) of the Members.

7.3 Approval of Land Board. Notwithstanding the foregoing, the following special voting provisions shall apply: the State Land Board 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.

7.4 Certificate. 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 8. ANNEXATION AND WITHDRAWAL OF PROPERTY**

8.1 Annexation. The Association may subject additional property which is located within the exterior boundaries of the Plats to the provisions of this Declaration with the consent of the owner of such property and the Affirmative Vote of a Majority of the Membership. Such annexation shall be accomplished by recording a Supplemental

Declaration with the Office of Recorder of the County, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon recording unless otherwise provided therein.

8.2 Withdrawal. The Association may withdraw property from the provisions of this Declaration with the consent of the Owner of such property and the Affirmative Vote of a Majority of the Membership. Such withdrawal shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property being withdrawn.

## **ARTICLE 9.** **GENERAL PROVISIONS**

9.1 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.

9.2 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 Plats, the Addendum, this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association.

9.3 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.

9.4 Effect of Provisions of Declaration. Each provision of this Declaration and the Bylaws, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration and the Bylaws, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration and the Bylaws: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner; (c) shall, as a personal covenant, be binding on such Owner and such Owner's respective heirs, personal representatives, successors and assigns; and, (d) shall be deemed an equitable servitude, running, in each case, as a burden with and upon the title to all Lots within the Property.

## 9.5 Enforcement and Remedies.

(a) In General. Each provision of this Declaration shall be enforceable by any Owner who has made written demand on the Association to enforce such provision and thirty (30) days have lapsed without appropriate action having been taken, by a proceeding for a prohibitive or mandatory injunction. In addition to any other remedy available at law or in any of the Association Documents, each provision of this Declaration with respect to an Owner or property of an Owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction and/or by a suit or action to recover damages, and/or, in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by exclusion of such Owner and such Owner's Lessees, Sub-owners and Guests from use of any Common Area or Association facility. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including injunction bond premiums, and its attorneys' fees incurred, including fees incurred on appeal.

(b) Fines. In addition to the provisions of Section 9.5(a), the Board shall be entitled to impose fines and penalties for violations of this Declaration in amounts to be provided in the Rules and Regulations. Fines and penalties may be assessed only against a Member of Association, and only if the violator is the Member or a member of the Member's family or a Sub-owner, guest, invitee, lessee, contractor, subcontractor, employee or agent of the Member. Fines and penalties may be increased in the case of a continuing violation, where the Member has failed to abate the violation within the time allowed therefore by the Board in written notice to the Member. In the case of a single incident, the fine or penalty may not be assessed unless the Member has received at least one prior written notice from the Board that the violation may subject the Member to fine(s). Fines and penalties imposed pursuant to this Section may be collected as an assessment as provided in the Bylaws and this Declaration. Non-payment of assessments shall not subject a Member to fines; rather, the remedy therefore shall be as provided in the Bylaws and as may otherwise be provided in this Declaration.

9.6 Limited Liability. Neither the Board, nor any member, agent or employee of the Board, nor the Association, nor State Land Board, Director, agent or employee of the Idaho Department of Lands, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

9.7 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

9.8 Waiver. Failure by the Association to enforce any provisions of the Association Documents shall not operate as a waiver of any such provision or of the Association's right to enforce such provision or any other provision of this Declaration or the Association Documents.

9.9 Notice of Sale. Any Owner, with the exception of Lessees, desiring to sell or otherwise transfer title to his or her Lot shall give the Association at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the name of the closing agent for such transfer and the closing date of such transfer.

IN WITNESS WHEREOF, the State Land Board has caused this Declaration 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

\*\*\*\*\*

THE STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, 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.

\_\_\_\_\_  
NOTARY PUBLIC FOR STATE OF IDAHO  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

WORKING DRAFT

**EXHIBIT A**

(listing of replatted Endowment lands)

WORKING DRAFT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit A  
| AMENDED CEDAR KNOLLS ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

**EXHIBIT B**

(listing of deeded lots not included in replatting activity)

WORKING DRAFT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
| AMENDED CEDAR KNOLL<sup>2</sup> ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

**EXHIBIT C**  
(Initial Neighborhoods)

The Sylvan Beach ~~Mutual Corporation~~ Neighborhood Association will remain in place as an association separate and distinct from the Association. The boundaries of the property which is deemed to be included in the said Mutual Corporation shall be the external boundaries of the lots who participate in the Sylvan Beach Mutual Corporation and said area shall be generally described and will not be affected by this Declaration. The Sylvan Beach Neighborhood is described as follows: Originating at the northern boundary of the Amended Payette Lake Cottage Sites plat and extending south along the eastern boundary of Warren Wagon Road to the southwest corner of Lot 164-R1, thence easterly along the southern boundary of said Lot 164-R1 intersection of Warren Wagon Road and Grouse Lane, thence easterly along the southern boundary of Grouse Lane to the southeast corner of said Lot 164-R1, thence northerly along the eastern boundary of said Lot 164-R1 to the northeast corner of said lot, thence easterly along the northern boundary of Sharlie Lane to the northeast corner of Sharlie Lane, thence southerly to the southwest corner of lot 178-R1 Lot 177, Amended Payette Lake Cottage Sites, thence south along the western boundary of Lot 177 to the common boundary of Lots 176 and 177, thence easterly to the Lake along the southern common boundary of said Lot 178-R1 Lots 176 and 177, excluding Lot 1, Block 28, Southwest Payette Cottage Sites.

The following six (6) Neighborhoods in the platted subdivisions will be initially created:

1. The Wagon Wheel Bay Neighborhood: Running from the above-described southern boundary of the Sylvan Beach ~~Neighborhood~~ Mutual Corporation (which would be the northern boundary of the Wagon Wheel Bay Neighborhood) to a southern boundary described as follows: From Warren Wagon Road easterly along the south boundary of Cedar Crest Drive, to Payette Drive, thence northerly along the east boundary of Payette Drive, thence easterly to the Lake along the common boundary of Lots 64 and 65, Amended Payette Lake Cottage Sites.
2. The Pine Haven Neighborhood: Running from the southern boundary of the Wagon Wheel Bay Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Pine Haven Place, thence easterly extending to the Lake across Payette Drive and along the northern boundary of Lot 57, Amended Payette Lake Cottage Sites.
3. The Chipmunk Trail Neighborhood: Running from the southern boundary of the Pine Haven Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 4, Bl. 12, Southwest

Payette Cottage Sites, thence easterly extending across Payette Drive and to the Lake along the southern boundary of Lot 3, Bl. 11.

4. The Squirrel Lane Neighborhood: Running from the southern boundary of the Chipmunk Trail Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 1, Bl. 1, Amended Pinecrest Addition, thence southerly along the west boundary of Lot 5, Bl. 1, thence easterly along the southern boundary of Lot 5, Bl. 1, extending across Payette Drive, thence northerly along the east boundary of Payette Drive to the common boundary of Lots 30 and 31, thence easterly along said common boundary to the Lake.
5. The Picnic Point Neighborhood: Running from the southern boundary of the Squirrel Lane Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Wild Rose Street, thence across Payette Drive to the eastern boundary of Payette Drive, thence northerly along the said eastern boundary of Payette Drive to the South boundary of Lot 1, Block 23, Southwest Payette Cottage Sites, thence easterly along said southern boundary of Lot 1, Block 23 to Payette Lake; also including the Lots on the west side of Warren Wagon Road.
6. The Wild Rose Neighborhood: Running from the southern boundary of the Picnic Point Neighborhood (which would be the northern boundary of this Neighborhood) to the southern boundary of the platted properties, excluding the property identified as "State Subdivision-Future Plat" on the State Subdivision – Southwest Payette Cottage Sites Plat.

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

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

**VALLEY COUNTY, IDAHO**

**TABLE OF CONTENTS**

ARTICLE 1. DEFINITIONS..... 2

    1.1 Addendum ..... 2

    1.2 Affirmative Vote of the Membership..... 2

    1.3 Articles..... 2

    1.4 Assessment..... 2

    1.5 Association ..... 3

    1.6 Association Documents ..... 3

    1.7 Association Expenses ..... 3

    1.8 Association Facilities ..... 3

    1.9 Benefitted Lots..... 3

    1.10 Board or Board of Directors..... 3

    1.11 Bylaws..... 3

    1.12 City..... 3

    1.13 City Code ..... 3

    1.14 Common Area ..... 4

    1.15 County..... 4

    1.16 County Code ..... 4

    1.17 Declaration..... 4

    1.18 Lot..... 4

    1.19 Member..... 4

    1.20 Mortgage..... 4

    1.21 Mortgage ..... 4

    1.22 Neighborhood..... 4

    1.23 Owner or Owners ..... 4

    1.24 Person..... 5

    1.25 Plats..... 5

    1.26 Pre-Existing Owner or Pre-Existing Owners..... 5

    1.27 Pre-Existing Lots ..... 5

    1.28 Project Documents..... 5

    1.29 Property or Project ..... 5

    1.30 State Land Board ..... 5

ARTICLE 2. ASSOCIATION MEMBERSHIP ..... 5

    2.1 Organization of Association..... 5

    2.2 Duties and Powers ..... 5

    2.3 Membership..... 5

        (a) One Class..... 5

        (b) Automatic Membership..... 6

(c) Voluntary Membership.....	6
ARTICLE 3. CONSTRUCTION STANDARDS AND USE RESTRICTIONS .....	7
3.1 Single-Family Residential Use .....	7
3.2 Mobile Homes.....	8
3.3 Manufactured or Modular Homes .....	8
3.4 Permits; Construction Standards .....	8
3.5 Fire Hazards.....	8
3.6 Protection of Forest Resources .....	8
3.7 Fences.....	8
3.8 No Noxious or Offensive Activity .....	8
3.9 Household Pets .....	8
ARTICLE 4. ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS.....	9
4.1 Creation of the Lien and Personal Obligation of Assessments .....	9
4.2 Transfer of Lot by Sale or Foreclosure .....	9
ARTICLE 5. RIGHTS OF MORTGAGEES .....	<u>109</u>
5.1 No Impairment .....	10
5.2 Subordination .....	10
5.3 Amendment of Declaration .....	<u>1149</u>
5.4 Mortgagee Protection Clause .....	<u>1149</u>
ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS .....	11
6.1 Common Area .....	11
6.2 Use by Others.....	11
6.3 Owners' Rights and Obligations Appurtenant.....	11
ARTICLE 7. DURATION AND AMENDMENT .....	12
7.1 Duration .....	12
7.2 Amendment .....	12
7.3 Approval of Director.....	12
7.4 Certificate .....	12
ARTICLE 8. ANNEXATION AND WITHDRAWAL OF PROPERTY .....	12
8.1 Annexation.....	12
8.2 Withdrawal .....	<u>1342</u>
ARTICLE 9. GENERAL PROVISIONS .....	13
9.1 Invalidity of Any Provision.....	13
9.2 Conflict of Project Documents .....	13
9.3 Addendum .....	13
9.4 Effect of Provisions of Declaration.....	13
9.5 Enforcement and Remedies .....	<u>1413</u>
(a) In General.....	<u>1413</u>
(b) Fines.....	14
9.5 Limited Liability .....	14
9.6 Successors and Assigns .....	14
9.7 Waiver .....	<u>1514</u>
9.8 Notice of Sale .....	<u>1514</u>

WORKING DRAFT

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

---

**VALLEY COUNTY, IDAHO**

WORKING DRAFT

August 8, 2013

Tom Schultz, Director  
Idaho Department of Lands  
P.O. Box 83720-0050  
Boise, Idaho 83720

Mr. Tom Schultz

My wife and I are property owners in the Payette Lakes Cottage Sites area on the west side of Payette Lake. Over the last two years, we have followed the process by which the Idaho Department of Lands has surveyed property and developed new plats for the west side of Payette Lake. We concur with the plats that were prepared and distributed to us in late July, 2013. We encourage you to approve these plats as drafted.

We also encourage your approval of the Bylaws for the Payette Lakes Cottage Sites Association, the Declaration of Covenants, Conditions and Restrictions and the Addendum to the Declaration of Covenants, Conditions and Restrictions (As drafted and mailed to us in late July). We feel that an association with bylaws and CC&R's is vital for ongoing organization and administration of common properties on the west side of Payette Lake.

Regards,

A handwritten signature in black ink, appearing to read "Jack and Kathy Dahl". The signature is written in a cursive style and is positioned above the typed name.

Jack and Kathy Dahl  
2396 N. Overview Place  
Boise, Idaho 83702

ATTACHMENT 4f

August 9, 2013

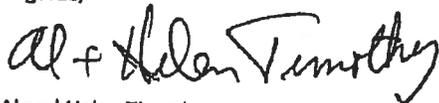
Tom Schultz, Director  
Idaho Department of Lands  
P.O. Box 83720-0050  
Boise, Idaho 83720

Mr. Tom Schultz

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Regards,



Al and Helen Timothy  
7 Club Lane  
Littleton, Colorado 80123

ATTACHMENT 4g

**From:** Frank Stoppello  
**To:** Kate Langford  
**Cc:** [jimd@alliedhandlingproducts.com](mailto:jimd@alliedhandlingproducts.com)  
**Subject:** Re: Sylvan Beach Mutual Corporation  
**Date:** Monday, August 12, 2013 10:33:02 AM

---

Dear Ms. Langford: Pursuant to today's conversation, I write as attorney for Sylvan Beach Mutual Corporation concerning the State's proposal to convey roads and Community Beach on pages 4 and 6 of the Preliminary Plats you sent me. I note on page 4 Sylvan Creek Road is actually Sylvan Beach Road. Our last two members on the southern end of Sharlie Lane on page 4 are Jack Dahl (whose lot is on the water) and Doug Porter (whose lot is on Warren Wagon Road). After my inspection of the area and my conversation with Jim Donald, our President, the Community Beach and Community Beach Road on page 6 are out of Sylvan Beach Mutual Corporation's area. Sylvan Beach does not want to become a member of any other proposed association. Our corporation has been in existence since 1943 and is active in governing the members' interests. Sylvan Beach would be in favor of the State deeding its interest in Sharlie Lane on Plat 4, but does not desire being deeded the Community Beach interest, Community Beach Road and Sharlie Lane shown on page 6 of the Preliminary Plats. If you have any questions, please feel free to contact me at your convenience. Sincerely, Frank W. Stoppello.

**CONFIDENTIALITY NOTICE:** This e-mail communication and materials attached hereto may contain private, confidential, or legally privileged information intended for the sole use of the designated and/or duly authorized recipient(s). If you are not the intended recipient or have received this e-mail in error, please notify the sender immediately by e-mail and permanently delete all copies of this e-mail including all attachments without reading them. If you are the intended recipient, secure the contents in a manner that conforms to all applicable state and/or federal requirements related to privacy and confidentiality of such information. Thank you.

---

**From:** Kate Langford [mailto:[KLangford@idl.idaho.gov](mailto:KLangford@idl.idaho.gov)]  
**Sent:** Monday, August 05, 2013 10:09 AM  
**To:** Frank Stoppello  
**Subject:** plat

**KATE LANGFORD**  
 Strategic Business Analyst  
 Email: [klangford@idl.idaho.gov](mailto:klangford@idl.idaho.gov)

Idaho Department of Lands | 300 N. 6th Street, Ste. 103 - Boise, ID 83720 | ☎ 208.334.0257

**TRUSTED STEWARDS**  
 of Idaho's Resources  
 from Main Street to Mountain Top

ATTACHMENT 4h

Resp't 0182

August 10, 2013

Director Tom Schultz  
Idaho Department of Lands  
P.O. Box 83720  
Boise, ID 83720-0050

RE: Payette Lake Cottage Sites Owners Association, Inc. CC&Rs

Dear Director:

I am writing to request an extension of the August 14, 2013 deadline within which to comment on the Proposals concerning the Cedar Knolls, Pinecrest and Southwest Payette Cottage Sites. I am requesting the extension for two reasons: 1) not all lessees and neighboring owners of land affected by the State's proposed actions have received the draft documents from the Land Department, for review, nor can they be found on the State Department of Lands website, and 2) the documents I have seen third hand are incomplete (Declaration Exhibit B and C) or missing altogether (Quitclaim Deed and Plat Dedication). From what I have been able to read, the draft documents present issues that Owners and Lessees need additional time to review and discuss before being able to making informed comments.

Please allow a 30 day extension for the comment period and forward a copy of the missing Declaration Exhibits B and C and a complete copy of the proposed Quitclaim Deed and Plat Dedication to:

COTTAGE SITE, LLC  
7225 BETHEL STREET  
BOISE, IDAHO 83704

Sincerely,



ATTACHMENT 4i

Resp't 0183

August 10, 2013

Director Tom Schultz  
Idaho Department of Lands  
P.O. Box 83720  
Boise, ID 83720-0050

RE: Payette Lake Cottage Sites Owners Association, Inc. CC&Rs

Dear Director:

I am writing to request an extension of the August 14, 2013 deadline within which to comment on the Proposals concerning the Cedar Knolls, Pinecrest and Southwest Payette Cottage Sites. I am requesting the extension for two reasons: 1) not all lessees and neighboring owners of land affected by the State's proposed actions have received the draft documents from the Land Department, for review, nor can they be found on the State Department of Lands website, and 2) the documents I have seen third hand are incomplete (Declaration Exhibit B and C) or missing altogether (Quitclaim Deed and Plat Dedication). From what I have been able to read, the draft documents present issues that Owners and Lessees need additional time to review and discuss before being able to making informed comments.

Please allow a 30 day extension for the comment period and forward a copy of the missing Declaration Exhibits B and C and a complete copy of the proposed Quitclaim Deed and Plat Dedication to:

MAILING ADDRESS:

Gladys Johnson  
827 Farrington Drive  
Eagle, ID 83616

Sincerely,



Gladys Johnson  
2409 Sharlie Lane  
McCall, ID 83638

ATTACHMENT 4j

August 10-2013

Director Tom Schultz  
Idaho Department of Lands

Dear Director:

I am writing to request an extension of the August 14, 2013 deadline within which to comment on the Proposals concerning the Cedar Knolls, Pinecrest and Southwest Payette Cottage Sites. I am requesting the extension for two reasons: 1) not all lessees and neighboring owners of land affected by Declaration have received the documents for review, nor can they be found on the State Department of Lands website, and 2) the documents I have seen third hand present issues that need additional time to review before making comment.

Sincerely,

*Patricia Wilcomb*  
*2354 Sharpe*  
*McCall, Idaho*  
*83638*

DEPT. OF LANDS  
2013 AUG 13 AM 9:18  
BOISE, IDAHO

ATTACHMENT 4k

August 10-2013

Director Tom Schultz  
Idaho Department of Lands

Dear Director:

I am writing to request an extension of the August 14, 2013 deadline within which to comment on the Proposals concerning the Cedar Knolls, Pinecrest and Southwest Payette Cottage Sites. I am requesting the extension for two reasons: 1) not all lessees and neighboring owners of land affected by Declaration have received the documents for review, nor can they be found on the State Department of Lands website, and 2) the documents I have seen third hand present issues that need additional time to review before making comment.

Sincerely,

*Marlee Wilcomb*

*Po box 3131/2362 Sharlie Lane*

*McCall Idaho 83638*

*Marlee Wilcomb*

DEPT. OF LAND  
2013 AUG 13 AM 9:18  
BOISE, IDAHO

ATTACHMENT 4I

Resp't 0186

August 12, 2013

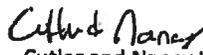
Members of the Land Board  
c/o Tom Schultz, Director  
PO Box 83720  
Statehouse  
Boise, Idaho 83720

Good Morning, again --

We wish to rescind the letter copied below as we now feel we need more time to study the documents. We have not ourselves yet received copies of these documents, and were relying on word of mouth for our opinions. We now have them available to us "third hand". We are now asking for a 30 day extension of the comment period in order to give ourselves time to study the documents, try to obtain copies of the missing exhibits, and acquaint ourselves with many and extensive powers the master home owners association have over the members.

Please, therefore, consider his a formal request for a 30 day extension of the comment period.

Yours Sincerely,

  
Cutler and Nancy Umbach  
2380 Sharlie Lane  
PO Box 2329  
McCall, Idaho 83638

DEPT. OF LAND,  
2013 AUG 13 AM 9:16  
BOISE, IDAHO

ATTACHMENT 4m

(Now Rescinded)

August 6, 2013

Members of the Land Board  
c/o Tom Schultz, Director  
PO Box 83720  
Statehouse  
Boise, Idaho 83720

Good Morning –

We are writing to express our support for Payette Lakes Cottage Sites property owners association documents recently sent to us by the Idaho Department of Lands. We appreciate the fact that these documents will give stability in the future to our neighborhoods, and we encourage your timely acceptance of them.

Yours Sincerely,

Cutler and Nancy Umbach  
2380 Sharlie Lane  
PO Box 2329  
McCall, Idaho 83638

DEPT. OF LANDS  
2013 AUG 13 AM 9:16  
BOISE, IDAHO

ATTACHMENT 4n

Resp't 0188

DEPT. OF LANDS

2013 AUG 13 PM 12: 59

BOISE, IDAHO

Director Tom Schultz  
Idaho Department of Lands  
Attn: SW Payette CC&Rs  
P.O. 83720  
Boise, ID 83720-0050

Dear Director Schultz:

DB (P&E)

Please accept this letter from the lessees and owners of 18 of the 17 homesites of properties abutting and accessing Grouse Lane, Sharlie Way and Sharlie Lane (Sheets five and six of the State Subdivision-Southwest Payette Cottage Sites) in response to the above Letter and the Proposals contained therein.

The Proposals refer to a Declaration of Covenants, Conditions and Restrictions concerning the Cedar Knolls, Pinecrest Addition and Southwest Cottage Sites and, in Exhibit C thereto, recommend the creation of six neighborhoods, including the Wagon Wheel Bay Neighborhood which would encompass the homesites abutting and accessing Grouse Way, Sharlie Way and Sharlie Lane.

The undersigned would like to propose that the homesites abutting and accessing Grouse Way, Sharlie Way and Sharlie Lane be excised from the Wagon Wheel Bay Neighborhood as our neighborhood has unique issues and concern not germane to the owners and lessees of the rest of the Warren Wagon Bay Neighborhood. In particular, 1)the Common Area of our neighborhood is primarily used to house the fire hydrant used to protect our houses from fire and 2) the Common area has no beach during the high water season of the summer months.

With respect to the first issue, access to the Common area is gained through an open area of approximately 350 square yards, which, pursuant to the advice of the Fire Chief of the McCall Fire Department, must be kept free of all cars to allow Department to attach its 30 foot long pumper to the hydrant. If any cars are parked on the Common Area, nearby Sharlie Way or nearby Sharlie Lane neither the fire truck nor its appurtenant pumper could gain access to the hydrant which would create a highly dangerous fire threat to the woodlands and houses of our neighborhood. We believe that a creation of a separate neighborhood would reflect our important interests in protecting the uninterrupted access to the hydrant as the local lessees and owners could more easily monitor and regulate parking than the distant Wagon Wheel Bay Neighborhood.

Unlike most, if not all, of the Common Areas of the remaining proposed Neighborhoods, and, in particular, the Common Areas of the Warren Wagon Bay Neighborhood our Common Area is comprised of grass and shrub areas, a small forest, a creek and, outside of the summer months, a small beach. it is thus a fragile area and not suitable for beach goers and other similar users. Again, creating a separate neighborhood would allow use to monitor and protect the current health and beauty of our Common Area.

ATTACHMENT 4o

If you wish further information on these matters we would be happy to supply such. In that regard, the Fire Chief of the McCall Fire Department will shortly provide an affidavit to you to the effect that the Department would be unable to gain access to our fire hydrant if there are any cars parked on our Common Area or nearby roads.

Sincerely,

Katherine Strawn, 2404/2406 Sharlie Lane  
 Brian Kindall 2416 Sharlie Lane  
 Nick Korte 2410 Sharlie Ln.  
 Louise McClure 2370 Sharlie Lane  
 Marilee Wilcomb 2362 Sharlie  
 Bizz Hart 2360 Sharlie  
 Don Johnson { 2409 Sharlie Lane  
 Janis Johnson { mail to:  
 Gladys Johnson { 827 Farringham Dr  
 Eagle ID 83616  
 Robert J. Seiler } 2350 WARREN WAGON  
 Dianne V. Seiler } LOT 15B Sharlie Lane  
 Cutler Umbach - 2380 Sharlie Lane  
 Jamey Cooke Vogt 993 Grouse Way  
 Douglas Bagley 2402 Sharlie Lane  
 Noelle Johnson - 2402 WARREN WAGON DR  
 Casey Johnson & Zake Johnson 2950 Sharlie Ln  
 Kathryn Zimmerman 2424 Sharlie Lane  
 [Signature] 2/24 [Signature]

**FRANK W. STOPPELLO**  
ATTORNEY AND COUNSELOR AT LAW  
620 W. HAYS STREET  
BOISE, IDAHO, 83702

TELEPHONE (208) 336-1020

FACSIMILE (208) 336-1027

August 12, 2013

Kate Langford  
Strategic Business Analyst  
Idaho Department of Lands  
300 N. 6th Street, Ste. 103  
Boise, ID 83720

Dear Ms. Langford:

Pursuant to today's conversation, I write as attorney for Sylvan Beach Mutual Corporation concerning the State's proposal to convey roads and Community Beach on pages 4 and 6 of the Preliminary Plats you sent me. I note on page 4 Sylvan Creek Road is actually Sylvan Beach Road. Our last two members on the southern end of Sharlie Lane on page 4 are Jack Dahl (whose lot is on the water) and Doug Porter (whose lot is on Warren Wagon Road). After my inspection of the area and my conversation with Jim Donald, our President, the Community Beach and Community Beach Road on page 6 are out of Sylvan Beach Mutual Corporation's area. Sylvan Beach does not want to become a member of any other proposed association. Our corporation has been in existence since 1943 and is active in governing the members' interests. Sylvan Beach would be in favor of the State deeding its interest in Sharlie Lane on Plat 4, but does not desire being deeded the Community Beach interest, Community Beach Road and Sharlie Lane shown on page 6 of the Preliminary Plats. If you have any questions, please feel free to contact me at your convenience.

Sincerely,

  
Frank W. Stoppello  
Attorney at Law

FWS:dc

ATTACHMENT 4p

Resp't 0191

August 12, 2013

Mr. Tom Schultz, Director  
Idaho Department of Lands  
P.O. Box 83720  
Boise, ID 83720-0500

RE: Request for a separate Sharlie-Grouse Neighborhood Association at Payette Lake

Dear Director Schultz:

A few days ago, you received a letter signed by all of the Lot Owners and Lessees who take access from Sharlie Lane, Sharlie Way and Grouse Lane requesting a seventh "neighborhood" in the Payette Lake Cottage Site Owners Association, Inc. This letter is a further request from our community for your consideration.

The Owners and Lessees of lots abutting Sharlie Lane, Sharlie Way and Grouse Lane, in the proposed *State Subdivision - Southwest Payette Lake Cottage Sites*, respectfully request an amendment to the State's proposed *Declaration of CC&Rs* which will allow us to be removed from the proposed *Payette Lake Cottage Sites Owners Association, Inc.* and form a separate Sharlie-Grouse Neighborhood Association, with Bylaws patterned after the proposed Payette Lakes Cottage Sites Owners Bylaws.

The reasons for our request are: 1) higher lot values for the State's leased lots within a Sharlie-Grouse Neighborhood Association (Sharlie-Grouse Association), 2) lack of neighborhood issues similar to the lots on Wagon Wheel Bay Road and Payette Lake Drive, 3) lack of benefit to the existing Sharlie-Grouse neighborhood operating structure from membership in the larger Payette Lake Cottage Sites Owners Association, Inc. (the Master Association), and 4) a majority of the Sharlie-Grouse Owners and Lessees are willing to assume responsibility and liability for our common areas.

The first point for consideration is that the State Endowment Fund will benefit from higher values for its leased lots when the lots are under local control from a small neighborhood association, with a Board of Directors from within the neighborhood. Closer attention to property conditions can be paid to the Endowment's property under a smaller, closer structure. Conversely, property values will not rise as high for the Endowment's leased lots if they are subjected to the governance of a large and distant Board of Directors, who are not familiar with the issues and conditions of our small neighborhood. Lessees and buyers at auction will not want to pay up for membership in a large homeowners association. In cases of this type, there is no substitute for smaller, local control.

Secondly, the Sharlie-Grouse neighborhood has an important issue that does not exist in the other proposed neighborhoods along Wagon Wheel Bay Road and Payette Lake Drive.

ATTACHMENT 4q

Resp't 0192

Sharlie-Grouse has a community beach with a fire hydrant situated in a cleared off area half way out to the rocky shore. Today, people from outside the adjoining community come to the clearing, park, and walk to the water leaving their vehicles unattended. The McCall City Fire Chief recently brought a pumper truck to the clearing to test its ability to get its side mounted connection within 10 feet of the hydrant. His conclusion was that if even one vehicle was parked in the clearing, a pumper truck would not be able to navigate close enough to the hydrant to make the connection.

If this community beach is included in the proposed Master Association property, "members" of this large Master Association may think they have the right to park their vehicles in the clearing and leave them unattended while using the lake. This is a serious life safety issue for the Sharlie-Grouse Owners and Lessees. Up until now, we have had no authority to deal with such unauthorized parking. Establishing a separate Sharlie-Grouse Association will give our community the necessary legal separation from the larger Master Association, and the authority to protect this invaluable resource, by keeping it free from encroachment by members of the large proposed Master Association, and people from outside the Master Association property.

Third, Owners and Lessees in our neighborhood have been cooperatively maintaining its water system, roads and community beach clearing, and undertaking neighborhood improvement projects for decades (since 1932). The responsibilities have been handed down from one generation to the next, each Owner or Lessee contributing as needed. We can do this well because we are a small group that communicates well and cooperates with one another to manage its common area effectively. Establishment of a separate Sharlie-Grouse Association will allow us to continue protecting and preserving our common area, as we have traditionally done, for decades to come.

Finally, the Sharlie-Grouse Owners and Lessees are ready to take on the responsibility and liability for our roads and community beach. We have an existing, effective operating structure that can easily be formalized into a nonprofit neighborhood association, legally separate from the proposed Master Association. As a community, we are willing to bear the cost of setting up the association and bear the costs of repairs and liability insurance.

We respectfully ask the Land Department to approve our request to amend the proposed Declaration to include a separate Sharlie-Grouse Neighborhood Association and to recommend to the Land Board the creation of a separate Quit Claim Deed conveying Sharlie Lane, Sharlie Way, Grouse Lane, the Community Beach Access Road and the Community Beach to the proposed Sharlie-Grouse Neighborhood Association, for management in accordance with the State's Declaration.

This request is coming at the eleventh hour because until Saturday August 10<sup>th</sup>, only one of our neighborhood's Lessees, and not a single Deeded Owner, had received the proposed Declaration or Bylaws from either the Land Department or Citizens for Payette Lake. This lack of notice,

while alarming, hopefully gives us the right to request a 30 day delay of the August 20<sup>th</sup> Land Board vote, so this request for a legally separate Sharlie-Grouse Neighborhood Association can be taken into consideration.

Respectfully,

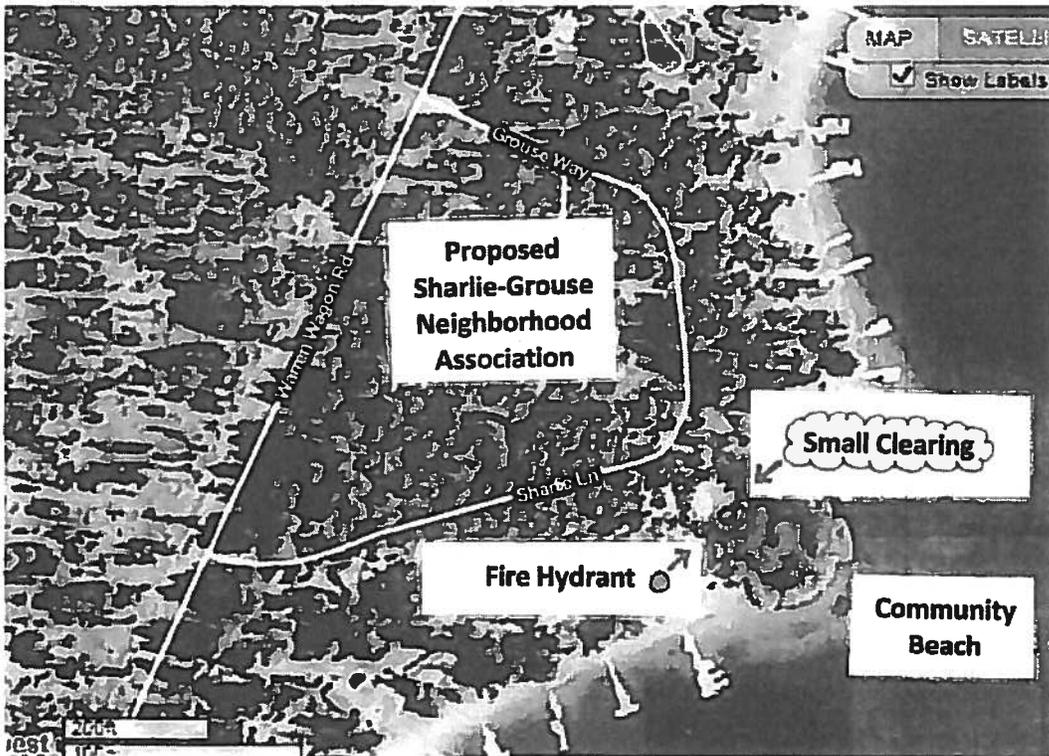
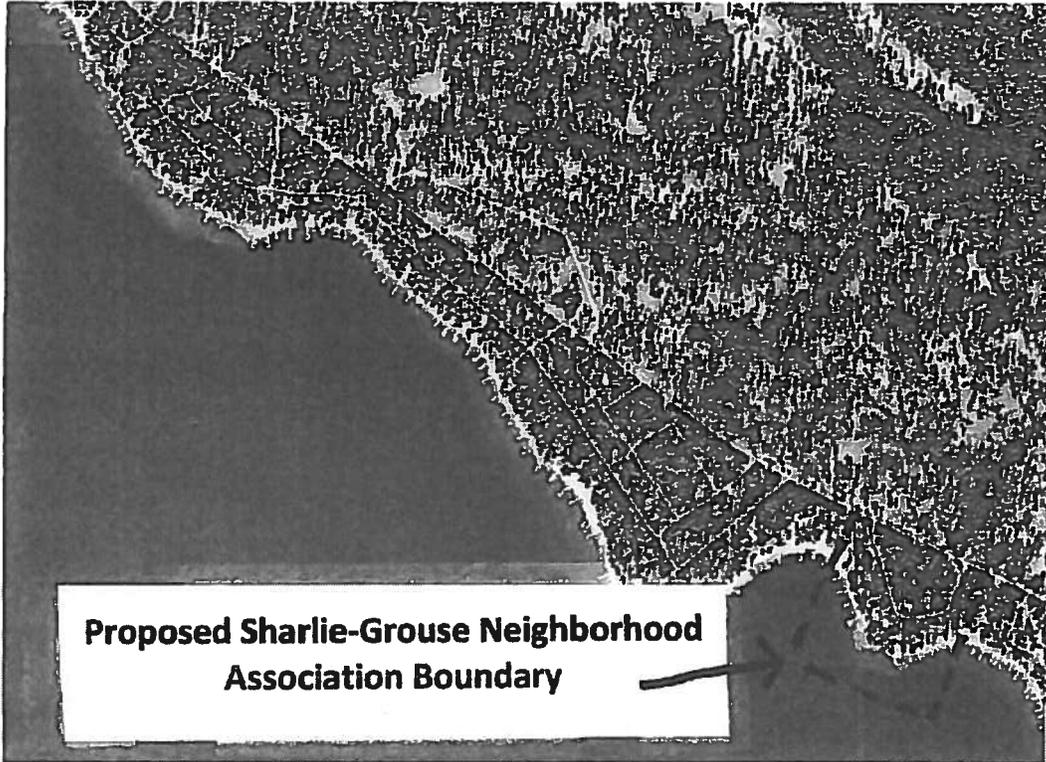
*Jeanne E Gorrissen*

Jeanne Gorrissen for the Sharlie-Grouse Neighborhood Owners and Lessees  
Phone: (208) 634-2984  
brazofish@aol.com

Attachment: *Proposed Sharlie-Grouse Neighborhood Association Boundary*

cc: The Honorable Butch Otter, Govenor  
Mr. Brandon Woolf, State Controller  
Mr. Ben Ysursa, Secretary of State  
Mr. Lawrence Wasden, State Attorney General  
Mr. Tom Luna, Superintendent Public Instruction

**Attachment: Proposed Sharlie-Grouse Neighborhood Association Request 8-12-13**





**DOMINIC L. GROSS, MD**

**Board Certified Orthopedic Surgeon  
Certificate of Added Qualification in Hand Surgery**

August 13, 2013

To: Kate Langford, Strategic Business Analyst, Idaho Department of Lands

Re: comment opportunity for Residents of State Subdivisions in Southwest Payette Area

Dear Kate,

After discussing the documents you sent by CD-ROM with Andy Scoggin, another deeded owner in the drafted Pine Haven Subdivision, Dominic and I have some comments which we will list below:

- There is no need for a provisional period of 3 directors elected to the Board of Directors. As drafted the three provisional directors would be comprised of:
  - 1) a member of the Citizens for Payette Lake organization
  - 2) a representative of the group of Lessees in the Southwest Payette Area and
  - 3) an independent director
- Since the 3 provisional directors will be in place for 6 months there is the potential that many decisions will be made and acted upon that will not be favorable to all residents.
- Instead, the 7 directors should be put into place immediately upon formation of the Homeowners' associations so all residents can be adequately represented.
- Some of the decisions which could be made in the first six months might include assessments, limited assessments, and limitations on access to the platted common areas.
- There is no discussion in any of the drafted documents regarding the upkeep and maintenance of the lot owner (deeded & lessee) access areas to the lake.
- There is no discussion in any of the drafted documents regarding the presence of community docks at the Chipmunk site (two docks currently) or the Rocky Shore / Picnic Point site.

After receiving literature over the past year from the Citizens of Payette Lake organization it is clear to us that one of the main objectives is to limit the ability of IDL to develop new lot owner (deeded & lessee) access areas to Payette Lake. The residents who use the lot owner (deeded & lessee) access areas (often referred to as "uplanders") need to be adequately represented when these Home Owners' Associations are formed. The organizing documents for these HOA's should include wording that preserve the lot owner (deeded & lessee) access areas to Payette Lake via the currently established areas. The documents should also include wording to preserve the permits for the currently established community docks.

ATTACHMENT 4r

311 W. Idaho Street • Boise, Idaho 83702 • Phone: 208.846.8616 • Fax: 208.888.4296



**DOMINIC L. GROSS, MD**

**Board Certified Orthopedic Surgeon  
Certificate of Added Qualification in Hand Surgery**

Additionally I would like to include written comments from Edward Sloan, 2267 Payette Drive:

Lot 1, Block 4, the plat shows an electrical easement going right through our cabin. It should be shown as straddling our south property line, 5' on each side as that is where the powerline is located.

Thank you for the opportunity to comment.

Sincerely,

Dominic L. Gross

Margaret M Jones

2263 Payette Drive  
McCall, ID

509 W. Groveview Lane  
Boise, ID 83702  
208-841-7818

This letter has been reviewed by <sup>four</sup>~~three~~ other owners in the area and they agree with the above but are not available for signature:

Lila Harper  
NE Corner of Pine Haven and Tamarack

Edward Sloan  
2267 Payette Drive

Jonathan Carter  
955 Pine Haven

Pat & Angie Shalzh  
Lover's Lane  
Tamarack Lane

**From:** [Kate Langford](#)  
**To:** [Tamara Armstrong](#)  
**Subject:** FW: Comments on draft CCRs, ByLaws, Plats (SW Payette and Cedar Knolls) [IWOV-GPDMS.FID386702]  
**Date:** Wednesday, August 14, 2013 6:10:22 PM

---

KATE LANGFORD  
Bureau Chief - Strategic Business Bureau  
Email: [klangford@idl.idaho.gov](mailto:klangford@idl.idaho.gov)

Idaho Department of Lands | 300 N. 6th Street, Ste. 103 - Boise, ID 83720 | ☎ 208.334.0257

*Trusted Stewards of Idaho's Resources from Main Street to Mountain Top.*

---

**From:** Deborah E. Nelson [mailto:den@givenspursley.com]  
**Sent:** Wednesday, August 14, 2013 4:50 PM  
**To:** Kate Langford; Tom Schultz  
**Cc:** Keith Donahue; 'Artis, Sam'; 'Patrick Shalz'; Angie Shalz  
**Subject:** Comments on draft CCRs, ByLaws, Plats (SW Payette and Cedar Knolls) [IWOV-GPDMS.FID386702]

We provide the following comments on the draft CCRs, ByLaws, Plats (SW Payette and Cedar Knolls):

CCRs:

- The Association **must be obligated** to maintain Common Areas in a reasonable and safe manner. Maintenance of the Common Areas is the primary (if not sole) purpose of forming a neighborhood association, and the Association is the only party with authority to perform maintenance. Absent a basic obligation for reasonable and safe maintenance, the owners do not have any enforceable right. Simply giving the Association the authority to perform maintenance in the Bylaws is insufficient because the Board, depending on its makeup of Directors at the time, might determine not to perform necessary maintenance. The lack of this basic maintenance obligation, coupled with the subjective Benefitted Owners construct (addressed below), is bound to lead to disagreements between owners. Properly-drafted CCRs will anticipate and avoid disagreements, not create them, especially over such a fundamental issue as maintenance of Common Areas.
- Section 6.1(c), (d): What are the "vested property rights of Pre-existing Owners" that are not already covered by (b) "restrictions or limitations contained in any deed"? The grant of easement should not be limited by undefined, unrecorded rights.
- The Board needs authority to order removal of encroachments into Common Areas and to assess costs to the encroaching Lot.
- Section 3.1: Does this restrict certain types of rentals (e.g., short-term)?
-

Section 3.9: To prevent a challenge based on violation of the Fair Housing Act, accommodation language needs to be added for assistance animals.

ByLaws:

- Common Areas should be maintained as part of the Common Assessments – i.e. by all Owners equally. The Benefitted Owners construct is ill-defined and bound to lead to unnecessary conflict. This is exacerbated by the proportional allocation of costs based on the amount of the benefit. This is far too complicated and subjective. It also inappropriately narrows the pool of contributors. Maintained Common Areas benefit everyone, including lakefront lots, by protecting the aesthetics and safety of the neighborhood as well as property values for everyone.
- Article 3, Section 1 re Initial Board of Directors: Delete “and who shall be designated by the Citizens for Payette Lake, an unincorporated Idaho Association (“CPL”). CPL is not representative of all Pre-existing Owners and such an organization has no place selecting a Director.
- Article 8, Section 7: 15 days is too short of notice. Need 30 days minimum.

Plats:

- Need to add notation on sheet 1 for Syringa Way Common Area, Picnic Point Common Area, Payette Drive Common Area, and Community Beach (Sylvan).
- We question/dispute the power line easement shown across many of the lots, including ours (2270 Lovers Lane).

Thank you for your consideration of these comments. Please feel free to contact me directly with any questions or follow-up to these comments.

Deborah Nelson and Keith Donahue, 2270 Lovers Lane

These comments are also supported by Sam Artis, 2273 Payette Drive, and by Pat and Angie Shalz, 2269 Tamarack.

**Deborah E. Nelson**

Givens Pursley LLP  
601 W. Bannock St., Boise, Idaho 83702  
(208) 388-1215 direct (208) 388-1300 fax  
[www.givenspursley.com](http://www.givenspursley.com)

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**From:** [Kate Langford](#)  
**To:** "Tammy Armstrong"  
**Subject:** FW: McCall Cottage Site CCR & ByLaw Comments ~  
**Date:** Thursday, August 15, 2013 11:39:01 AM

---

KATE LANGFORD  
Bureau Chief - Strategic Business Bureau  
Email: [klangford@idl.idaho.gov](mailto:klangford@idl.idaho.gov)

Idaho Department of Lands | 300 N. 6th Street, Ste. 103 - Boise, ID 83720 | ☎ 208.334.0257

*Trusted Stewards of Idaho's Resources from Main Street to Mountain Top.*

---

**From:** Thomas Felter  
**Sent:** Thursday, August 15, 2013 8:11 AM  
**To:** Kate Langford  
**Subject:** FW: McCall Cottage Site CCR & ByLaw Comments ~

CCR & Bylaw comments below from lessee, Pat Shalz.

*Thomas Felter, CSM*  
Commercial & Residential Program Manager

**Idaho Department of Lands**  
300 North 6th Street, Suite 103  
Boise, ID 83702  
(208) 334-0260 Phone  
(208) 334-3698 Fax

[tfelter@idl.idaho.gov](mailto:tfelter@idl.idaho.gov)  
<http://www.idl.idaho.gov>

---

**From:** Patrick Shalz [<mailto:pat@tekcommercial.com>]  
**Sent:** Wednesday, August 14, 2013 4:20 PM  
**To:** Thomas Felter  
**Subject:** FW: McCall Cottage Site CCR & ByLaw Comments ~

Hi Thomas,

Hope all is well with you and your family this summer. I want to make sure you got a few of the many comments we have regarding the CCRs and ByLaws that were sent out for review last month. I know there are more comments to come regarding these documents but I wanted to make you got our main comments at this time.

Again, thanks for your time to review our comments and concerns. There will be a letter sent as well addressing our concerns.

Regards,

ATTACHMENT 4t

Resp't 0200

**Patrick Shalz, SIOR**  
*Office Brokerage Services*  
Thornton Oliver Keller  
PH: (208) 947-0834  
FX: (208) 947-0869  
[pat@tokcommercial.com](mailto:pat@tokcommercial.com)

---

**Plats:**

- Need to add notation on sheet 1 for Syringa Way Common Area, Picnic Point Common Area, Payette Drive Common Area, and Community Beach (Sylvan).
- Question the power line easement shown across many of the lots, including ours.

**ByLaws:**

- Article 3, Section 1 re Initial Board of Directors: Delete “and who shall be designated by the Citizens for Payette Lake, an unincorporated Idaho Association (“CPL”). CPL is not representative of all Pre-existing Owners and such an organization has no place selecting a Director.
- Common areas should be maintained as part of the Common Assessments – i.e. by all Owners, equally. The Benefitted Owners construct is ill-defined and bound to lead to problems. This is exacerbated by the proportional allocation of costs based on the amount of the benefit. This is far too complicated and subjective. It also inappropriately narrows the pool of contributors. Maintained common areas benefit everyone, including lakefront lots, by protecting the aesthetics and safety of the neighborhood as well as property values for everyone.
- Roads should be maintained as part of the Common Assessments.
- Article 8, Section 7: 15 days is too short of notice. Need 30 days minimum.

**CCRs:**

- Board needs authority to order removal of encroachments into Common Area and to assess costs to encroaching Lot.
- Art. 3, Section 3.1: Does this restrict certain types of rentals (e.g., short-term)?
- Art. 6, Section 6.1(c), (d): what are the “vested property rights of Pre-existing Owners” that are not already covered by (b) “restrictions or limitations contained in any deed”?

EXHIBIT 5 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 5 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT



**STATE BOARD OF LAND COMMISSIONERS**

C. L. "Butch" Otter, Governor and President of the Board  
 Ben Yursa, Secretary of State  
 Lawrence G. Wasden, Attorney General  
 Brandon D. Woolf, State Controller  
 Tom Luna, Superintendent of Public Instruction

Tom Schultz, Secretary to the Board

Revised FINAL Agenda  
 State Board of Land Commissioners' Regular Meeting  
 October 15, 2013 – 9:00 AM  
 Senate Hearing Room WW55, Lower Level, West Wing, 700 W Jefferson St, Boise

*Please note meeting location.*

**1. Director's Report**

- A. Interest Rate on Department Transactions – October 2013
- B. Timber Sale Activity and Information Report – September 2013
- C. Division of Lands and Waterways Activity and Information Report – September 2013
- D. Legal Matter Summary – September 2013
- E. Fire Season Report – September 2013

**2. Endowment Fund Investment Board Manager's Report – Presented by Larry Johnson, EFIB Manager of Investments**

- A. Manager's Report
- B. Investment Report

**• CONSENT**

**3. Timber Sales for Approval – Staffed by Eric Besaw, Regional Operations Chief-North, and Kurt Houston, Regional Operations Chief-South**

<u>NORTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
A. Hobbit Cardiac	CR-30-0593	6,615	MBF	Shoshone	St. Joe (St. Maries)
<u>SOUTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
B. Goldfish	CR-42-5083	950	MBF	Clearwater	Maggie Creek (Kamiah)

**4. Disclaimer of Land – Dechant/Buhler Properties, Notus, ID – Staffed by Sid Anderson, Program Manager-Public Trust**

This certifies that this is a true and correct copy of this document, the original of which is on file with the Idaho Department of Lands (IDL).

Kevin J. Miller 3-18-2019  
 IDL Representative Date

State Board of Land Commissioners  
 FINAL Agenda-rev1010  
 Regular Meeting (Boise) – October 15, 2013  
 Page 1 of 2

5. **Results of September 11 and 13, 2013 Conflicted Grazing Lease Auctions** – Staffed by Diane French, Program Manager-Grazing, Agriculture and Conservation
6. **Results of August 21, 2013 Conflicted Mineral Lease Auction** – Staffed by Bob Pietras, Program Manager-Commercial Energy and Minerals
7. **Results of September 27, 2013 Conflicted Commercial Lease Auction (Snake River Canyon Jump)** – Staffed by Bob Pietras, Program Manager-Commercial Energy and Minerals
8. **Approval of Minutes** – September 17, 2013 Regular Meeting (Boise)

- **REGULAR**

9. **Southwest Payette Lake CC&Rs** – Presented by Kate Langford, Bureau Chief-Strategic Business
10. **Approval of ERC III, LLC Land Exchange** – Presented by Kathy Opp, Deputy Director-Lands and Waterways
11. **Approval of ERC IV, LLC Land Exchange** – Presented by Kathy Opp, Deputy Director-Lands and Waterways
12. **Approval of EP Crossings, LLC Land Exchange** – Presented by Kathy Opp, Deputy Director-Lands and Waterways

- **EXECUTIVE SESSION**

- A. Idaho Code 67-2345(1)(c) – to conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency. [TOPIC: ERC III, ERC IV, and EP Crossings Land Exchanges]

- **REGULAR**

Board Action on Agenda Items 10 - 12

- **INFORMATION**

NONE

- A FINAL AGENDA will be available at the Idaho Department of Lands, 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho, two (2) days preceding the meeting. If you have questions or would like to arrange auxiliary aides or services for persons with disabilities, please contact Dept. of Lands at (208) 334-0242. Accommodations for auxiliary aides or services must be made no less than five (5) working days in advance of the meeting.
- The CONSENT AGENDA addresses routine items the board may approve without discussion.
- The REGULAR AGENDA addresses policy and program items the board may wish to discuss prior to making a formal recommendation.
- The INFORMATION AGENDA provides information only.
- The EXECUTIVE SESSION is a special closed session to consider confidential matters pursuant to Idaho Code § 67-2345.
- An item may be moved from one agenda to another by the Board.
- The agenda is subject to change.

EXHIBIT 6 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 6 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

STATE BOARD OF LAND COMMISSIONERS  
October 15, 2013  
Regular Agenda

SUBJECT

Southwest Payette Covenants, Conditions and Restrictions

BACKGROUND

At the July 2013 Land Board meeting the Department presented a lot solutions package for the Southwest Payette area which, when implemented, will transfer ownership of roads and common areas to an association. Draft Covenants, Conditions and Restrictions (CC&R) and Draft Association By-laws were also developed for consideration. (Attachment 1-3) A comment period on the draft CC&Rs was directed by the Board.

DISCUSSION

Compact discs containing draft documents were sent out on July 17, 2013 to all lessees and deeded owners. Over 130 requests for comments were sent out. The responses received by August 20, 2013 are included in Attachment 4. Comments received fell into one of three main categories; in support of CC&Rs, opposed to CC&Rs and requests for extension of the comment period. At the request of residents of the area the comment period was extended to September 20, 2013.

The Citizen's for Payette Lake (CPL) group provided suggested revisions to the declarations documents. The minor revisions suggested by CPL are acceptable to the Department.

The Sylvan Beach Mutual Corporation group requested that the road segments within the association's boundary be deeded to the Sylvan Beach Mutual Corporation. A newly formed group, Sharlie-Grouse Neighborhood Association (incorporation date of August 20, 2013), submitted a request to have the roads and lake access area within their neighborhood boundaries deeded to the Sharlie-Grouse Neighborhood Association, as well as adjustment of the initial neighborhoods listing in the CC&R documents. The Department, with legal counsel evaluation, has considered these requests in light of rights conferred in prior plats and deeds. After due consideration the State believes the currently proposed plan for Southwest Payette Lake is in the best interest of the State endowment lands, and does not intend to further fragmentize ownership or control of the roads, easements and common areas among other homeowners associations.

Comments provided with specific suggestions to the language of the draft Covenants, Conditions and Restrictions (CC&R) documents have been taken under consideration by the Department and its legal counsel.

This certifies that this is a true and correct copy of this document, the original of which is on file with the Idaho Department of Lands (IDL).

Karen Miller      3-18-2019  
IDL Representative      Date

State Board of Land Commissioners  
Southwest Payette Covenants, Conditions and Restrictions r1  
Regular Land Board Meeting – October 15, 2013  
Page 1 of 2

RECOMMENDATION

The Department recommends that the Land Board approve the Covenants, Conditions and Restrictions, including revisions suggested in Attachment 4.d, for the cottage site developments in the Southwest Payette area.

BOARD ACTION

A motion was made by Attorney General Wasden that the Board approve the Department's recommendation with the addition that the Department be directed to prepare a report to the Board presenting options for either leasing or disposing of the five lots adjacent to Syringa Park. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

ATTACHMENTS

1. Southwest Payette Declaration of Covenants, Conditions & Restrictions for Recordation
2. Southwest Payette Addendum of Covenants, Conditions & Restrictions for Recordation
3. Draft SW Payette Association By-Laws
4. Comment email/letters received:
  - a. Smith email, 7/23/2013
  - b. Carley, 8/1/2013
  - c. Umbach, 8/6/2013
  - d. Citizens for Payette Lake, 8/8/2013 - Declaration Redline
  - e. Dahl, 8/8/2013
  - f. Timothy, 8/9/2013
  - g. Stoppello email, 8/12/2013
  - h. Bagley, 8/10/13
  - i. Jacobs Letter dated 9-11-13 and Response to Ms. Jacobs dated 9/24/13
  - j. Sharlie Grouse Neighborhood Assoc Letter 9/23/13 and Response to Mr. Gustavsen dated 10/8/13



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

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

**VALLEY COUNTY, IDAHO**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** ("Declaration"), is made on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by the **State Board of Land Commissioners**, by and through the **Idaho Department of Lands** (the "**State Land Board**"), with reference to the following facts:

A. The State Land Board is the owner of \_\_\_\_\_ residential Lots located at Payette Lake, Valley County, Idaho, known as **AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES**. The land encumbered by this Declaration is more particularly described as follows:

All land currently owned by the State Land Board, located within the Plats of **AMENDED CEDAR KNOLL ACRES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; **AMENDED PINECREST ADDITION**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; and **SOUTHWEST PAYETTE COTTAGE SITES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_, records of Valley County, Idaho. Said land is identified more specifically by subdivision name, block and lot in **Exhibit "A"**.

Hereafter, the term "Owners" shall refer to the owners of the Lots bound by this Declaration together with the owners of such Lots which may hereafter be made subject to this Declaration by the deeded owners ("Pre-Existing Owners") of the Lots identified in **Exhibit "B"** and depicted on the Plats for purposes of identification ("Pre-Existing Lots"). The Pre-Existing Lots identified in Exhibit "B" are not currently owned by the State Land Board, and the Pre-Existing Owners have not yet agreed that Pre-Existing Lots which they own shall be subject to this Declaration. However, the Pre-Existing Owners may at any time subject their Pre-Existing Lots to this Declaration as provided in Section 2.3 below.

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 **Payette Lakes Cottage Sites Owners Association, Inc.**, which Association will operate and maintain certain properties and facilities within the Plats and assume maintenance obligations by virtue of deeded ownership and an easement 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 and the State's Lessees as provided herein and in the Addendum hereto, their successors-in-interest and assigns, the 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. 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 Land Board and its Lessees.

1.2 Affirmative Vote of the Membership. The Affirmative Vote of a Majority of the Membership shall be achieved on any particular matter upon the vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Affirmative Vote of sixty-seven percent (67%) of the Membership shall be achieved on any particular matter upon the vote of at least sixty-seven percent (67%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Board shall have the right to submit any matter requiring Membership approval to the Membership by mailed ballot, in which case the approval of the matter shall require the specified percentage (i.e., 51% or 67%) of the total votes of the Membership.

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

1.4 Assessment. 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 Common Assessments, Special Assessments, Local Improvement Assessments or Local Maintenance Assessments, as those terms are more specifically defined in the Bylaws.

1.5 Association. Association shall mean the Payette Lakes Cottage Sites Owners 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 as provided herein, and any successor-in-interest thereto.

1.6 Association Documents. Association Documents shall mean the various governing documents of the Association, including: (a) the Articles of Incorporation; (b) the Bylaws; (c) this Declaration; (d) all Rules and Regulations promulgated by the Board; and, (e) all amendments and supplements to any of the aforementioned documents.

1.7 Association Expenses. Association Expenses shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area, expenses incurred by the Association in meeting its obligations and in the administration of the Association, and any reasonable reserve for such purposes as determined by the Board. Association expenses may be levied and collected by the Board as Common Assessments, Special Assessments, Local Improvement Assessments or Local Maintenance Assessments.

1.8 Association Facilities. Association Facilities shall mean all property owned or leased by the Association or otherwise held or used by the Association, or which is under the Association's management or control by, through or under contractual arrangements, licenses or other arrangements, including property furnished by Declarant, real property or interests therein, improvements on real property, and personal property and equipment.

1.9 Benefitted Lots. Benefitted Lots shall mean groups of Lots which have like interests or needs, which Lots may already be grouped as a Neighborhood, which are so designated for the following purposes: (a) to determine, assess and budget Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) to determine, assess and budget Local Maintenance Assessments, as defined at Article 8 of the Bylaws; and/or, (c) to otherwise facilitate the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members.

1.10 Board or Board of Directors. The Board or Board of Directors shall be the Board of Directors of the Association, as it shall be constituted from time to time.

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

1.12 City. City shall mean the City of McCall.

1.13 City Code. City Code shall mean the McCall City Code.

1.14 Common Area. Common Area shall mean the property identified on the Plats as Common Area. Absent such designation, the term "Common Area" as used herein shall include but not necessarily be limited to all roads, easements, rights-of-way, and lake access lots which are shown on the Plats. Common Area shall also include additional property or property rights obtained by the Association in the future.

1.15 County. County shall mean Valley County, Idaho.

1.16 County Code. County Code shall mean the Valley County Land Use and Development Ordinance, as amended, superseded or repealed.

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

1.18 Lot. Lot shall include a platted parcel of land that is part of the Plats, other than Common Area, as well as all Pre-existing Lots which become subject to this Declaration as provided below in Article 2.

1.19 Member. Member shall mean a member of the Association, as further defined in Article 2. Every Owner of a Lot subject to this Declaration now or at a later time shall automatically be a Member of the Association, except where said Lot Owner is the State Land Board, in which case the Member shall be the Lessee of the Lot, if any, as provided in that certain Addendum being filed of record with this Declaration. Notwithstanding the foregoing, Pre-Existing Owners are not automatically Members, but may join voluntarily and may thereupon become a Member, as set forth in Section 2.3(c).

1.20 Mortgage. Mortgage shall mean a recorded mortgage, deed of trust, real estate contract, or other instrument creating a voluntary security interest in any Lot.

1.21 Mortgagee. Mortgagee shall mean a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, leasehold, or other holder of a perfected voluntary security interest in any Lot.

1.22 Neighborhood. Neighborhood shall mean a group of Lots designated by the Board as a separate Neighborhood for purposes of: (a) determining, assessing and budgeting Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) determining, assessing and budgeting Local Maintenance Assessments, as defined at Article 8 of the Bylaws; (c) electing Directors to the Board; (d) providing input and information to the Board with regard to proposed services, maintenance, improvements or other issues uniquely affecting the Neighborhood; and/or (e) otherwise facilitating the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members. The initially designated Neighborhoods are identified on the attached **Exhibit "C"**.

1.23 Owner or Owners. Owner or Owners shall include 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 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."

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

1.25 Plats. Plats shall refer to the recorded plats for AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION and SOUTHWEST PAYETTE COTTAGE SITES, and any amendments thereto.

1.26 Pre-Existing Owner or Pre-Existing Owners. Pre-Existing Owner or Pre-Existing Owners shall mean owners of Pre-Existing Lots.

1.27 Pre-Existing Lots. Pre-Existing Lots shall mean the Lots identified in attached Exhibit "B".

1.28 Project Documents. Project Documents shall mean the Plats and the Association Documents.

1.29 Property or Project. Property or Project shall mean all Lots subject to this Declaration as described in Exhibit A to this Declaration, and all common areas, easements and other Lots depicted on the Plats, together with all buildings, improvements and structures thereon.

1.30 State Land Board. The State Land Board shall mean the State Land Board, acting by and through the Idaho Department of Lands, collectively.

## **ARTICLE 2.** **ASSOCIATION MEMBERSHIP**

2.1 Organization of Association. The Association shall be incorporated under the name of Payette Lakes Cottage Sites Owners 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.

(a) Classes. There shall be two classes of membership in the Association, which shall consist of the following:

(i) Current Owners. The owners of the Lots which are depicted in the Plats, excluding Common Area and Lessees of Lots as provided in the attached Addendum; and

(ii) Pre-existing Owners-Permanent Memberships. Pre-existing Owners who elect to join the Association and subject their Lots to this Declaration and the Association Documents.

(iii) Pre-Existing Owners-Provisional Membership. Pre-Existing Owners who elect to join the Association as provided below.

(b) Automatic Membership. The Owner of a Lot, except a Pre-Existing Owner, 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association. The Lessees of Lots shall be considered Owners as provided in the Addendum.

(c) Voluntary Membership.

(i) Pre-existing Owners-Permanent Memberships. A Pre-Existing Owner may voluntarily become a Permanent Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter be subject to all terms and conditions of this Declaration, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. Once a Pre-Existing Owner submits its Pre-Existing Lot(s) to this Declaration, then the Pre-Existing Owner shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(ii) Pre-existing Owners-Provisional Memberships. A Pre-existing Owner may voluntarily become a Provisional Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement (the "Statement") signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter be subject to all terms and conditions of this Declaration, subject to an option to withdraw as a Member, as described below, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. The Association shall provide the Statement for the Pre-existing Owner's use as aforesaid. A Pre-existing Owner desiring to utilize this Provisional Membership shall notify the Association of such election not later than one (1) year after the date on which the Declaration is filed of record with Valley County, Idaho. The failure to timely do so shall result in a waiver of the right to utilize the Provisional Membership. Once a Provisional Member submits its Pre-Existing Lot(s) to this Declaration, then the Provisional Member shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. The option to withdraw as a Member may be exercised at any time within five (5) years of the date of the Statement upon delivery of written notice to the Association in form provided for this purpose by the Association (the "Notice") of the exercise of the option to withdraw. Such Notice shall be delivered not less than one hundred eighty (180) days prior to the date of withdrawal. The Association shall then execute the

Notice and cause it to be filed of record with Valley County. In the event the Provisional Member does not elect to exercise its option to withdraw as provided herein, then it shall be deemed a Permanent Member. The aforesaid option to withdraw shall be personal to the Provisional Member, and may not be exercised by any other person, entity, assignee or successor-in-interest. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(d) Rights and Duties of Memberships. The two above-described classes of Memberships shall equally enjoy the rights and privileges and be subject to the duties and obligations afforded by this Declaration and the Association Documents.

### **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 or used except for single-family residential purposes by the Owner, its family, and its guests and invitees, or by a single-family tenant. No more than one (1) Single-Family Dwelling and such associated accessory structures as are allowed by the County Code or City Code, whichever may be applicable to the Lot, shall be allowed on any Lot. All docks placed on or appurtenant to a Lot shall be in accordance with applicable laws. An Owner may not assign or convey a right of use of a dock to anyone other than the dock's permitted owners of record.

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 and the applicable County Code or City Code, meet applicable snow load requirements for Property (i.e., under the applicable County Code, City Code or building codes), and are installed on a permanent foundation shall be allowed.

3.4 Permits; Construction Standards. Each Owner shall comply with all applicable federal, state, and local laws, rules, codes 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 the County Code or City Code which is applicable to the Lot. Notwithstanding the foregoing, any structures or land uses which exist at the time of the recordation of this Declaration and which were approved by the State Land Board or which were in compliance with all applicable Codes when constructed are permitted to continue and shall be subject to the applicable code provisions for non-conforming uses or non-conforming structures.

3.5 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 in conformity with the International Urban-Wildlands Interface Fire Code.

3.6 Protection of Forest Resources. Other forest resources shall be protected, such as archeological resources, sensitive plant and animal species, water quality and fish habitat, as required by applicable federal, state, and local laws, rules, codes and regulations.

3.7 Fences. Fences on Lots shall comply with the provisions of the applicable County Code or City Code.

3.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance, as defined by Idaho law. All exterior heating and cooling devices must be screened from the view of neighboring properties and all reasonable measures must be taken by the Owners of such devices to mitigate noise to adjoining properties. Without waiving an Owner's rights to seek relief under Idaho law, for purposes of a demand that the Association take action, the Association shall have sole discretion to determine whether the subject activity constitutes a nuisance under the terms of this Section.

3.9 Household Pets. No animals, of any kind, except for household pets shall be raised, bred, or kept on any portion of the Property. Pets must be kept within the boundaries of the Lot unless accompanied by and under the positive control of the Owner. Consistent and/or chronic barking by dogs, or threatening or aggressive behavior by an animal, shall be considered a nuisance. The Board may create such additional Rules and Regulations with regard to household pets as it deems reasonable appropriate.

#### 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 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 and such Assessment may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. No Owner of a Lot may exempt himself or herself from liability for Assessments by waiver of the use or enjoyment of any of the Common Area (if any) or any other part of the Property, 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. However, neither sale nor transfer pursuant to mortgage foreclosure or by deed in lieu of foreclosure nor extinguishment, as aforesaid, shall affect or extinguish the personal liability of the Owner for unpaid Assessments.

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 which are unpaid at 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 which are then owing to 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. 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 or construction of improvements thereon, 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 non-judicial (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 or consent in writing to 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 Owner whose title is derived through foreclosure or otherwise.

## **ARTICLE 6.**

### **COMMON AREA AND OWNERS' RIGHTS**

6.1 Common Area: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The vested property rights of Pre-existing Owners, the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of any recreational facilities which may be located within the Common Area; and,
- (d) The vested property rights of Pre-existing Owners, the right of the Board to suspend the right of an Owner to use any Common Area or any recreational facilities located within the Common Area (i) for any period during which any Assessment charged against such Owners Lot remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association, after notice and a hearing as provided in the Bylaws.

6.2 Use by Others. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees ("Sub-

owners”), subject to reasonable Board regulation. All such Sub-Owners shall be subject to the provisions of Article 3 of this Declaration and to all applicable Rules and Regulations which are promulgated by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot, unless provided to the contrary in the Lease. An Owner shall be responsible and liable for the actions of its Sub-owners and for any violations by such Sub-owners of the terms of this Declaration and the Rules and Regulations which are promulgated by the Board.

6.3 Owners' Rights and Obligations Appurtenant. All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in the Association under this Declaration are hereby declared to be and shall be appurtenant to the title to the Lot owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Lot. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Lot shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.4 Limitation on Rights. Neither the Association nor any Owner shall have the right to grant any rights of use of the Common Area to the owners of property located outside of the Property or to members of the general public.

## **ARTICLE 7. DURATION AND AMENDMENT**

7.1 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 0.

7.2 Amendment. Amendments to this Declaration may be proposed by the Board. Notice of the subject matter of any 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. The amendment shall be adopted upon the Affirmative Vote of sixty-seven percent (67%) of the Members.

7.3 Approval of Land Board. Notwithstanding the foregoing, the following special voting provisions shall apply: the State Land Board 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.

7.4 Certificate. 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 8.**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

8.1 Annexation. The Association may subject additional property which is located within the exterior boundaries of the Plats to the provisions of this Declaration with the consent of the owner of such property and the Affirmative Vote of a Majority of the Membership. Such annexation shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon recording unless otherwise provided therein.

8.2 Withdrawal. The Association may withdraw property from the provisions of this Declaration with the consent of the Owner of such property and the Affirmative Vote of a Majority of the Membership. Such withdrawal shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property being withdrawn.

**ARTICLE 9.**  
**GENERAL PROVISIONS**

9.1 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.

9.2 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 Plats, the Addendum, this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association.

9.3 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.

9.4 Effect of Provisions of Declaration. Each provision of this Declaration and the Bylaws, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration and the Bylaws, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration and the Bylaws: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner; (c) shall, as a personal covenant, be binding on such Owner and such Owner's respective heirs, personal representatives,

successors and assigns; and, (d) shall be deemed an equitable servitude, running, in each case, as a burden with and upon the title to all Lots within the Property.

#### 9.5 Enforcement and Remedies.

(a) In General. Each provision of this Declaration shall be enforceable by any Owner who has made written demand on the Association to enforce such provision and thirty (30) days have lapsed without appropriate action having been taken, by a proceeding for a prohibitive or mandatory injunction. In addition to any other remedy available at law or in any of the Association Documents, each provision of this Declaration with respect to an Owner or property of an Owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction and/or by a suit or action to recover damages, and/or, in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by exclusion of such Owner and such Owner's Lessees, Sub-owners and Guests from use of any Common Area or Association facility. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including injunction bond premiums, and its attorneys' fees incurred, including fees incurred on appeal.

(b) Fines. In addition to the provisions of Section 9.5(a), the Board shall be entitled to impose fines and penalties for violations of this Declaration in amounts to be provided in the Rules and Regulations. Fines and penalties may be assessed only against a Member of Association, and only if the violator is the Member or a member of the Member's family or a Sub-owner, guest, invitee, lessee, contractor, subcontractor, employee or agent of the Member. Fines and penalties may be increased in the case of a continuing violation, where the Member has failed to abate the violation within the time allowed therefore by the Board in written notice to the Member. In the case of a single incident, the fine or penalty may not be assessed unless the Member has received at least one prior written notice from the Board that the violation may subject the Member to fine(s). Fines and penalties imposed pursuant to this Section may be collected as an assessment as provided in the Bylaws and this Declaration. Non-payment of assessments shall not subject a Member to fines; rather, the remedy therefore shall be as provided in the Bylaws and as may otherwise be provided in this Declaration.

9.6 Limited Liability. Neither the Board, nor any member, agent or employee of the Board, nor the Association, nor State Land Board, Director, agent or employee of the Idaho Department of Lands, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

9.7 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

9.8 Waiver. Failure by the Association to enforce any provisions of the Association Documents shall not operate as a waiver of any such provision or of the

Association's right to enforce such provision or any other provision of this Declaration or the Association Documents.

9.9 Notice of Sale. Any Owner, with the exception of Lessees, desiring to sell or otherwise transfer title to his or her Lot shall give the Association at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the name of the closing agent for such transfer and the closing date of such transfer.

IN WITNESS WHEREOF, the State Land Board has caused this Declaration 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

\*\*\*\*\*

THE STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, 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.

\_\_\_\_\_  
NOTARY PUBLIC FOR STATE OF IDAHO  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

DRAFT

**EXHIBIT A**

(listing of replatted Endowment lands)

DRAFT

**EXHIBIT B**

(listing of deeded lots not included in replatting activity)

DRAFT

**EXHIBIT C**  
(Initial Neighborhoods)

The Sylvan Beach Neighborhood Association will remain in place and will not be affected by this Declaration. The Sylvan Beach Neighborhood is described as follows: Originating at the northern boundary of the Amended Payette Lake Cottage Sites plat and extending south to the intersection of Warren Wagon Road and Grouse Lane, thence easterly along the southern boundary of Grouse Lane to the western boundary of Lot 177, Amended Payette Lake Cottage Sites, thence south along the western boundary of Lot 177 to the common boundary of Lots 176 and 177, thence easterly to the Lake along the common boundary of Lots 176 and 177.

The following six (6) Neighborhoods in the platted subdivisions will be initially created:

1. The Wagon Wheel Bay Neighborhood: Running from the southern boundary of the Sylvan Beach Neighborhood (which would be the northern boundary of the Wagon Wheel Bay Neighborhood) to a southern boundary described as follows: From Warren Wagon Road easterly along the south boundary of Cedar Crest Drive, to Payette Drive, thence northerly along the east boundary of Payette Drive, thence easterly to the Lake along the common boundary of Lots 64 and 65.
2. The Pine Haven Neighborhood: Running from the southern boundary of the Wagon Wheel Bay Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Pine Haven Place, thence easterly extending to the Lake across Payette Drive and along the northern boundary of Lot 57.
3. The Chipmunk Trail Neighborhood: Running from the southern boundary of the Pine Haven Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 4, Bl. 12, Southwest Payette Cottage Sites, thence easterly extending across Payette Drive and to the Lake along the southern boundary of Lot 3, Bl. 11.
4. The Squirrel Lane Neighborhood: Running from the southern boundary of the Chipmunk Trail Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 1, Bl. 1, Amended Pinecrest Addition, thence southerly along the west boundary of Lot 5, Bl. 1, thence easterly along the southern boundary of Lot 5, Bl. 1, extending across Payette Drive, thence northerly along the east boundary of Payette Drive to the common boundary of Lots 30 and 31, thence easterly along said common boundary to the Lake.

5. The Picnic Point Neighborhood: Running from the southern boundary of the Squirrel Lane Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Wild Rose Street, thence across Payette Drive to the eastern boundary of Payette Drive, thence northerly along the said eastern boundary of Payette Drive to the South boundary of Lot 1, Block 23, Southwest Payette Cottage Sites, thence easterly along said southern boundary of Lot 1, Block 23 to Payette Lake; also including the Lots on the west side of Warren Wagon Road.
6. The Wild Rose Neighborhood: Running from the southern boundary of the Picnic Point Neighborhood (which would be the northern boundary of this Neighborhood) to the southern boundary of the platted properties, excluding the property identified as "State Subdivision-Future Plat" on the State Subdivision – Southwest Payette Cottage Sites Plat.

DRAFT

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

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

**VALLEY COUNTY, IDAHO**

**TABLE OF CONTENTS**

ARTICLE 1. DEFINITIONS .....	2
1.1 Addendum.....	2
1.2 Affirmative Vote of the Membership .....	2
1.3 Articles .....	2
1.4 Assessment .....	2
1.5 Association.....	2
1.6 Association Documents.....	3
1.7 Association Expenses .....	3
1.8 Association Facilities.....	3
1.9 Benefitted Lots .....	3
1.10 Board or Board of Directors .....	3
1.11 Bylaws .....	3
1.12 City.....	3
1.13 City Code .....	3
1.14 Common Area.....	3
1.15 County .....	3
1.16 County Code.....	3
1.17 Declaration.....	4
1.18 Lot.....	4
1.19 Member.....	4
1.20 Mortgage.....	4
1.21 Mortgagee.....	4
1.22 Neighborhood .....	4
1.23 Owner or Owners.....	4
1.24 Person .....	4
1.25 Plats.....	4
1.26 Pre-Existing Owner or Pre-Existing Owners .....	5
1.27 Pre-Existing Lots.....	5
1.28 Project Documents .....	5
1.29 Property or Project.....	5
1.30 State Land Board.....	5
ARTICLE 2. ASSOCIATION MEMBERSHIP.....	5
2.1 Organization of Association .....	5
2.2 Duties and Powers .....	5
2.3 Membership .....	5
(a) One Class .....	5
(b) Automatic Membership .....	5
(c) Voluntary Membership .....	6

ARTICLE 3. CONSTRUCTION STANDARDS AND USE RESTRICTIONS.....	7
3.1 Single-Family Residential Use .....	7
3.2 Mobile Homes .....	7
3.3 Manufactured or Modular Homes.....	7
3.4 Permits; Construction Standards.....	7
3.5 Fire Hazards.....	8
3.6 Protection of Forest Resources.....	8
3.7 Fences .....	8
3.8 No Noxious or Offensive Activity .....	8
3.9 Household Pets.....	8
ARTICLE 4. ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS .....	8
4.1 Creation of the Lien and Personal Obligation of Assessments .....	8
4.2 Transfer of Lot by Sale or Foreclosure.....	8
ARTICLE 5. RIGHTS OF MORTGAGEES.....	9
5.1 No Impairment.....	9
5.2 Subordination .....	9
5.3 Amendment of Declaration.....	10
5.4 Mortgagee Protection Clause.....	10
ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS.....	10
6.1 Common Area .....	10
6.2 Use by Others .....	10
6.3 Owners' Rights and Obligations Appurtenant .....	11
ARTICLE 7. DURATION AND AMENDMENT.....	11
7.1 Duration .....	11
7.2 Amendment.....	11
7.3 Approval of Director .....	11
7.4 Certificate.....	11
ARTICLE 8. ANNEXATION AND WITHDRAWAL OF PROPERTY .....	12
8.1 Annexation .....	12
8.2 Withdrawal .....	12
ARTICLE 9. GENERAL PROVISIONS.....	12
9.1 Invalidity of Any Provision .....	12
9.2 Conflict of Project Documents.....	12
9.3 Addendum.....	12
9.4 Effect of Provisions of Declaration .....	12
9.5 Enforcement and Remedies.....	13
(a) In General .....	13
(b) Fines .....	13
9.5 Limited Liability.....	13
9.6 Successors and Assigns .....	13
9.7 Waiver.....	13
9.8 Notice of Sale.....	14

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

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**VALLEY COUNTY, IDAHO**

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

**STATE SUBDIVISION – AMENDED CEDAR KNOLL ACRES, AMENDED  
PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES  
VALLEY COUNTY, IDAHO**

**THIS ADDENDUM TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (“Addendum”), is made on this \_\_\_ day of \_\_\_\_\_, 2013, 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 \_\_\_ day of \_\_\_\_\_, 2013 as Instrument No. \_\_\_\_\_, records of Valley 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 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 offered by the State and return the executed lease to the Idaho Department of Lands on or before \_\_\_\_\_, 2013, shall be deemed a Member of the Association upon the occurrence of the latter of the incorporation of the Association with the office of the Idaho Secretary of State, and the

execution of the 2014 lease. 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:

---

Secretary of State

---

Director, Idaho Department of Lands

\*\*\*\*\*

THE STATE OF IDAHO )

) ss.

COUNTY OF ADA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 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.

\_\_\_\_\_  
NOTARY PUBLIC for Idaho

Residing at \_\_\_\_\_,

Idaho

My Commission expires:

DRAFT

**BYLAWS  
OF  
PAYETTE LAKES COTTAGE SITES OWNERS ASSOCIATION, INC.**

**ARTICLE 1.  
PLAN OF OWNERSHIP**

Section 1. Name and Location. The name of this association ("Association") is the Payette Lakes Cottage Sites Owner's Association, Inc. The principal office of the Association shall be in Valley County, Idaho.

Section 2. Definitions. Each term in these Bylaws with its first letter capitalized shall have the meaning defined for such term in the Declaration of Covenants, Conditions and Restrictions for Amended Cedar Knoll Acres, Amended Pinecrest Addition and Southwest Payette Lakes Cottage Sites as it may be amended or supplemented (the "Declaration"), or as defined in these Bylaws.

**ARTICLE 2.  
MEMBERSHIP; MEETINGS AND VOTING RIGHTS**

Section 1. Membership. Membership shall be as provided in the Declaration and these Bylaws.

Section 2. Record Date. The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any other information or material, or in order to make a determination of membership, for any purpose other than assessments which are provided for in Article 8 herein. The Members existing on any such record date shall be deemed Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice or information or material with respect to the same matter and for any adjournment of the same meeting.

A record date shall not be more than fifty (50) days prior to the date on which the particular action requiring determination of membership is proposed or expected to be taken or to occur.

If no record date is established for a meeting, the date on which written notice of such meeting is first given to any member shall be deemed the record date for the meeting.

Section 3. Quorum. Except as otherwise provided in the Articles or these Bylaws, the presence in person or by proxy of Members who are entitled to vote twenty percent (20%) of the total votes of the Association Membership shall constitute a quorum for the Association. The presence in person or by proxy of Members who are entitled to vote twenty percent (20%) of the total votes of a Neighborhood shall constitute a quorum for the Neighborhood.

Section 4. Proxies. Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution, and every proxy shall automatically cease at such time as the Member granting the proxy no longer qualifies as a Member of the Association.

Section 5. Majority Vote. At any meeting of Members where a vote is required and at which a Quorum has been established, the affirmative vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy shall be the act of the Members, unless the vote of a greater number is required by law, the Articles, the Declaration or these Bylaws as from time to time in force and effect.

Section 6. Membership Meetings.

(a) Annual Meeting. The annual meeting of the Members, except as necessary to appoint the initial Board and except for the initial annual meeting of the Members in 2014, shall be held in the month of August in each year, or at such other date designated by the Board, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. The first annual meeting of the Members shall be held in 2014 as early as can reasonably be scheduled. Annual meetings of each of the Neighborhoods shall be held immediately in advance of the annual Membership meeting.

(b) Special Meetings. Special meetings of the Members for any purpose, unless otherwise prescribed by statute, may be called by the president or by the Board, and shall be called by the president at the request of the two or more Directors or Members entitled to cast fifteen percent (15%) or more of the total votes of the Association Membership. A Special Meeting of a Neighborhood may be called by the president or by the Board, and shall be called by the president at the request of Members entitled to cast thirty percent (30%) or more of the total votes of the Neighborhood's Members.

(c) Place Of Meeting. The Board shall designate a place in the County as the place for any annual meeting or for any special meeting of the Members called by the Board. If no designation is made, or if a special meeting shall be called otherwise than by the Board, the place of meeting shall be the principal office of the Association.

(d) Notice Of Meeting. Written or printed notice of any meeting of the Members stating the place, day and hour of the meeting, the purpose or purposes for which the meeting is called, and a description of matters on which a vote of the Membership will be taken shall be delivered personally, by mail, by facsimile or by electronic transmission to each Member entitled to vote at such meeting not less than thirty (30) nor more than fifty (50) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as

it appears in the records of the Association, with postage thereon prepaid. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at corporate expense.

(e) Informal Action By Members. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if all of the Members entitled to vote with respect to the subject matter thereof are given notice of the subject matter pursuant to Subsection (d) above; and, the action or proposition is approved in writing by Members representing at least eighty percent (80%) of the voting power of the Association or, in the case of a Neighborhood, of the Neighborhood. Approval of a subject matter by such method shall have the same force and effect as approval pursuant to a vote taken at a meeting of such Members.

(f) Adjournment. In the absence of a quorum at a Members' meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date.

(g) Rules at Meetings. Except as otherwise provided in these Bylaws, the Articles or the Declaration, all meetings of the Members shall be governed by Roberts Revised Rules of Order.

### **ARTICLE 3.** **BOARD OF DIRECTORS**

Section 1. Initial Board 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.

Section 2. Number and Term of Directors. Commencing with the first annual meeting, the Board shall consist of seven (7) Directors, who shall be Owners and who shall be elected at the first annual meeting of the Members as follows:

(a) One (1) Director shall be elected by the Affirmative Vote of a Majority of the Members of each of the following Neighborhoods: The Wagon

Wheel Bay Neighborhood, the Pine Haven Neighborhood, the Chipmunk Trail Neighborhood, the Squirrel Lane Neighborhood, the Picnic Point Neighborhood, and the Wild Rose Neighborhood (the "Neighborhood Directors"); and,

(b) One (1) Director shall be elected by the Affirmative Vote of a Majority of the Members of the Association (the "At Large Director")

(c) Except for the initial Directors, who shall serve until the first meeting of the Members of the Association, the Directors shall serve concurrent terms of two (2) years.

Section 3. Election of Board of Directors.

(a) Nomination. Nominations for election to the Board of Directors may be made from the floor at the annual meeting of the Association. Additionally, the Board may appoint a Nominating Committee, which shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. If the Board determines to appoint a Nominating Committee, the Committee shall be appointed at least forty-five (45) days prior to each annual meeting of the Members, to serve until the close of such annual meeting, and shall make as many nominations for election to the Board of Directors as it shall, in its discretion, determine, but not less than the number of vacancies that are to be filled.

(b) Election of Directors. Elections of Board members shall be by secret written ballot. All elections shall be conducted by noncumulative voting.

Section 4. Resignations, Removal and Vacancies. Any Director may resign at any time by giving written notice to the president or the secretary of the Association. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Neighborhood Director may be removed from office either with or without cause at any time by the affirmative vote of at least seventy-five percent (75 %) of the Members of such Neighborhood who are present in person or by proxy at an annual Membership Meeting or at a Special Meeting of the Neighborhood. The At Large Director may be removed from office either with or without cause at any time by the affirmative vote of at least seventy-five percent (75 %) of the Members who are present in person or by proxy at an annual Membership Meeting or at a Special Meeting of the Membership. Any vacancy occurring in the Board by reason of resignation, removal or death of any Director shall be filled by the affirmative vote of a majority of the Directors then in office. In the case of the resignation, removal or death of a Neighborhood Director, the vacancy shall be filled by a Member of the Neighborhood. Any director appointed to fill any vacancy in the Board shall serve until the expiration of the term of his or her predecessor.

Section 5. Regular and Special Meetings. There shall be not less than one "in person" regular meeting of the Board per year. Additional meetings may be held

telephonically or by comparable technological conferencing. Any business may be transacted at a regular meeting. The regular meeting of the Board for the election of officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Members, or any special meeting of Members at which a Board is elected. The Board may also determine that other regular meetings do not require call or formal notice. Special meetings of the Board may be held at any place within Idaho at any time when called by the president, or by three (3) or more Directors, upon at least seven (7) days prior notice of the time and place thereof being given to each Director by delivery to the director, by mailing, by facsimile or electronic transmission, and addressed to him at his post office address as it appears on the books of the Association. Notices shall state the purposes of the meeting. No notice of any adjourned meeting of the directors shall be required. Special meetings may be held telephonically or by comparable technological conferencing.

Section 6. Quorum. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws, the Articles or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 7. Waiver of Notice, Action by Consent of Directors. Before, at or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him or her except when a Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the directors.

Section 8. Adjournment; Executive Session. The Board may, with the approval of a majority of a quorum of the Directors, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 9. Board Meetings Open to Members. Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Association Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized by the vote of a majority of a quorum of the Board.

**ARTICLE 4.**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

The Board shall have the powers and duties necessary for the administration of the affairs of the Association. Without limitation on the generality of the foregoing powers and duties, the Board shall be vested with, and responsible for, the following powers and duties:

Section 1. To select, appoint, supervise, and remove all officers, agents and employees of the Association; to prescribe such powers and duties for them as may be consistent with law, and with the Articles, the Declaration and these Bylaws; and to require from them security for faithful service when deemed advisable by the Board;

Section 2. To enforce the applicable provisions of the Declaration, Articles, these Bylaws and other instruments relating to the ownership, management and control of the Property;

Section 3. To adopt and publish Rules and Regulations governing the use of any Common Area and Association Facilities, and the personal conduct of the Members and their tenants, guests and invitees thereon, and to establish procedures and penalties for the infraction thereof, subject to approval of the membership;

Section 4. To pay all taxes and assessments which are, or could become, a lien on any Common Area or a portion thereof;

Section 5. To contract for casualty, liability and other insurance on behalf of the Association as required or permitted in the Declaration and as otherwise deemed prudent by the Board, including but not limited to Directors and Officers Liability Insurance, unless the cost of which is deemed prohibitive by the Board;

Section 6. To cause any Common Area to be maintained or improved and to contract for goods and/or services for any Common Area or for the Association;

Section 7. To delegate its powers to committees, officers or employees of the Association, or to a management company pursuant to a written contract, as expressly authorized by the Articles, Declaration and these Bylaws;

Section 8. To keep complete and accurate books and records of the receipts and expenditures of the Association, specifying and itemizing the maintenance and repair expenses incurred, and to prepare budgets and financial statements for the Association as required in these Bylaws in accordance with good accounting procedures; to provide for independent audits as required by law and these Bylaws;

Section 9. To initiate and execute disciplinary proceedings against Members of the Association for violations of the provisions of the Articles, Declaration, these Bylaws and such rules as may be promulgated by the Board, in accordance with procedures set forth in these Bylaws:

Section 10. To borrow money and incur indebtedness for purposes of the Association, and to cause to be executed and delivered therefore, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefore, subject to the approval requirements of the Articles, these Bylaws, or the law;

Section 11. To fix and collect Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments, according to the Declaration and these Bylaws, and, if deemed appropriate in the Board's discretion, and in addition to any other remedies available to the Board by law or in equity, to record a Notice of Assessment Lien and foreclose the lien against any Lot for which an Assessment is not paid within thirty (30) days after the due date, or bring an action at law against the Owner personally obligated to pay such Assessment;

Section 12. To prepare and file annual tax returns with the federal and state government, as required by law, and to make such elections as may be necessary to reduce or eliminate the tax liability of the Association. Without limiting the generality of the foregoing, the Board may, on behalf of the Association, elect to be taxed under Section 528 of the Internal Revenue Code or any successor or similar statute conferring income tax benefits on homeowners associations;

Section 13. To enter into, make, amend, perform and carry out, or cancel and rescind, contracts, leases, permits, management agreements, and concession agreements for any lawful purposes pertaining to its business.

Section 14. To establish bank accounts for the common treasury and for all separate funds which are required or may be deemed advisable by the Board.

Section 15. To acquire, by gift, purchase, lease, trade or any other method, own, operate, build, manage, maintain, rent, sell, develop, encumber, and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein, all in accordance with the Association Documents.

Section 16. To veto any action taken or contemplated to be taken by any other Neighborhood within the Property, which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Association Documents. The Association also shall have the power and

shall have broad discretion to require specific action to be taken by a Neighborhood in connection with any of its obligations and responsibilities. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by a Neighborhood, and (b) delegate budgeting duties and require that a proposed budget include certain items and that specific expenditures be made.

Section 17. To adopt rules and protocol regarding the establishment, operation and functioning of Neighborhood Committees.

Section 18. To modify the boundaries of Neighborhoods, create new Neighborhoods, or merge Neighborhoods, with the approval of the Membership.

Section 19. The foregoing enumeration of specific powers shall not limit or restrict in any manner the general powers of the Association and the enjoyment and exercise thereof as now or hereafter conferred by the laws of Idaho.

Section 20. The foregoing enumeration of specific powers shall not limit or restrict in any manner the implied powers of the Association and the enjoyment and exercise thereof as now or hereafter may be reasonably required to carry out the functions provided herein or in any of the Association Documents or to enforce the provisions of any of the Association Documents.

Section 21. The following provisions are inserted for the management of the business and for the conduct of the affairs of the Association, and are in furtherance of and not in limitation or exclusion of the powers granted herein or by law:

(a) Execution of Instruments. Authority to convey or encumber the property of the Association and to execute any deed, contract or other instrument on behalf of the Association is vested in the president or any vice president. All instruments conveying or encumbering such property (whether or not executed as such attorney-in-fact) shall be executed by the president or vice president and attested by the secretary or an assistant secretary of the Association.

(b) Director and Officer Conflicts of Interest. No contract or other transaction between the Association and one or more of its Directors or Officers, or any other corporation, firm, association, or entity in which one or more of its directors are Directors or Officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such Director or Officer are present at the meeting of the Board or a committee thereof which authorizes, approves or ratifies such contract or transaction or because such Director's or Directors' votes are counted for such purposes, if:

(i) The fact of such relationship or interest is disclosed or known to the Board or committee which authorizes, approves, or ratifies the contract or transaction, and the contract or transaction is authorized, approved or ratified by a vote or consent sufficient for the purpose without counting the vote or consent of such interested Director; or

(ii) The contract or transaction is fair and reasonable to the Association and the fact of such relationship or interest is fully and fairly disclosed or known to the Board.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

(c) Liability Insurance. The Association may insure its officers and directors against certain losses which such persons may incur because of their acts or omissions as officers or directors, including, but not limited to, losses resulting from judgments, settlements and costs of litigation. Such insurance shall be limited to reasonable amounts of coverage for such officers and directors.

(d) Limitation of Liability. No Member of the Association shall be personally liable for any debt or other obligation of the Association, and no property within the Project shall be subject to any lien to enforce the collection of any debt or other obligation of the Association, except liens for unpaid assessments made in accordance with the Articles, these Bylaws and the Association Documents.

## **ARTICLE 5. OFFICERS**

Section 1. Officers. The officers of the Association shall be a president, one or more vice presidents, a secretary and a treasurer. Such officers shall be elected by majority vote of the Board. The Board may appoint such other officers, assistant officers, committees and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board, such officer, agent or employee shall follow the orders and instructions of the president or his designee.

Section 2. Removal Of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and a

successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 3. Vacancies. A vacancy in any office, however occurring, may be filled by the Board for the unexpired portion of the term.

Section 4. President. The president shall be the chief executive officer of the Association. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents and employees.

Section 5. Vice Presidents. The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Board. In the absence of the president, the vice president designated by the Board or (if there be no such designation) designated in writing by the president shall have the powers and perform the duties of the president. If no such designation shall be made, all vice presidents may exercise such powers and perform such duties.

Section 6. Secretary. The secretary shall:

(a) Keep the minutes of the proceedings of the members, executive committee, subcommittees, and Board;

(b) See that all notices are duly given in accordance with the provisions of these Bylaws, the Articles, the Declaration and as required by law;

(c) Be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board;

(d) Keep at the registered office or principal place of business of the Association a record containing the names and registered addresses of all members, the designation of the property owned or leased by each member, and, if such property is mortgaged and the mortgagee has given the Association notice thereof, the name and address of the mortgagee;

(e) In general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board, assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

Section 7. Treasurer. The treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board. The treasurer shall receive and give receipts for moneys paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office

of the treasurer and, upon request of the Board, shall make such reports to it as may be required at any time. The treasurer shall have such other powers and perform such other duties as may be from time to time prescribed by the Board or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

Section 8. Daily Management of the Association. The Board shall have the authority to hire such employees and agents as it determines are necessary to manage the functions of the Association and to conduct the day to day management of the Association subject to the supervision of the Board and its officers.

## **ARTICLE 6.**

### **BUDGETS, FINANCIAL STATEMENTS, BOOKS AND RECORDS**

Section 1. Budgets and Financial Statements. Financial statements and pro forma operating budgets for the Association shall be regularly prepared (at least annually) and copies shall be distributed to each Member of the Association.

Section 2. Fiscal Year. The fiscal year of the Association shall be as designated by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 3. Inspection of Association's Books and Records. The inspection of Association books and records is governed by Idaho Code § 30-3-131.

Section 4. Statement of Account. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Lot Owner shall be furnished a statement of his account setting forth the amount of any unpaid Assessments or other charges due and owing from such Owner.

## **ARTICLE 7.**

### **OBLIGATIONS OF THE MEMBERS**

Section 1. Assessments. Each Member shall be obligated to pay and shall pay to the Association any Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments which are levied by the Board in accordance with Article 8 and the Association Documents with respect to such Owner's Lot.

Section 2. Time for Payment. The amount of any Assessment, charge for interest or otherwise, fine, penalty or other amount payable by any Owner or with respect to such Owner's Lessees, Sub-owners, Guests or Lot shall become due and payable as specified in Article 8 hereof or by the Board. Any such amount which is delinquent shall bear interest at the default rate which shall be periodically set by the Board (the "Default Rate").

Section 3. Lien for Assessments and Other Amounts. All Assessments, together with interest from the due date of such assessment at the Default Rate, late charges, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the Assessment is made until paid, as more particularly provided in Article 8 hereof. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title. Each Member hereby waives, renounces and releases all rights to a homestead exemption, and any redemption period to the extent allowed by law, which it may acquire by statute or by operation of law.

Section 4. Compliance With Association Documents. Each Member shall comply with all provisions of the Association Documents as from time to time in force and effect. In addition to all other remedies, the membership rights and privileges of any Member or guest, including, but not limited to, the right to vote and the right to use Common Area and Association Facilities, may be suspended by action of the Board during the period when any Assessments or other amounts due relating to such Member's Lot remains unpaid; but, upon payment of such Assessments or other amounts, such rights and privileges shall be automatically restored. If the Board has adopted and published rules and regulations governing the use of Common Area and Association Facilities and the personal conduct of any person related thereto, subject to the vested property rights of Pre-existing Owners, the Board may, in its discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty (30) days, or if such person is in a continuous violation of such rules and regulations for a period during the violation and continuing for thirty (30) days after such time as the violation ceases.

Section 5. Enforcement of Assessments.

(a) Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Member. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than ten (10) days from the date of the mailing of the notice by which the default must be cured; and, (d) that the failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for Assessment against the Lot of the Member and the exercise by the Board of any other remedies either provided herein or allowed by law, including an action against the Member personally, for the delinquent Assessment. In such case, and as a condition of the cure of the delinquent Assessment, the Member may be obligated by the Board, at the Board's sole discretion, to additionally pay all costs of enforcement, including without limitation reasonable attorneys' fees, costs and related expenses and to pay interest at the Default Rate, from the date

on which the Assessment was due, as well as a reasonable late charge to be determined by the Board.

(b) Enforcement of Assessments. Each Member is and shall be deemed to covenant and agree to pay to the Association each and every Assessment provided for in these Bylaws; and agrees to the enforcement of all such Assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of the Association Documents, each Member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Member. In addition to any other remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the Member to pay the Assessments provided for in this Declaration, and each of them, in any manner provided by law in equity, or without any limitation of the foregoing, by either or both of the following procedures, non-exclusively:

(i) Enforcement by Suit. By commencement of a suit at law against any Member or Members personally obligated to pay Assessments, for such delinquent Assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon and/or late charges as provided for herein, costs of collection, court costs and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Member. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

(ii) Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all Assessments levied against any and all Members, together with interest thereon as provided for herein, fines imposed for violation of the Association Documents, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. The Board or its duly authorized representative may file and record a Notice of Delinquent Assessment on behalf of the Association against the Lot of the defaulting Owner who has not cured the default as provided in Section 5(a) above. The amount of the Assessment, plus any costs of collection, expenses attorneys' fees and interest assessed in accordance with these Bylaws shall be a lien on the Owner's Lot from and after the time the Association records the Notice of Delinquent Assessment. Such Notice shall be executed and acknowledged by any officer of the Association and shall contain substantially the following:

1. The claim of lien made pursuant to these Bylaws;

2. The name of the record Owner;
3. The legal description of the Lot against which claim of lien is made;
4. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorneys' fees and any other sums allowed in any Association Document (with any proper offset allowed); and,
5. The name and address of the trustee authorized by the Association to enforce the lien by public sale.

Upon recordation, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied, together with all improvements thereon and appurtenances thereto. Such lien shall have priority over all liens or claims created subsequent to the recordation of the Notice. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by the Idaho Code for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any Officer or Director of the Association, or any Title Company authorized to do business in Idaho as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Members and shall secure payment of all sums set forth in the Notice, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said Notice.

The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

The sale or transfer of any Lot shall not affect the continued validity or enforceability of the lien, which shall run with and burden the Lot, nor shall it relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Assessments on such Lot due

prior to such acquisition of title. Such unpaid Assessments shall be collectible from all Members subject to Assessment pursuant to these Bylaws, including such acquirer, its successors and assigns. The Owner of a Lot which is sold with unpaid Assessments shall also continue to be personally liable therefore.

Each Owner hereby expressly waives any objection to the enforcement and foreclosure of Assessment liens in this manner. Upon the timely curing of any default for which a Notice was filed by the Board, the Board shall cause an officer of the Association to record an appropriate release of such Notice in the Office of the County Recorder of Valley County, Idaho. No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by non-use or abandonment of his or her Lot or any of the Common Area or Association Facilities.

Section 6. Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Member an Assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay Assessments. In such event, each Member shall continue to pay Common Assessments, Special Assessments, Local Improvement Assessments and/or Local Maintenance Assessments on the same basis as for the last year for which an Assessment was made, if any, until a new Assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

**ARTICLE 8  
ASSESSMENTS**

Diagram 8.1 provides a summary of assessments, as more fully and completely described in this Article 9 below.

ASSESSMENT SUMMARY	
Assessment Type	Description
COMMON ASSESSMENTS	Levied in an equal amount for each Lot.
SPECIAL ASSESSMENTS	Levied in the event that the Board determines that other Assessments will be inadequate to meet an unanticipated expense which cannot be deferred to the next budget year.
LOCAL IMPROVEMENT ASSESSMENTS	Desired improvements; allocated to only those Lots which benefit from the improvement; must be approved by at least 2/3 of owners of Benefited Lots (only the Owners of the Benefited Lots vote).
LOCAL MAINTENANCE ASSESSMENTS	Benefiting a specific Neighborhood or group of Members; allocated to only those Lots and/or Neighborhoods which benefit from the repair and maintenance.

## Diagram 8.1

Section 1. Common Assessments. Common Assessments shall be calculated and levied as an equal amount per Lot, which equal amount per Lot shall be the "Common Assessment Rate". Based on budget estimates, the Board shall determine and set forth in its annual budget the Common Assessment Rate required to produce the total Common Assessments set forth in such budget. The annual budget shall be reviewed at the annual membership meeting. The provisions of this Section 1 cannot be amended except by the Affirmative Vote of sixty-seven percent (67%) of the Membership.

Section 2. Payment of Common Assessments. Each Common Assessment shall become due and payable, in its entirety on or before December 1, or such other date as the Board may reasonably determine. In addition to any other remedy provided herein, in any other Association Document, or by law, any portion of any Common Assessment not paid when due and payable shall become a lien on and against all of the real property owned by such Owner, including any Lots owned by such Owner other than the Lot with respect to which the Common Assessment has not been fully paid. The Board, in its sole discretion, in cases of extreme hardship may release any such lien if it receives other security for the payment of the delinquent Common Assessment which it deems sufficient to protect the interest of the Association. Notwithstanding the foregoing, any Lot which is exempt from taxation pursuant to Title 63, Chapter 6 of the Idaho Code as amended (or any comparable statute), or any property, real or personal, owned by the Association may be granted an exemption from the Common Assessment by the Board; provided that the Board specifically approves such exemption in each particular case. The Board shall have the discretion to make the Common Assessments due and payable annually, quarterly or monthly.

Section 3. Special Assessments. The Board may levy in any fiscal year one or more Special Assessments, applicable to that year only, in the event that the Board determines that other Assessments will be inadequate to meet an unanticipated expense which cannot be deferred to the next budget year. Approval of a majority of the Board shall be required for the levy of a Special Assessment. Such a vote shall be held at a meeting of the Board at which a quorum is present. Notice of such meeting shall set forth the purpose therefore and shall be sent to all Directors and all Members not less than fifteen days nor more than sixty days in advance of such meeting. Any such Assessment which is so approved shall be levied in proportion to the benefits received. Special Assessments shall be calculated and levied as an equal amount per Lot, unless the purpose of the Special Assessment is to cover shortfalls in Local Maintenance or Local Improvement Assessments, in which case the Special Assessment shall be calculated and levied by such method that the Board finds will result in the Special Assessment being equitable in proportion to benefits received. The date or dates that any such Special Assessment is due and payable shall be set forth in the resolution of the Board authorizing such Assessment.

Section 4. Local Improvement Assessments. If, in the judgment of the Board, certain improvements within the Project are desirable, and those improvements will

especially benefit certain Lots, and if all or a part of the costs of those improvements should in fairness be paid for by the Owners of the Benefited Lots, the Board may propose a Local Improvement Assessment or the Owners of Benefited Lots may request a Local Improvement Assessment. With respect to each proposed Local Improvement Assessment, the Board shall specify the nature of the proposed improvement, shall designate the Benefited Lots which will be especially benefited by the improvement, and shall recommend a Local Improvement Assessment calculated to meet the costs applicable to the local improvement, with the Board specifying the amounts of such Assessments, the dates for payment of such Assessments, and the portion, if any, of the costs of any improvement that will be borne by the Association. The Local Improvement Assessment shall then be submitted to a vote of the Owners of the Benefited Lots, at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to the Owners of the Benefited Lots at least 30 days in advance (unless each such Owner waives such notice). If at least two-thirds (2/3) of the Owners of the Benefited Lots approve the Local Improvement Assessment at such a meeting, the Local Improvement Assessment shall take effect.

Section 5. Apportionment of Local Improvement Assessments. Local Improvement Assessments shall be assessed in proportion to the benefits received. The Board shall make such assessments by any apportionment method that the Board finds will result in Assessments being equitable in proportion to benefits received.

Section 6. Disposition of Funds Raised Through Local Improvement Assessments. All funds collected through the imposition of a Local Improvement Assessment shall be applied to the costs of making, contracting, and installing the local improvement for which such Assessment was imposed, except that any funds remaining unspent upon completion of such improvement shall be returned to the Owners of the Benefited Lots in the proportion on which such Lots were assessed.

Section 7. Local Maintenance Assessments. If, in the judgment of the Board, maintenance and repair of certain property within the Project is desirable, and such maintenance and repair will especially benefit certain lots, and if all or a part of the costs of those improvements should in fairness be paid for by the Owners of the Benefited Lots, the Board may propose a Local Maintenance Assessment or the Owners of Benefited Lots may request a Local Maintenance Assessment. With respect to each proposed Local Maintenance Assessment, the Board shall specify the nature of the proposed maintenance and/or repair, shall designate the Benefited Lots which will be especially benefited by such maintenance and/or repair, and shall recommend a Local Maintenance Assessment calculated to meet the costs applicable to the local maintenance, with the Board specifying the amounts of such Assessments, the dates for payment of such Assessments, and the portion, if any, of the costs of any maintenance and repair that will be borne by the Association. Prior to making a final decision regarding whether to impose the Local Maintenance Assessment, the Board shall provide the opportunity for Owners of the Benefited Lots to comment on the proposed Assessment at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to the Owners of the Benefited Lots at least 15 days in advance (unless each such Owner waives such notice).

Section 8. Apportionment of Local Maintenance Assessments. Local Maintenance Assessments shall be assessed in proportion to the benefits received. The Board shall make such Assessments by any apportionment method that the Board finds will result in Assessments being equitable in proportion to benefits received.

Section 9. Disposition of Funds Raised Through Local Maintenance Assessments. All funds collected through the imposition of a Local Maintenance Assessment shall be applied to the costs of the maintenance and/or repairs for which such Assessment was imposed.

Section 10. Association Budget. At the first meeting of the Board following the adoption of the Association's fiscal year, the Board shall adopt an estimated budget for the remainder of that fiscal year. Such budget shall include: (A) the estimated costs and expenses and proposed capital expenditures which will be chargeable to the Association to fulfill its obligations under the Declaration, the Articles and the Bylaws as then in force and effect; (B) the estimated income and other funds which will be received by the Association; and (C) the estimated total amounts required to be raised by Common Assessments, Local Maintenance Assessments and/or Local Improvement Assessments to cover such costs, expenses and capital expenditures of the Association and to provide reasonable reserves. For each subsequent fiscal year the Board shall, prior to the beginning of each fiscal year, propose and tentatively adopt a similar budget, which shall also include all long-term or continuing commitments of the Association made in connection with or contemplated under any previously approved budget. The Board may delegate budgeting responsibilities to Neighborhoods and/or Benefited Lots, for Board review, for Local Improvement Assessments, Local Maintenance Assessments, and such other budget items as the Board may determine. The tentative budget for each subsequent fiscal year shall become final thirty (30) days after the distribution of the tentative budget to the Members. Except as emergencies may require the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association through Assessments, all other sources of income and borrowing.

## **ARTICLE 9 NEIGHBORHOODS**

Section 1. In General. Declarant has designated separate Neighborhoods within the Property, for purposes of electing Directors to the Association Board as provided at Article 3 above. A Neighborhood may act either directly with the Association, or through a Neighborhood Committee or Neighborhood Association established in accordance with this Article 9. Any Neighborhood can be later formally organized as a Committee or an Association by the Association Board. Until such time as a Neighborhood Committee or Association is organized, if at all, the members of the Neighborhood shall elect their designated Association Director(s) at the annual meeting of the Members of the Association. Other than the power to elect a Director, as provided herein, Neighborhoods shall have no autonomous power to act unilaterally or independent of formal Board approval.

Section 2. Neighborhood Committees and Associations. No Neighborhood Committee or Association shall have the power or the authority to levy assessments, unless specifically authorized in writing to do so by the Board, and any action of such Committee or Association shall be subject to the approval of the Association.

(a) Neighborhood Committees. In the event that a Neighborhood Committed is created, the Neighborhood shall elect a Neighborhood Committee. Such a Neighborhood Committee shall consist of three (3) to five (5) Members, as determined by at least a majority of the votes associated with the Lots in the Neighborhood. Neighborhood Committee members shall be elected for a term of one (1) year or until their successors are elected. In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice requirements applicable to the Board. At all Neighborhood Committee meetings, a majority of the committee members present in person or by proxy shall constitute a quorum for the transaction of business. Unless specifically provided to the contrary herein, decisions of the Neighborhood Committee shall be made by an affirmative vote of a majority of the committee members present at any meeting at which a quorum is present. Any vote for a Association Director shall be taken by all of the members of the Neighborhood, and not simply by vote of the committee members; and, quorum, voting, notice and meeting requirements for such a vote shall be those applicable to membership meetings herein. Meetings of a Neighborhood Committee shall be open to all Owners of Lots in the Neighborhood and their representatives, as well as to the Association Board. Minutes of all Neighborhood Committee Meetings shall be kept and a copy thereof provided to the Secretary of the Association, and to any member of the Neighborhood, upon request. It is intended that the Neighborhood Committee shall provide a mechanism for issues which are unique to the Neighborhood to be identified and, as necessary, presented to the Board of the Association.

(b) Neighborhood Associations. In the event that a Neighborhood Association is created, the Association Board shall adopt Articles of Incorporation and Bylaws which outline the regulation and the management of the affairs of the Neighborhood Association. The members of such Association shall be the members of the Neighborhood. Other than the power to elect a Director, as provided herein, such an Association shall have no autonomous power to act unilaterally or independent of formal Board approval.

#### **ARTICLE 10.** **AMENDMENT OF BYLAWS**

The Affirmative Vote of 67% of the Membership shall be required to make, amend and repeal the Bylaws of the Association at any regular meeting of the Membership or at any special meeting called for that purpose at which a quorum is represented.

**ADOPTION OF BYLAWS**

We, the undersigned, being all of the Directors of the Payette Lakes Cottage Sites Owner's Association, Inc., do hereby assent to the within and foregoing Bylaws and hereby adopt the same as the Bylaws of said Association.

EXECUTED by the undersigned on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, the duly elected and acting Secretary of the Payette Lakes Cottage Sites Owner's Association, Inc., do hereby certify:

That the within and foregoing Bylaws were adopted as the Bylaws of said Association on this \_\_\_\_ day of \_\_\_\_\_, 2013, and that the same do constitute the Bylaws of said Association.

EXECUTED by the undersigned on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Secretary

**BYLAWS  
OF  
PAYETTE LAKES COTTAGE SITES OWNER'S ASSOCIATION, INC.**

**TABLE OF CONTENTS**

ARTICLE 1. PLAN OF OWNERSHIP .....	1
Section 1. Name and Location .....	1
Section 2. Definitions .....	1
ARTICLE 2. MEMBERSHIP; MEETINGS AND VOTING RIGHTS .....	1
Section 1. Membership.....	1
Section 2. Record Date .....	1
Section 3. Quorum .....	1
Section 4. Proxies .....	2
Section 5. Majority Vote .....	2
Section 6. Membership Meetings .....	2
(a) Annual Meeting .....	2
(b) Special Meetings.....	2
(c) Place Of Meeting .....	2
(d) Notice Of Meeting .....	2
(e) Informal Action By Members .....	3
(f) Adjournment.....	3
(g) Rules at Meetings .....	3
ARTICLE 3. BOARD OF DIRECTORS .....	3
Section 1. Number and Term of Directors .....	3
Section 1. Number and Term of Directors .....	3
Section 2. Election of Board of Directors.....	4
(a) Nomination.....	4
(b) Election of Directors.....	4
Section 3. Resignations, Removal and Vacancies .....	4
Section 4. Regular and Special Meetings.....	4
Section 5. Quorum .....	5
Section 6. Waiver of Notice, Action by Consent of Directors.....	5
Section 7. Adjournment; Executive Session.....	5
Section 8. Board Meetings Open to Members.....	5
ARTICLE 4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.....	6
ARTICLE 5. OFFICERS .....	9
Section 1. Officers .....	9
Section 2. Removal Of Officers .....	9
Section 3. Vacancies .....	10
Section 4. President .....	10
Section 5. Vice Presidents .....	10
Section 6. Secretary .....	10
Section 7. Treasurer.....	10
Section 8. Daily Management of the Association .....	11
ARTICLE 6. BUDGETS, FINANCIAL STATEMENTS, BOOKS AND RECORDS .....	11

Section 1. Budgets and Financial Statements.....	11
Section 2. Fiscal Year .....	11
Section 3. Inspection of Association's Books and Records .....	11
Section 4. Statement of Account.....	11
ARTICLE 7. OBLIGATIONS OF THE MEMBERS.....	11
Section 1. Assessments.....	11
Section 2. Time for Payment.....	11
Section 3. Lien for Assessments and Other Amounts .....	12
Section 4. Compliance With Association Documents.....	12
Section 5. Enforcement of Assessments.....	12
(a) Notice of Default and Acceleration of Assessments.....	12
(b) Enforcement of Assessments .....	13
(i) Enforcement by Suit .....	13
(ii) Enforcement by Lien.....	13
Section 6. Failure to Assess.....	15
ARTICLE 8. ASSESSMENTS .....	15
Section 1. Common Assessments .....	16
Section 2. Payment of Common Assessments .....	16
Section 3. Special Assessments .....	16
Section 4. Local Improvement Assessments.....	16
Section 5. Apportionment of Local Improvement Assessments .....	17
Section 6. Disposition of Funds Raised Through Local Improvement Assessments.....	17
Section 7. Local Maintenance Assessments.....	17
Section 8. Apportionment of Local Maintenance Assessments.....	18
Section 9. Disposition of Funds Raised Through Local Maintenance Assessments.....	18
Section 10. Association Budget .....	18
ARTICLE 9. NEIGHBORHOODS.....	18
Section 1. In General .....	18
Section 2. Neighborhood Committees and Associations.....	19
(a) Neighborhood Committees .....	19
(b) Neighborhood Associations .....	19
ARTICLE 10. AMENDMENT OF BYLAWS .....	19
ADOPTION OF BYLAWS.....	20

DEPT. OF LANDS  
2013 AUG -2 AM 9:31  
BOISE, IDAHO

August 1, 2013

Tom Schultz, Director of the Idaho Department of Lands and Secretary to the Land Board  
P.O. Box 83720  
Statehouse, Boise, Idaho 83720

Dear: Mr Schultz

The Carley family has owned deeded property in McCall for over fifty years. We strongly encourage the IDL to proceed with replatting of the amended Payette Lakes Cottages. All of the people I have spoken with in this neighborhood support the ownership and control of the replatting. It makes no sense to us for the State of Idaho to bear the responsibility of our common access points. We are supportive of creating a home owner's association and dealing with the management of these newly deeded lands.

Please support our effort to properly manage the roads and access lands within our neighborhood.

Sincerely,

Clay Carley  
2202 Payette Dr.

ATTACHMENT 4a

August 6, 2013

Members of the Land Board  
c/o Tom Schultz, Director  
PO Box 83720  
Statehouse  
Boise, Idaho 83720

Good Morning –

We are writing to express our support for Payette Lakes Cottage Sites property owners association documents recently sent to us by the Idaho Department of Lands. We appreciate the fact that these documents will give stability in the future to our neighborhoods, and we encourage your timely acceptance of them.

Yours Sincerely,



Cutler and Nancy Umbach  
2380 Sharlie Lane  
PO Box 2329  
McCall, Idaho 83638

DEPT. OF LANDS  
2013 AUG - 7 AM 10: 08  
BOISE, IDAHO

ATTACHMENT 4b

R500300 996 Happy Day Way

**From:** Ken Smith  
**To:** Cottage Site Plan  
**Subject:** Comments on Bylaws, first reading.  
**Date:** Tuesday, July 23, 2013 12:41:26 PM

---

1. "Common Areas" -- what are they, where are they, how are they defined?
2. The Board can borrow money? WHY?
3. Assessments (common, special, local improvement, local maintenance) -- seems overly complex and potentially divisive.
4. Section 15 - "To acquire..." What's that mean?
5. Section 17 - Neighborhood Committees -- drawn up and defined forever? by whom, when, how?
6. 7.4 - "Common area and Association Facilities..." like what?
7. "Vested property rights of pre-existing owners..." What does that mean? Seems like a (potential) exemption or free pass.
8. "Neighborhoods" and "Benefited Lots" WHO decides who benefits -- seems fraught w/ arguments and/or abuse..... FOR INSTANCE, "We've decided your roads need work but ours do not."

To try and build an ASSOCIATION which, from the onset, is a aggregation of potential differing neighborhoods w/ differing needs and differing histories seems problematic.

Ken Smith

ATTACHMENT 4c

Citizens for Payette Lake Comments

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

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

**VALLEY COUNTY, IDAHO**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration")**, is made on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by the **State Board of Land Commissioners**, by and through the **Idaho Department of Lands** (the "**State Land Board**"), with reference to the following facts:

A. The State Land Board is the owner of \_\_\_\_\_ residential lots located at Payette Lake, Valley County, Idaho, known as **AMENDED CEDAR KNOLLS ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES**. The land encumbered by this Declaration is more particularly described as follows:

All land currently owned by the State Land Board, located within the Plats of **AMENDED CEDAR KNOLLS ACRES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; **AMENDED PINECREST ADDITION**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; and **SOUTHWEST PAYETTE COTTAGE SITES**, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_, records of Valley County, Idaho. Said land is identified more specifically by subdivision name, block and lot in **Exhibit "A"**.

Hereafter, the term "Owners" shall refer to the owners of the Lots bound by this Declaration together with the owners of such Lots which may hereafter be made subject to this Declaration by the deeded owners ("Pre-Existing Owners") of the Lots identified in **Exhibit "B"** and depicted on the Plats for purposes of identification ("Pre-Existing Lots"). The Pre-Existing Lots identified in Exhibit "B" are not currently owned by the State Land Board, and the Pre-Existing Owners have not yet agreed that Pre-Existing Lots which they own shall be subject to this Declaration. However, the Pre-Existing Owners may at any time subject their Pre-Existing Lots to this Declaration as provided in Section 2.3 below.

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 Payette Lakes Cottage Sites Owners Association, Inc., which Association will operate and maintain certain properties and facilities within the Plats and assume maintenance obligations by virtue of deeded ownership and an easement over State land.

## Citizens for Payette Lake Comments

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 and the State's Lessees as provided herein and in the Addendum hereto, their successors-in-interest and assigns, the 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.** 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 Land Board and its Lessees.

1.2 **Affirmative Vote of the Membership.** The Affirmative Vote of a Majority of the Membership shall be achieved on any particular matter upon the vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Affirmative Vote of sixty-seven percent (67%) of the Membership shall be achieved on any particular matter upon the vote of at least sixty-seven percent (67%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Board shall have the right to submit any matter requiring Membership approval to the Membership by mailed ballot, in which case the approval of the matter shall require the specified percentage (i.e., 51% or 67%) of the total votes of the Membership.

1.3 **Articles.** Articles shall mean the Articles of Incorporation of the Association, as amended from time to time.

1.4 **Assessment.** 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 Common Assessments, Special Assessments, Local Improvement

## Citizens for Payette Lake Comments

Assessments or Local Maintenance Assessments, as those terms are more specifically defined in the Bylaws.

1.5 Association. Association shall mean the Payette Lakes Cottage Sites Owners 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 as provided herein, and any successor-in-interest thereto.

1.6 Association Documents. Association Documents shall mean the various governing documents of the Association, including: (a) the Articles of Incorporation; (b) the Bylaws; (c) this Declaration; (d) all Rules and Regulations promulgated by the Board; and, (e) all amendments and supplements to any of the aforementioned documents.

1.7 Association Expenses. Association Expenses shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area, expenses incurred by the Association in meeting its obligations and in the administration of the Association, and any reasonable reserve for such purposes as determined by the Board. Association expenses may be levied and collected by the Board as Common Assessments, Special Assessments, Local Improvement Assessments or Local Maintenance Assessments.

1.8 Association Facilities. Association Facilities shall mean all property owned or leased by the Association or otherwise held or used by the Association, or which is under the Association's management or control by, through or under contractual arrangements, licenses or other arrangements, including property furnished by Declarant, real property or interests therein, improvements on real property, and personal property and equipment.

1.9 Benefitted Lots. Benefitted Lots shall mean groups of Lots which have like interests or needs, which Lots may already be grouped as a Neighborhood, which are so designated for the following purposes: (a) to determine, assess and budget Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) to determine, assess and budget Local Maintenance Assessments, as defined at Article 8 of the Bylaws; and/or (c) to otherwise facilitate the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members.

1.10 Board or Board of Directors. The Board or Board of Directors shall be the Board of Directors of the Association, as it shall be constituted from time to time.

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

1.12 City. City shall mean the City of McCall.

1.13 City Code. City Code shall mean the McCall City Code.

### Citizens for Payette Lake Comments

1.14 Common Area. Common Area shall mean the property identified on the Plats as Common Area. Absent such designation, the term "Common Area" as used herein shall include but not necessarily be limited to all roads, easements, rights-of-way, and lake access lots which are shown on the Plats. Common Area shall also include additional property or property rights obtained by the Association in the future.

1.15 County. County shall mean Valley County, Idaho.

1.16 County Code. County Code shall mean the Valley County Land Use and Development Ordinance, as amended, superseded or repealed.

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

1.18 Lot. Lot shall include a platted parcel of land that is part of the Plats, other than Common Area, as well as all Pre-existing Lots which become subject to this Declaration as provided below in Article 2.

1.19 Member. Member shall mean a member of the Association, as further defined in Article 2. Every Owner of a Lot subject to this Declaration now or at a later time shall automatically be a Member of the Association, except where said Lot Owner is the State Land Board, in which case the Member shall be the Lessee of the Lot, if any, as provided in that certain Addendum being filed of record with this Declaration. Notwithstanding the foregoing, Pre-Existing Owners are not automatically Members, but may join voluntarily and may thereupon become a Member, as set forth in Section 2.3(c).

1.20 Mortgage. Mortgage shall mean a recorded mortgage, deed of trust, real estate contract, or other instrument creating a voluntary security interest in any Lot.

1.21 Mortgagee. Mortgagee shall mean a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, leasehold, or other holder of a perfected voluntary security interest in any Lot.

1.22 Neighborhood. Neighborhood shall mean a group of Lots designated by the Board as a separate Neighborhood for purposes of: (a) determining, assessing and budgeting Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) determining, assessing and budgeting Local Maintenance Assessments, as defined at Article 8 of the Bylaws; (c) electing Directors to the Board; (d) providing input and information to the Board with regard to proposed services, maintenance, improvements or other issues uniquely affecting the Neighborhood; and/or (e) otherwise facilitating the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members. The initially designated Neighborhoods are identified on the attached Exhibit "C".

1.23 Owner or Owners. Owner or Owners shall include 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"

**Citizens for Payette Lake Comments**

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."

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

1.25 Plats. Plats shall refer to the recorded plats for AMENDED CEDAR KNOLLS ACRES, AMENDED PINECREST ADDITION and SOUTHWEST PAYETTE COTTAGE SITES, and any amendments thereto.

1.26 Pre-Existing Owner or Pre-Existing Owners. Pre-Existing Owner or Pre-Existing Owners shall mean owners of Pre-Existing Lots.

1.27 Pre-Existing Lots. Pre-Existing Lots shall mean the Lots identified in attached Exhibit "B".

1.28 Project Documents. Project Documents shall mean the Plats and the Association Documents.

1.29 Property or Project. Property or Project shall mean all Lots subject to this Declaration as described in Exhibit A to this Declaration, and all common areas, easements and other Lots depicted on the Plats, together with all buildings, improvements and structures thereon.

1.30 State Land Board. The State Land Board shall mean the State Land Board, acting by and through the Idaho Department of Lands, collectively.

**ARTICLE 2.  
ASSOCIATION MEMBERSHIP**

2.1 Organization of Association. The Association shall be incorporated under the name of Payette Lakes Cottage Sites Owners 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.

(a) Classes. There shall be two classes of membership in the Association, which shall consist of the following:

**Citizens for Payette Lake Comments**

(i) Current Owners. The owners of the Lots which are depicted in the Plats, excluding Common Area and Lessees of Lots as provided in the attached Addendum; and

(ii) Pre-existing Owners-Permanent Memberships. Pre-existing Owners who elect to join the Association and subject their Lots to this Declaration and the Association Documents.

(iii) Pre-Existing Owners-Provisional Membership. Pre-Existing Owners who elect to join the Association as provided below.

(b) Automatic Membership. The Owner of a Lot, except a Pre-Existing Owner, 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association. The Lessees of Lots shall be considered Owners as provided in the Addendum.

(c) Voluntary Membership.

(i) Pre-existing Owners-Permanent Memberships. A Pre-Existing Owner may voluntarily become a Permanent Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter be subject to all terms and conditions of this Declaration, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. Once a Pre-Existing Owner submits its Pre-Existing Lot(s) to this Declaration, then the Pre-Existing Owner shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(ii) Pre-existing Owners-Provisional Memberships. A Pre-existing Owner may voluntarily become a Provisional Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement (the "Statement") signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter

### Citizens for Payette Lake Comments

be subject to all terms and conditions of this Declaration, subject to an option to withdraw as a Member, as described below, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. The Association shall provide the Statement for the Pre-existing Owner's use as aforesaid. A Pre-existing Owner desiring to utilize this Provisional Membership shall notify the Association of such election not later than one (1) year after the date on which the Declaration is filed of record with Valley County, Idaho. The failure to timely do so shall result in a waiver of the right to utilize the Provisional Membership. Once a Provisional Member submits its Pre-Existing Lot(s) to this Declaration, then the Provisional Member shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. The option to withdraw as a Member may be exercised at any time within five (5) years of the date of the Statement upon delivery of written notice to the Association in form provided for this purpose by the Association (the "Notice") of the exercise of the option to withdraw. Such Notice shall be delivered not less than one hundred eighty (180) days prior to the date of withdrawal. The Association shall then execute the Notice and cause it to be filed of record with Valley County. In the event the Provisional Member does not elect to exercise its option to withdraw as provided herein, then it shall be deemed a Permanent Member. The aforesaid option to withdraw shall be personal to the Provisional Member, and may not be exercised by any other person, entity, assignee or successor-in-interest. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(d) Rights and Duties of Memberships. The two above-described classes of Memberships shall equally enjoy the rights and privileges and be subject to the duties and obligations afforded by this Declaration and the Association Documents.

### 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 or used except for single-family residential purposes by the Owner, its family, and its guests and invitees, or by a single-family tenant. No more than one (1) Single-Family Dwelling and such associated accessory structures as are allowed by the County Code or City Code, whichever may be applicable to the Lot, shall be allowed on any Lot. All docks placed on or appurtenant to a Lot shall be in accordance with applicable laws. An Owner may not assign or convey a right of use of a dock to anyone other than the dock's permitted owners of record.

### Citizens for Payette Lake Comments

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 and the applicable County Code or City Code, meet applicable snow load requirements for Property (i.e., under the applicable County Code, City Code or building codes), and are installed on a permanent foundation shall be allowed.

3.4 Permits; Construction Standards. Each Owner shall comply with all applicable federal, state, and local laws, rules, codes 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 the County Code or City Code which is applicable to the Lot. Notwithstanding the foregoing, any structures or land uses which exist at the time of the recordation of this Declaration and which were approved by the State Land Board or which were in compliance with all applicable Codes when constructed are permitted to continue and shall be subject to the applicable code provisions for non-conforming uses or non-conforming structures.

3.5 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 in conformity with the International Urban-Wildlands Interface Fire Code.

3.6 Protection of Forest Resources. Other forest resources shall be protected, such as archeological resources, sensitive plant and animal species, water quality and fish habitat, as required by applicable federal, state, and local laws, rules, codes and regulations.

3.7 Fences. Fences on Lots shall comply with the provisions of the applicable County Code or City Code.

3.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance, as defined by Idaho law. All exterior heating and cooling devices must be screened from the view of neighboring properties and all reasonable measures must be taken by the Owners of such devices to mitigate noise to adjoining properties. Without waiving an Owner's rights to seek relief under Idaho law, for purposes of a demand that the Association take action, the Association shall have sole discretion to determine whether the subject activity constitutes a nuisance under the terms of this Section.

3.9 Household Pets. No animals, of any kind, except for household pets shall be raised, bred, or kept on any portion of the Property. Pets must be kept within the boundaries of the Lot unless accompanied by and under the positive control of the Owner. Consistent and/or chronic barking by dogs, or threatening or aggressive behavior by an animal, shall be considered a nuisance. The Board may create such additional Rules and Regulations with regard to household pets as it deems reasonable appropriate.

## Citizens for Payette Lake Comments

3.10 Non-conformities Preexisting Structures. Any structure or improvement which is in place as of the date of recordation of this Declaration and which is not in conformity with any of the provisions of Article 3.2, 3.3, 3.4 or 3.7 above shall be deemed in all respects to be a conforming use under the provisions of this Declaration and may be maintained and repaired as a conforming use in its current condition. In the event that such structure or improvement is replaced, then the replacement shall conform to all provisions of this Declaration and existing zoning ordinances, as amended.

**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 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 and such Assessment may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. No Owner of a Lot may exempt himself or herself from liability for Assessments by waiver of the use or enjoyment of any of the Common Area (if any) or any other part of the Property, 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. However, neither sale nor transfer pursuant to mortgage foreclosure or by deed in lieu of foreclosure nor extinguishment as aforesaid, shall affect or extinguish the personal liability of the Owner for unpaid Assessments.

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 which are unpaid at 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 which are then owing to 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

**Citizens for Payette Lake Comments**

grantor in excess of the amount set forth in the statement. 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 or construction of improvements thereon, 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 non-judicial (i.e., trustee's sales), and a deed (or assignment) in lieu of foreclosure.

### Citizens for Payette Lake Comments

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 or consent in writing to 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 Owner whose title is derived through foreclosure or otherwise.

## ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS

6.1 Common Area: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The vested property rights of Pre-existing Owners, the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of any recreational facilities which may be located within the Common Area; and,
- (d) The vested property rights of Pre-existing Owners, the right of the Board to suspend the right of an Owner to use any Common Area or any recreational facilities located within the Common Area (i) for any period during which any Assessment charged against such Owners Lot remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association, after notice and a hearing as provided in the Bylaws.

6.2 Use by Others. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees ("Sub-owners"), subject to reasonable Board regulation. All such Sub-Owners shall be subject to the provisions of Article 3 of this Declaration and to all applicable Rules and Regulations which are promulgated by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot, unless provided to the contrary in the Lease. An Owner shall be responsible and liable for the actions of its Sub-owners and for any violations by such Sub-owners of the terms of this Declaration and the Rules and Regulations which are promulgated by the Board.

6.3 Owners' Rights and Obligations Appurtenant. All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in the Association under this Declaration are hereby declared to be and

### Citizens for Payette Lake Comments

shall be appurtenant to the title to the Lot owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Lot. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Lot shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.4 Limitation on Rights. Neither the Association nor any Owner shall have the right to grant any rights of use of the Common Area to the owners of property located outside of the Property or to members of the general public.

### ARTICLE 7. DURATION AND AMENDMENT

7.1 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 9~~ this Article 7.

7.2 Amendment. Amendments to this Declaration may be proposed by the Board. Notice of the subject matter of any 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. The amendment shall be adopted upon the Affirmative Vote of sixty-seven percent (67%) of the Members.

7.3 Approval of Land Board. Notwithstanding the foregoing, the following special voting provisions shall apply: the State Land Board 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.

7.4 Certificate. 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 8. ANNEXATION AND WITHDRAWAL OF PROPERTY

8.1 Annexation. The Association may subject additional property which is located within the exterior boundaries of the Plats to the provisions of this Declaration with the consent of the owner of such property and the Affirmative Vote of a Majority of the Membership. Such annexation shall be accomplished by recording a Supplemental

### Citizens for Payette Lake Comments

Declaration with the Office of Recorder of the County, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon recording unless otherwise provided therein.

8.2 Withdrawal. The Association may withdraw property from the provisions of this Declaration with the consent of the Owner of such property and the Affirmative Vote of a Majority of the Membership. Such withdrawal shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property being withdrawn.

### **ARTICLE 9.** **GENERAL PROVISIONS**

9.1 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.

9.2 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 Plats, the Addendum, this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association.

9.3 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.

9.4 Effect of Provisions of Declaration. Each provision of this Declaration and the Bylaws, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration and the Bylaws, and any necessary exception or reservation of grant or title, estate, right or interest to effectuate any provision of this Declaration and the Bylaws: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner; (c) shall, as a personal covenant, be binding on such Owner and such Owner's respective heirs, personal representatives, successors and assigns; and, (d) shall be deemed an equitable servitude, running, in each case, as a burden with and upon the title to all Lots within the Property.

## Citizens for Payette Lake Comments

### 9.5 Enforcement and Remedies.

(a) In General. Each provision of this Declaration shall be enforceable by any Owner who has made written demand on the Association to enforce such provision and thirty (30) days have lapsed without appropriate action having been taken, by a proceeding for a prohibitive or mandatory injunction. In addition to any other remedy available at law or in any of the Association Documents, each provision of this Declaration with respect to an Owner or property of an Owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction and/or by a suit or action to recover damages, and/or, in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by exclusion of such Owner and such Owner's Lessees, Sub-owners and Guests from use of any Common Area or Association facility. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including injunction bond premiums, and its attorneys' fees incurred, including fees incurred on appeal.

(b) Fines. In addition to the provisions of Section 9.5(a), the Board shall be entitled to impose fines and penalties for violations of this Declaration in amounts to be provided in the Rules and Regulations. Fines and penalties may be assessed only against a Member of Association, and only if the violator is the Member or a member of the Member's family or a Sub-owner, guest, invitee, lessee, contractor, subcontractor, employee or agent of the Member. Fines and penalties may be increased in the case of a continuing violation, where the Member has failed to abate the violation within the time allowed therefore by the Board in written notice to the Member. In the case of a single incident, the fine or penalty may not be assessed unless the Member has received at least one prior written notice from the Board that the violation may subject the Member to fine(s). Fines and penalties imposed pursuant to this Section may be collected as an assessment as provided in the Bylaws and this Declaration. Non-payment of assessments shall not subject a Member to fines; rather, the remedy therefore shall be as provided in the Bylaws and as may otherwise be provided in this Declaration.

9.6 Limited Liability. Neither the Board, nor any member, agent or employee of the Board, nor the Association, nor State Land Board, Director, agent or employee of the Idaho Department of Lands, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

9.7 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

**Citizens for Payette Lake Comments**

9.8 Waiver. Failure by the Association to enforce any provisions of the Association Documents shall not operate as a waiver of any such provision or of the Association's right to enforce such provision or any other provision of this Declaration or the Association Documents.

9.9 Notice of Sale. Any Owner, with the exception of Lessees, desiring to sell or otherwise transfer title to his or her Lot shall give the Association at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the name of the closing agent for such transfer and the closing date of such transfer.

IN WITNESS WHEREOF, the State Land Board has caused this Declaration 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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Citizens for Payette Lake Comments

\*\*\*\*\*

THE STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, 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.

\_\_\_\_\_  
NOTARY PUBLIC FOR STATE OF IDAHO  
Residing at \_\_\_\_\_, Idaho  
My Commission expires: \_\_\_\_\_

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**EXHIBIT A**

(listing of replatted Endowment lands)

WORKING DRAFT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit A  
| AMENDED CEDAR KNOLL<sup>§</sup> ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

**EXHIBIT B**

(listing of deeded lots not included in replatting activity)

WORKING DRAFT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
| AMENDED CEDAR KNOLLS ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

**EXHIBIT C**  
(Initial Neighborhoods)

The Sylvan Beach ~~Mutual Corporation~~ Neighborhood Association will remain in place as an association separate and distinct from the Association. The boundaries of the property which is deemed to be included in the said Mutual Corporation shall be the external boundaries of the lots who participate in the Sylvan Beach Mutual Corporation and said area shall be generally described and will not be affected by this Declaration. The Sylvan Beach Neighborhood is described as follows: Originating at the northern boundary of the Amended Payette Lake Cottage Sites plat and extending south along the eastern boundary of Warren Wagon Road to the southwest corner of Lot 164-R1, thence easterly along the southern boundary of said Lot 164-R1, thence northerly along the intersection of Warren Wagon Road and Greuse Lane, thence easterly along the southern boundary of Greuse Lane to the southeast corner of said Lot 164-R1, thence northerly along the eastern boundary of said Lot 164-R1 to the northeast corner of said lot, thence easterly along the northern boundary of Sharlie Lane to the northeast corner of Sharlie Lane, thence southerly to the southwest corner of lot 178-R1, Lot 177, Amended Payette Lake Cottage Sites, thence south along the western boundary of Lot 177 to the common boundary of Lots 176 and 177, thence easterly to the Lake along the southern common boundary of said Lot 178-R1, Lots 176 and 177, excluding Lot 1, Block 28, Southwest Payette Cottage Sites.

The following six (6) Neighborhoods in the platted subdivisions will be initially created:

1. The Wagon Wheel Bay Neighborhood: Running from the above-described southern boundary of the Sylvan Beach Neighborhood Mutual Corporation (which would be the northern boundary of the Wagon Wheel Bay Neighborhood) to a southern boundary described as follows: From Warren Wagon Road easterly along the south boundary of Cedar Crest Drive, to Payette Drive, thence northerly along the east boundary of Payette Drive, thence easterly to the Lake along the common boundary of Lots 64 and 65, Amended Payette Lake Cottage Sites.
2. The Pine Haven Neighborhood: Running from the southern boundary of the Wagon Wheel Bay Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Pine Haven Place, thence easterly extending to the Lake across Payette Drive and along the northern boundary of Lot 57, Amended Payette Lake Cottage Sites.
3. The Chipmunk Trail Neighborhood: Running from the southern boundary of the Pine Haven Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 4, Bl. 12, Southwest

Payette Cottage Sites, thence easterly extending across Payette Drive and to the Lake along the southern boundary of Lot 3, Bl. 11.

4. The Squirrel Lane Neighborhood: Running from the southern boundary of the Chipmunk Trail Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 1, Bl. 1, Amended Pinecrest Addition, thence southerly along the west boundary of Lot 5, Bl. 1, thence easterly along the southern boundary of Lot 5, Bl. 1, extending across Payette Drive, thence northerly along the east boundary of Payette Drive to the common boundary of Lots 30 and 31, thence easterly along said common boundary to the Lake.
5. The Picnic Point Neighborhood: Running from the southern boundary of the Squirrel Lane Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Wild Rose Street, thence across Payette Drive to the eastern boundary of Payette Drive, thence northerly along the said eastern boundary of Payette Drive to the South boundary of Lot 1, Block 23, Southwest Payette Cottage Sites, thence easterly along said southern boundary of Lot 1, Block 23 to Payette Lake; also including the Lots on the west side of Warren Wagon Road.
6. The Wild Rose Neighborhood: Running from the southern boundary of the Picnic Point Neighborhood (which would be the northern boundary of this Neighborhood) to the southern boundary of the platted properties, excluding the property identified as "State Subdivision-Future Plat" on the State Subdivision – Southwest Payette Cottage Sites Plat.

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

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

**VALLEY COUNTY, IDAHO**

**TABLE OF CONTENTS**

ARTICLE 1. DEFINITIONS .....2

1.1 Addendum.....2

1.2 Affirmative Vote of the Membership .....2

1.3 Articles .....2

1.4 Assessment .....2

1.5 Association.....3

1.6 Association Documents.....3

1.7 Association Expenses .....3

1.8 Association Facilities.....3

1.9 Benefitted Lots .....3

1.10 Board or Board of Directors .....3

1.11 Bylaws .....3

1.12 City.....3

1.13 City Code.....3

1.14 Common Area.....4

1.15 County .....4

1.16 County Code.....4

1.17 Declaration.....4

1.18 Lot.....4

1.19 Member.....4

1.20 Mortgage.....4

1.21 Mortgage.....4

1.22 Neighborhood.....4

1.23 Owner or Owners.....4

1.24 Person.....5

1.25 Plats.....5

1.26 Pre-Existing Owner or Pre-Existing Owners .....5

1.27 Pre-Existing Lots.....5

1.28 Project Documents .....5

1.29 Property or Project.....5

1.30 State Land Board.....5

ARTICLE 2. ASSOCIATION MEMBERSHIP .....5

2.1 Organization of Association .....5

2.2 Duties and Powers .....5

2.3 Membership .....5

(a) One Class .....5

(b) Automatic Membership .....6

DRAFT

(c) Voluntary Membership .....	6
ARTICLE 3. CONSTRUCTION STANDARDS AND USE RESTRICTIONS .....	7
3.1 Single-Family Residential Use .....	7
3.2 Mobile Homes .....	8
3.3 Manufactured or Modular Homes .....	8
3.4 Permits; Construction Standards .....	8
3.5 Fire Hazards .....	8
3.6 Protection of Forest Resources .....	8
3.7 Fences .....	8
3.8 No Noxious or Offensive Activity .....	8
3.9 Household Pets .....	8
ARTICLE 4. ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS .....	9
4.1 Creation of the Lien and Personal Obligation of Assessments .....	9
4.2 Transfer of Lot by Sale or Foreclosure .....	9
ARTICLE 5. RIGHTS OF MORTGAGEES .....	10
5.1 No Impairment .....	10
5.2 Subordination .....	10
5.3 Amendment of Declaration .....	11
5.4 Mortgagee Protection Clause .....	11
ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS .....	11
6.1 Common Area .....	11
6.2 Use by Others .....	11
6.3 Owners' Rights and Obligations Appurtenant .....	11
ARTICLE 7. DURATION AND AMENDMENT .....	12
7.1 Duration .....	12
7.2 Amendment .....	12
7.3 Approval of Director .....	12
7.4 Certificate .....	12
ARTICLE 8. ANNEXATION AND WITHDRAWAL OF PROPERTY .....	12
8.1 Annexation .....	12
8.2 Withdrawal .....	13
ARTICLE 9. GENERAL PROVISIONS .....	13
9.1 Invalidity of Any Provision .....	13
9.2 Conflict of Project Documents .....	13
9.3 Addendum .....	13
9.4 Effect of Provisions of Declaration .....	13
9.5 Enforcement and Remedies .....	14
(a) In General .....	14
(b) Fines .....	14
9.5 Limited Liability .....	14
9.6 Successors and Assigns .....	14
9.7 Waiver .....	15
9.8 Notice of Sale .....	15

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Table of Contents – Page iii  
| AMENDED CEDAR KNOLLS ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

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

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**VALLEY COUNTY, IDAHO**

WORKING DRAFT

August 9, 2013

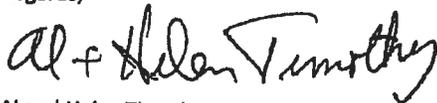
Tom Schultz, Director  
Idaho Department of Lands  
P.O. Box 83720-0050  
Boise, Idaho 83720

Mr. Tom Schultz

My wife and I are property owners in the Payette Lakes Cottage Sites area on the west side of Payette Lake. Over the last two years, we have followed the process by which the Idaho Department of Lands has surveyed property and developed new plats for the west side of Payette Lake. We concur with the plats that were prepared and distributed to us in late July, 2013. We encourage you to approve these plats as drafted.

We also encourage your approval of the Bylaws for the Payette Lakes Cottage Sites Association, the Declaration of Covenants, Conditions and Restrictions and the Addendum to the Declaration of Covenants, Conditions and Restrictions (As drafted and mailed to us in late July). We feel that an association with bylaws and CC&R's is vital for ongoing organization and administration of common properties on the west side of Payette Lake.

Regards,



Al and Helen Timothy  
7 Club Lane  
Littleton, Colorado 80123

ATTACHMENT 4e

August 9, 2013

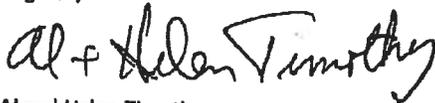
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Regards,

A handwritten signature in black ink that reads "Al + Helen Timothy". The signature is written in a cursive, flowing style.

Al and Helen Timothy  
7 Club Lane  
Littleton, Colorado 80123

ATTACHMENT 4f

**From:** [Frank Stoppello](mailto:Frank.Stoppello)  
**To:** [Kate Langford](mailto:Kate.Langford)  
**Cc:** [jimd@alliedhandlinoproducts.com](mailto:jimd@alliedhandlinoproducts.com)  
**Subject:** Re: Sylvan Beach Mutual Corporation  
**Date:** Monday, August 12, 2013 10:33:02 AM

---

Dear Ms. Langford: Pursuant to today's conversation, I write as attorney for Sylvan Beach Mutual Corporation concerning the State's proposal to convey roads and Community Beach on pages 4 and 6 of the Preliminary Plats you sent me. I note on page 4 Sylvan Creek Road is actually Sylvan Beach Road. Our last two members on the southern end of Sharlie Lane on page 4 are Jack Dahl (whose lot is on the water) and Doug Porter (whose lot is on Warren Wagon Road). After my inspection of the area and my conversation with Jim Donald, our President, the Community Beach and Community Beach Road on page 6 are out of Sylvan Beach Mutual Corporation's area. Sylvan Beach does not want to become a member of any other proposed association. Our corporation has been in existence since 1943 and is active in governing the members' interests. Sylvan Beach would be in favor of the State deeding its interest in Sharlie Lane on Plat 4, but does not desire being deeded the Community Beach interest, Community Beach Road and Sharlie Lane shown on page 6 of the Preliminary Plats. If you have any questions, please feel free to contact me at your convenience. Sincerely, Frank W. Stoppello.

CONFIDENTIALITY NOTICE: This e-mail communication and materials attached hereto may contain private, confidential, or legally privileged information intended for the sole use of the designated and/or duly authorized recipient(s). If you are not the intended recipient or have received this e-mail in error, please notify the sender immediately by e-mail and permanently delete all copies of this e-mail including all attachments without reading them. If you are the intended recipient, secure the contents in a manner that conforms to all applicable state and/or federal requirements related to privacy and confidentiality of such information. Thank you.

---

**From:** Kate Langford [<mailto:KLangford@idl.idaho.gov>]  
**Sent:** Monday, August 05, 2013 10:09 AM  
**To:** Frank Stoppello  
**Subject:** plat

**KATE LANGFORD**  
 Strategic Business Analyst  
 Email: [klangford@idl.idaho.gov](mailto:klangford@idl.idaho.gov)

Idaho Department of Lands | 300 N. 6th Street, Ste. 103 - Boise, ID 83720 | ☎ 208.334.0257

**TRUSTED STEWARDS**  
 of Idaho's Resources  
 from Main Street to Mountain Top

ATTACHMENT 4g

August 10, 2013

Director Tom Schultz  
Idaho Department of Lands  
P.O. Box 83720  
Boise, ID 83720-0050

RE: Payette Lake Cottage Sites Owners Association, Inc. CC&Rs

Dear Director:

I am writing to request an extension of the August 14, 2013 deadline within which to comment on the Proposals concerning the Cedar Knolls, Pinecrest and Southwest Payette Cottage Sites. I am requesting the extension for two reasons: 1) not all lessees and neighboring owners of land affected by the State's proposed actions have received the draft documents from the Land Department, for review, nor can they be found on the State Department of Lands website, and 2) the documents I have seen third hand are incomplete (Declaration Exhibit B and C) or missing altogether (Quitclaim Deed and Plat Dedication). From what I have been able to read, the draft documents present issues that Owners and Lessees need additional time to review and discuss before being able to making informed comments.

Please allow a 30 day extension for the comment period and forward a copy of the missing Declaration Exhibits B and C and a complete copy of the proposed Quitclaim Deed and Plat Dedication to:

COTTAGE SITE, LLC  
7225 BETHEL STREET  
BOISE, IDAHO 83704

Sincerely,

Handwritten signature of Douglas Bagley in cursive script.

ATTACHMENT 4h

Resp't 0287



1015 ROBERT ST. BOX 8286 PHONE 342-3828  
BOISE, IDAHO 83707

September 11, 2013  
Director Thomas Schultz  
Idaho Department of Lands  
300 Nth 6<sup>th</sup> Street Ste 103  
Boise, Idaho 83720

Dear Director Schultz,

Enclosed is a copy of the comments we made on August 13, 2013. These comments were not included in the packet given to the commissioners.

Our families concern is the removal of our access off Chipmunk Trail. We or our attorney has yet to receive a return call from either Ms. Langford or Mr. Strong.

Please address this issue.

Thank you

Donna Day Jacobs

Lots 48 49 and 990 Chipmunk Trail

Cc: State Board of Land Commissions

DEPT. OF LAND  
2013 SEP 13 AM 9:09  
BOISE, IDAHO

DEVELOPERS OF:  
VISTA VILLAGE SHOPPING CENTER  
BONE INDUSTRIAL PARK  
CHERRY VISTA  
MIRA VISTA  
COUNTRY CLUB GOLF COURSE  
COUNTRY CLUB MANOR  
COUNTRY CLUB ACRES  
HILLCREST TERRACE  
NORTHRIDGE SUBDIVISION

Don't Delay — See Day Today

ATTACHMENT 4i

Comments on SW Payette Plats and CC & R  
Idaho Department of Lands

August 14, 2014.

Thank you for the opportunity to comment on these documents. We would like to request a delay. Our concern is the Chipmunk Trail Road Closure. We reside at 910 Chipmunk Trail. When the plat was first circulated numerous calls from our attorney to Kate Langford have not been returned. In addition we were assured in public and private meetings that this access would remain. The department attorney said this access was considered an assumption in the original deed and a right of the property.

Chipmunk Trail has been a road since our property was platted and removed from State Endowment Lands in 1912. It is the access to our property.

The new plats appear to be combining that road with the unleased lot downlake and renaming it Chipmunk Trail Access. While it is clear that the new plat has changed boundaries in an attempt to solve existing problems, this closure seems unnecessary. If the road is closed, will the road be divided between neighboring landowners which has been done in the past?

In addition the access was platted 30 feet and has grown to 32 at the expense of our property. Please clearly rename Chipmunk Trail as a road for at least 150 feet past Payette Lake Drive and return it to its 30 foot dimension.

We also feel since the endowments stand to make 70 million dollars from leaseholders in land exchanges with minimal fire-life-safety protections should be included in the plat, even though they do not exist now.

Thank you

Donna Jacobs  
Lts 48, 49 and 990 Chipmunk leasehold

Ben Day  
Lts 48, 49 and 990 Chipmunk leasehold

2013 SEP 13 AM 9:09  
BOISE, IDAHO  
-EPT. OF LANDS

**DIVISION OF LANDS AND WATERWAYS  
STRATEGIC BUSINESS BUREAU  
300 N 6<sup>TH</sup> STREET, SUITE 103  
PO BOX 83720  
BOISE, ID 83720-0050  
PHONE (208) 334-0200  
FAX (208) 334-3698**



**TOM SCHULTZ, DIRECTOR  
KATHY OPP, DEPUTY DIRECTOR**

**STATE BOARD OF LAND COMMISSIONERS  
C. L. "Butch" Otter, Governor  
Ben Yarsa, Secretary of State  
Lawrence G. Wasden, Attorney General  
Brandon D. Woolf, State Controller  
Tom Luna, Sup't of Public Instruction**

September 24, 2013

Donna Day Jacobs  
Day Realty  
P.O. Box 8286  
Boise, ID 83707

Re: Chipmunk Trail Common Area

Dear Ms. Jacobs:

Idaho Department of Lands is in receipt of your correspondence dated September 11, 2013, regarding the Chipmunk Trail Common Area. In your correspondence you express concern regarding "the removal of our access of Chipmunk Trail" and claim that the Chipmunk Trail Road has been, or plans to be, closed by the Department. This is not correct.

As you know the historic Chipmunk Trail access remains completely intact, as do the existing road, view area and seating, rail fencing, and stairway to water's edge. In addition to this historic access area, the Department has expanded this area to include the lot immediately to the south. As part of the replatting of Endowment land in this area, the historic Chipmunk Trail access has been combined with expansion area and identified as the Chipmunk Trail Common Area on the new Southwest Payette Cottage Sites plat (see excerpt enclosed). To further clarify that the access remains, the name will be altered to "Chipmunk Trail Access and Common Area". In addition to the revised name of the site, the plat contains reference information from the Amended Payette Lake Cottage Sites plat on the lot as well.

The Department appreciates the submittal of your comments regarding this matter.

Sincerely,

Kate Langford  
Bureau Chief, Strategic Business Bureau

Enclosure – Excerpt from SW Payette Cottage Sites Plat

cc: Tom Schultz, Director  
Kathy Opp, Deputy Director  
Project File

KL/tla

*"Trusted Stewards of Idaho's Resources From Main Street to Mountain Top"*



W.DAVISON (1878-1964)  
FRANK DAVISON (1907-1984)  
R.H. COPPLE (1919-1995)

\_\_\_\_\_  
E DON COPPLE  
TERRY C. COPPLE  
HEATHER A. CUNNINGHAM\*  
JAY GUSTAVSEN  
ED GUERRICABEITIA  
MICHAEL BAND

**DAVISON, COPPLE, COPPLE & COPPLE, LLP**  
**ATTORNEYS AT LAW**  
SUITE 600  
199 N. Capitol Blvd.  
**BOISE, IDAHO**

TELEPHONE (208) 342-3658  
FAX (208) 386-9428  
<http://www.davisoncopples.com>

\_\_\_\_\_  
MAILING ADDRESS  
P.O. BOX 1583  
BOISE, IDAHO 83701  
\*Of Counsel

September 23, 2013

Kate Langford  
Strategic Business Analyst  
Idaho Department of Lands  
300 N. 6<sup>th</sup> Street, Ste. 103  
Boise, Idaho 83720

Re: Proposal for Sharlie-Grouse Neighborhood Association, Inc.

Dear Ms. Langford:

Pursuant to our meeting at your offices on September 11, 2013, we are providing you with our client's proposal and desired intent on establishing their own neighborhood association in McCall, Idaho. The Sharlie-Grouse Neighborhood Association, Inc. ("SGNA") respectfully requests that the State Endowment leased lots, roads and Community Beach, within its boundary (*see attached Exhibit "A" Neighborhood Description*), be excluded from the proposed Payette Lake Cottage Site Owners Association, Inc. ("PLCSO Association"). SGNA would like the Idaho Department of Lands to grant separate quitclaim deeds for Sharlie Lane, Sharlie Way, Community Beach Access Road, Grouse Way and the Community Beach (*see attached Exhibit "B" Boundary Map - Yellow Roads and Beach*) to SGNA. We believe the benefits of our proposal to SGNA and the State far outweigh the benefits of including SGNA in the PLSCO. Additionally, we believe the State has set a precedent in establishing similar associations, and to not allow the same for SGNA would ignore historical decisions of your Board and be arbitrarily unfair to our client.

The SGNA desires not to be included in the PLSCO Association because it is already in existence and represents a well-organized neighborhood, similar to that of the Sylvan Beach Mutual Corporation, Inc. Placing the SGNA neighborhood into a large association, with a geographically distant Board of Directors, is arbitrary and unjustifiable and not in the best interests of the SGNA lot owners and the State Endowment's leased lots. The SGNA residents have a long history of capably managing and maintaining the State Endowment land located within its boundary, without outside control. The State recognizes fifteen (15) separate neighborhood associations at Priest Lake, Idaho and has therefore established precedent for recognizing and working with the SGNA Association as a separate entity.

ATTACHMENT 4j

Kate Langford  
September 23, 2013  
Page 2

The market value of the State Endowment Lots, within the SNGA boundary, will be protected and enhanced by being in a small, locally-controlled association. SGNA has filed its Articles of Incorporation with the Secretary of State and is capable of performing the functions the State requires for enhancing and protecting the value and attractiveness of the State Endowment's lease lots within its neighborhood. The residents of the Sharlie-Grouse Neighborhood have been effectively protecting and improving the value of all the property within the Association's boundary for decades without outside control. They want a well-maintained, attractive neighborhood while still recognizing the rights of State Endowment land. Membership in a small local association, controlled by Directors living within the neighborhood who strive to have a well-maintained neighborhood, enhances the State Endowment land's property value far more than membership in a large, sprawling association controlled by distant Directors outside the neighborhood.

SGNA should be offered the opportunity to own the State Endowment lands, within its boundary, in keeping with the rights afforded the Sylvan Beach Mutual Corp. and the fifteen (15) Associations IDL established at Priest Lake. It is our understanding that on August 12, 2013, IDL staff asked the Sylvan Beach Mutual Corp., due north of SGNA, to take ownership of Sharlie Lane, Sharlie Way, Community Beach Assess Rd., Grouse Way and the Community Beach, by quitclaim deed. The Sylvan Beach Mutual Corp. President Jim Donald, via his attorney, Frank Stoppello, declined to take ownership of the roads and Community Beach which are outside his group's property boundary (*see attached Exhibit "C" Stoppello Letter*). The Sylvan Beach Corp. did, however, agree to accept a quitclaim deed for a portion of the northern section of Sharlie Ln., which is within Sylvan Beach Mutual Corp's. boundary. (*See attached Exhibit "B" Boundary Map – Blue Roads*). SGNA has worked closely with Jim Donald to verify the common boundary between the two groups. By IDL's actions on August 12, 2013, SGNA believes the Department demonstrated its intent to separate out the roads and Community Beach, within the SGNA's boundary, from the proposed PLCSO Association deed, and deed them to the Sylvan Beach Mutual Corporation. Therefore, in fairness, the State should have no objection to granting SGNA quitclaim deeds for the same land.

Our client strongly believes and has every intent to ensure that the pre-existing rights of deeded owners and lessees in the 1932 Amended Payette Lake Cottage Site Subdivision, the proposed Southwest Payette Lake, Cedar Knoll Acres, and Pinecrest Subdivisions, to use the Community Beach are preserved. The Community Beach can be reserved for the use of the second-tier Owners and Lessees in the proposed Southwest Payette Lake, Cedar Knoll Acres and Pinecrest subdivisions, via deed language, in keeping with the historic use allowed for in the existing 1932 Amended Payette Lake Cottage Site Plat.

In line with the desire for a neighborhood association, and the site-specific issues that arise, there is a fire prevention and safety issue which is particular to this neighborhood. In the 1980's, a fire hydrant was placed in the clearing of the Community Beach by the McCall Fire Department. Therefore, the future use of the Community Beach will need to be subject to SGNA parking restrictions necessitated by the McCall Fire Chief's letter of August 12, 2013 stating that, "...the

Kate Langford  
September 23, 2013  
Page 3

*maneuvering space needed to place a fire engine close enough to the hydrant, to allow for drafting, is limited and [it is] very important it not be obstructed by parked vehicles.* " This fire/life/safety restriction is consistent with existing IDL policy as evidenced on its signage at the Community Beach entrance stating, in part: "Beyond This Point - Foot Traffic Only" which, as non-owners, the Sharlie-Grouse residents were never legally entitled to enforce. By quitclaiming the land to the SGNA, it will have the legal right to enforce this important fire/life/safety regulation and maintain the existing and proposed subdivisions residents' use of the Community Beach.

Granting SGNA quitclaim deeds to the State Endowment land, within its boundary, recognizes and protects the rights of the existing association, and prevents another potential lawsuit. We believe granting SGNA quitclaim deeds will increase the value of the Endowment property. Granting SGNA quitclaim deeds is consistent with the way IDL has dealt with the Sylvan Beach Mutual Corporation and the fifteen (15) Associations it formed at Priest Lake. Granting SGNA quitclaim deeds poses no undue hardship for the IDL, the Land Board, nor other residents in the existing and proposed subdivisions.

Please feel free to contact me with any questions or concerns. Otherwise, we will await your response.

Sincerely,

DAVISON, COPPLE, COPPLE & COPPLE



Jay Gustavsen of the firm

Encls.

cc: The Sharlie-Grouse Neighborhood Association, Inc.

**PROPOSED AMENDMENT TO WORKING DRAFT OF  
STATE DECLARATION – EXHIBIT "C"  
INITIAL NEIGHBORHOODS**

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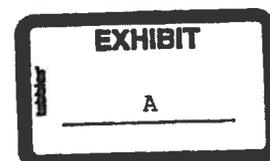
The Sylvan Beach Mutual Corporation will remain in place as an association separate and distinct from the Association. The Corporation shall be the external boundaries of the lots which participate in the Sylvan Beach Mutual Corporation and said area shall be generally described as follows: Originating at the northern boundary of the Amended Payette Lake Cottage Sites plat and extending south along the eastern boundary of Warren Wagon Road to the southwest corner of said Lot 164, thence easterly along the southern boundary of said Lot 164 to the southeast corner of said Lot 164, thence northerly along the eastern boundary of said Lot 164 to the northeast corner of said lot, thence easterly along the northern boundary of Sharlie Lane to the northeast corner of Sharlie Lane, thence southerly to the southwest corner of Lot 178 easterly to the Land along the southern boundary of said Lot 178. ~~the southwest corner of Lot 203, Amended Pavette Lake Cottage Sites, thence easterly along the southern boundary of Lot 203 to the intersection of southeast corner of Lot 203 and the western boundary of Sharlie Lane, thence south along the western boundary of Sharlie Lane to the southwest corner of Sharlie Lane, thence easterly to the intersection of the southeast corner of Sharlie Lane and the southwest corner of Lot 222 Amended Payette Lake Cottage Sites, thence northerly along the western boundary of Lot 222 to the southwest corner of Lot 221, thence easterly to the Lake along the southern boundary of Lot 221.~~

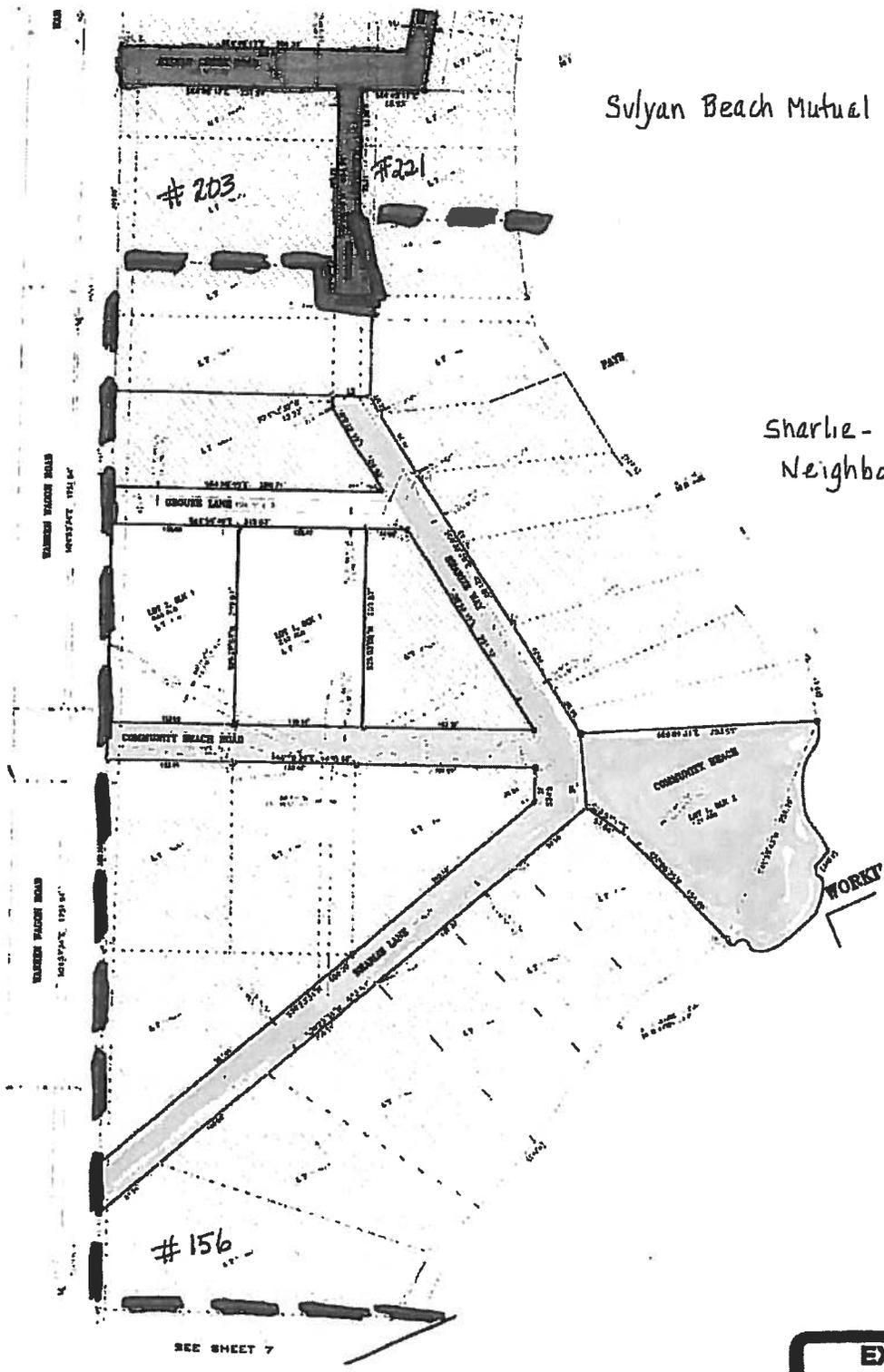
The Sharlie-Grouse Neighborhood Association, Inc. (SGNA) shall remain in place as an association separate and distinct from the Association. The SGNA shall be the external boundaries of the lots which participate in the SGNA and shall be generally described as follows: Running from the southern boundary of the Sylvan Beach Mutual Corporation (which would be the northern boundary of the SGNA) and extending south along the eastern boundary of Warren Wagon Road to the southwest corner of Lot 156, Amended Payette Lake Cottage Sites, thence easterly to the Lake along the southern boundary of Lot 156.

The following six (6) Neighborhoods in the platted subdivisions will be initially created:

**The Wagon Wheel Bay Neighborhood:** Running from the above described southern boundary of the Sylvan Beach Mutual Corporation ~~Sharlie-Grouse Neighborhood Association, Inc.~~ (which would be the northern boundary of the Wagon Wheel Bay Neighborhood) to a southern boundary described as follows: from Warren Wagon Road easterly along the south boundary of Cedar Crest Drive, to Payette Drive, thence northerly along the east boundary of Payette Drive, thence easterly to the Lake along the common boundary of Lots 64 and 65.

*Remaining Neighborhood descriptions remain as originally written in State Declaration, Exhibit "C." (Working Draft version)*





Sullyan Beach Mutual Corp.

Charlie - Grouse  
Neighborhood Assn.

**EXHIBIT**  
B

**FRANK W. STOPPELLO**  
ATTORNEY AND COUNSELOR AT LAW  
620 W. HAYS STREET  
BOISE, IDAHO, 83702

TELEPHONE (208) 336-1020

FACSIMILE (208) 336-1027

August 12, 2013

Kate Langford  
Strategic Business Analyst  
Idaho Department of Lands  
300 N. 6th Street, Ste. 103  
Boise, ID 83720

Dear Ms. Langford:

Pursuant to today's conversation, I write as attorney for Sylvan Beach Mutual Corporation concerning the State's proposal to convey roads and Community Beach on pages 4 and 6 of the Preliminary Plats you sent me. I note on page 4 Sylvan Creek Road is actually Sylvan Beach Road. Our last two members on the southern end of Sharlie Lane on page 4 are Jack Dahl (whose lot is on the water) and Doug Porter (whose lot is on Warren Wagon Road). After my inspection of the area and my conversation with Jim Donald, our President, the Community Beach and Community Beach Road on page 6 are out of Sylvan Beach Mutual Corporation's area. Sylvan Beach does not want to become a member of any other proposed association. Our corporation has been in existence since 1943 and is active in governing the members' interests. Sylvan Beach would be in favor of the State deeding its interest in Sharlie Lane on Plat 4, but does not desire being deeded the Community Beach interest, Community Beach Road and Sharlie Lane shown on page 6 of the Preliminary Plats. If you have any questions, please feel free to contact me at your convenience.

Sincerely,

*Frank W. Stoppello*  
Frank W. Stoppello  
Attorney at Law

FWS:dc





STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

October 8, 2013

Regular Mail and Email to: [gus@davisoncopples.com](mailto:gus@davisoncopples.com)

Mr. Jay Gustavsen, Esq.  
DAVISON, COPPLE, COPPLE  
& COPPLE, LLC  
199 N. Capitol Blvd.  
Boise, Idaho 83720

Re: Payette Lake – Proposal for Sharlie-Grouse Neighborhood Association, Inc.

Dear Mr. Gustavsen:

This letter is in reply to your letter dated September 23, 2013, wherein you requested the creation of an additional neighborhood Association to be known as the Sharlie-Grouse Neighborhood Association, Inc. ("SGNA"), which would be separate from the proposed Payette Lake Cottage Site Owners Association, Inc. ("PLCSOA").

The State Land Board, by and through the Idaho Department of Lands ("IDL") (collectively the "State"), has been working on plans that will ultimately result in the disposal of state endowment cottage site lots at both Payette and Priest Lakes. A lot of time and effort has gone into the preparation of a disposition process for both Payette Lake and Priest Lake. While there are many similarities between the two lakes, there are also significant differences which have affected the planning for the disposition process on both lakes.

Part of the process for Payette Lake will involve the transfer of a majority of the roads, easements and common areas to PLCSOA, a homeowners association to be newly formed, and to include all applicable state lessees, as well as any deeded owner who choose to become members of PLCSOA. The State has gone to great lengths to prepare and pursue a disposition plan for the endowment cottage site lots while at the same time recognizing and taking into account the need to continue to participate in and protect the endowment lands for the benefit of endowment beneficiaries. The roads, easements and common areas will be available to all members of PLCSOA, which will be responsible for maintenance and repair in accordance with the association documents.

Natural Resources Division  
P.O. Box 83720, Boise, Idaho 83720-0010  
Telephone: (208) 334-2400, FAX: (208) 854-8072  
Located at 700 W. State Street  
Joe R. Williams Building, 2nd Floor

Jay Gustavsen  
October 8, 2013  
Page 2

The State believes the currently proposed plan for Payette Lake is in the best interest of the State endowment lands, and does not intend to further fragmentize ownership or control of the roads, easements and common areas among other homeowners associations such as SGNA.

Best regards,

A handwritten signature in black ink, appearing to read 'R. Follett', written over a faint circular stamp or watermark.

ROBERT M. FOLLETT  
Deputy Attorney General

RMF/mb

EXHIBIT 7 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 7 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

1 State Board of Land Commissioners  
 2 October 15, 2013 Regular Meeting  
 3 Senate Hearing Room WW55, Lower Level, West Wing, 700 W Jefferson St, Boise, Idaho  
 4

5 Agenda Item 9 – Southwest Payette Lake CC&Rs  
 6 Action Item – Motion on page 9, line 320  
 7

8 **SPEAKERS:**

- 9 • C. L. "Butch" Otter, Governor
- 10 • Ben Ysursa, Secretary of State
- 11 • Lawrence Wasden, Attorney General
- 12 • Brandon Woolf, State Controller
- 13 • Tom Luna, Superintendent of Public Instruction
- 14 • Tom Schultz, Director and Secretary to the Board, Department of Lands
- 15 • Kate Langford, Bureau Chief-Strategic Business, Department of Lands
- 16 • Steve Millemann, Legal Counsel, Citizens for Payette Lake
- 17 • Robert Forrey, Nampa ID
- 18 • Steve Strack, Deputy Attorney General
- 19 • Jay Gustavsen, Legal Counsel, Sharlie-Grouse Neighborhood Association
- 20 • Robert Follett, Deputy Attorney General

21  
 22 **Governor Otter:** Mr. Secretary.

23  
 24 **Director Schultz:** Governor and members of the Board, we have four items on our regular agenda. The  
 25 first is Tab 9, and this our Southwest Payette Covenants, Conditions, and Restrictions. And we  
 26 have Kate Langford, our Bureau Chief for Strategic Business, will present this item.  
 27

28 **Ms. Kate Langford:** Good morning, Governor and members of the Land Board. I'm Kate Langford,  
 29 Bureau Chief for the Strategic Business Bureau. If you recall back in July, we had introduced a  
 30 lot solutions package for the southwest portion of Payette Lake where we own a number of  
 31 cottage sites, or endowment land leased as cottage sites. That solutions package included the  
 32 ultimate transfer of the ownership of the roads and the common areas to an association for that  
 33 area for management and oversight in the future. Part of that package also included a draft  
 34 covenants, conditions, and restrictions for that particular area.  
 35

36 In July the Land Board authorized us to go out and contact the deeded owners and lessees in the  
 37 area, request comments on the CC&R's that were in draft form. We did that and then brought  
 38 results back in September, where we also had a number of comments come in requesting an  
 39 extended comment period, or excuse me, in August to extend the comment period into  
 40 September. We have done that. The extended comment period completed in the end of

This certifies that this is a true and correct copy  
 of this document, the original of which is on file  
 with the Idaho Department of Lands (IDL).

  
 IDL Representative      Date 3-20-2019

State Board of Land Commissioners  
 October 15, 2013 Regular Meeting (Boise)  
 Agenda Item9: Southwest Payette Lake CC&Rs  
 Verbatim Transcript  
 Page 1 of 9

41 September around the 20th. And we had really one significant additional comment come in,  
 42 and that was a request by a neighborhood group to see if they could have a separate deeding of  
 43 the lots, the roads, and the common area lots within their location.

44

45 If you look at the memo that we've provided in the packet, it's the second memo [sic] from the  
 46 bottom on that first page where it's talking about the Sylvan Beach Mutual Corporation, and  
 47 then the newer comment was the Sharlie-Grouse Neighborhood Association. And they both  
 48 were expressing a desire to have roads and/or common areas within their neighborhood  
 49 boundaries deeded to them directly. You'll see at the bottom of that paragraph where we have  
 50 taken their comments and requests into consideration, consulted with the legal counsel, and—

51

52 **Governor Otter:** What page is that on?

53

54 **Ms. Langford:** It's on the first page, Governor, of the memo; it's that second full paragraph from the  
 55 bottom.

56

57 **Governor Otter:** Oh, I'm just looking at the—okay.

58

59 **Ms. Langford:** And so, at the end of that paragraph we have, "After due consideration the State believes  
 60 the currently proposed plan for the Southwest Payette Lakes area is in the best interest of the  
 61 state endowment lands and does not intend to further fragment ownership or control of the  
 62 roads and easements or common areas among other homeowners' associations." This of course  
 63 will honor any of the prior rights that were conferred either in previous plats or previous deeds  
 64 that have happened over a number of decades.

65

66 Other than that, we had a few comments with specific suggested recommended language  
 67 changes for the covenants, conditions, and restrictions documents, and they've been taken into  
 68 consideration by both the Department and its legal counsel, and we're happy today to present  
 69 the CC&R's to the Land Board and request that they approve the covenants, conditions, and  
 70 restrictions, including the suggested revisions included in Attachment 4D, for the cottage site  
 71 developments in the Southwest Payette area. And I'd be happy to answer any questions.

72

73 **Governor Otter:** Questions or comments?

74

75 **Attorney General Wasden:** Governor.

76

77 **Governor Otter:** Mr. Wasden.

78

79 **Attorney General Wasden:** Thank you Governor. Kate, do these CC&R's complete the steps necessary  
 80 for disposition of all of the Southwest Payette cottage sites?

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**Ms. Langford:** Governor and Mr. Attorney General, this particular adoption the CC&R's is the last official action that we need from the Board. We would then go forward, record the plats, there would be three of them for that area, and the CC&R documents and bylaws form the association for that area. And then we can conclude or continue with disposition activities for that location.

**Attorney General Wasden:** Thank you. Governor, follow up?

**Governor Otter:** Follow up.

**Attorney General Wasden:** And I direct this question both to you, Kate, and to Tom Schultz. I'm interested in the five lots that are adjacent to Syringa Park. Has the Board taken final action regarding those five lots?

**Director Schultz:** Okay, let me maybe address that. Mr. Attorney General, members of the Board, I think back at our November Land Board meeting the Board voted on the acquisition, November of 2012, of two improvements. And in that memo, if I recall, there was language in there that said the Department could retain these lots pending future disposition. And we have talked about flexibility on those five lots in the future. We didn't make a commitment that we were going to sell them, we were not going to sell them, but the language afforded the Department an opportunity to do that in the future.

**Attorney General Wasden:** Okay. All right.

**Ms. Langford:** Governor, if I may, we do have Steve Millemann in the audience and he represents the Citizens for Payette Lake. He may be interested in commenting on this item.

**Governor Otter:** Anybody want to make comments on this before we take action? Steve, is that you?

**Mr. Steve Millemann:** Yes. Morning, Governor and members of the Board.

**Governor Otter:** Morning.

**Mr. Millemann:** For the record, I'm Steve Millemann; I represent an unincorporated association, Citizens for Payette Lake that was formed a little over a year ago. It is comprised of owners and lessees of property within the Payette Lake cottage sites platted area. Approximately 51 members; approximately 21 lessees and 30 owners. The CPL has been managed by a steering committee comprised of Ron and Diane Graves, Ron Nahas, Bill Rawlings, Rob Rebholtz, Perry and Nancy Sands, Gregg and Sally Middlekauff, Jim Young and Ed O'Gara. These

120 documents before you culminate a process which started well over a year ago, at least as  
121 involves my client, longer than that as involves the Department.  
122

123 CPL was formed out of a sense of very grave concern about some of the early direction that was  
124 being considered regarding the re-platting of this area. I think those concerns could easily have  
125 resulted in litigation. They did not, and I think they did not largely as a result of the leadership  
126 of Director Schultz, and Deputy Director Opp, and the Attorney General's Office, and the  
127 steering committee of CPL.  
128

129 The documents before you today, as Kate mentioned, are part of a package which would  
130 complete the re-platting of the Southwest Payette Lakes cottage sites. That also includes the  
131 plats, and the plat notes, and the other implementing documents. The documents are not  
132 perfect, nor would we expect them to be at this point. There are certainly issues that are  
133 outstanding and will continue, including the issue raised by the Attorney General. Certainly CPL  
134 has concerns about the withdrawn properties, and will certainly have continuing concerns about  
135 any use of those properties for other than single-family residential use. That being said, CPL  
136 endorses the documents and endorses the rest of the package, because most importantly we  
137 feel that the documents not only resolve the dispute which started a year ago, and the concerns  
138 which were raised, but they place day-to-day management of these common areas, and roads,  
139 and lake access lots in the hands of those people that are directly affected by the day-to-day  
140 management and that's the lessees and the owners.  
141

142 The documents recognize that lessees' and owners' interests are aligned and not adverse. The  
143 documents give lessees and owners the essential tools that they need to move forward and to  
144 govern the area. It's important I think to recognize that documents like these are living  
145 documents. They're not etched once, and once only, in stone. And so our focus, and I think the  
146 focus of the Attorney General's Office, has been to provide a governance structure but also  
147 provide flexibility for the board of the new association, and the neighborhoods within the new  
148 association, to continue to evaluate their needs and, as needed, to bring amendments to the  
149 documents to this Board for approval.  
150

151 I would certainly stand for any questions but my primary purpose this morning was to let you  
152 know that the Citizens for Payette Lake endorse these documents, endorse the rest of the  
153 documents that go along with these, and would urge the Board to grant the approval and  
154 complete this process.  
155

156 **Governor Otter:** Questions or comments for Mr. Millemann. Thanks, Steve.  
157

158 **Mr. Millemann:** Thank you.  
159

160 **Governor Otter:** Mr. Secretary.

161

162 **Director Schultz:** Mr. Governor, if there's no other public comment on this we—

163

164 **Governor Otter:** Is there anybody else, wish to comment on this? Yes, Mr. Forrey.

165

166 **Mr. Robert Forrey:** Governor, members of the Board, I'm Bob Forrey, 4900 Ridgewood Road in Nampa.

167 My question is it appears that the roadways, and common areas, and easements will be deeded

168 over to an association. I don't see anything about an auction for before that deed is signed or

169 any monetary value for the roadways. They're still—the roads and common areas are still

170 endowment lands. Can they simply be deeded over without—?

171

172 **Governor Otter:** Good question. I don't know the answer to that.

173

174 **Director Schultz:** Mr. Governor, members of the Board what I would like to probably do is call

175 Mr. Follett or Mr. Strack up. This has been a discussion that we've looked at legally and we feel

176 legally it's within the Board's authority to do this. But I would be remiss to—

177

178 **Governor Otter:** Without an auction?

179

180 **Director Schultz:** Yes, sir without an auction.

181

182 **Mr. Steve Strack:** Governor, members of the Board, I'm Steven Strack, Deputy Attorney General in the

183 Natural Resources Division. This is an issue that we did extensive research on. And we found—I

184 think we've briefed the Board on this before, and this is just a reminder that in 1924 and 1932

185 when these cottage sites were platted there was dedication language in the plat that basically

186 dedicated these roads and common areas to public use. By law when you do that kind of

187 dedication it's basically a conveyance of title to the public.

188

189 And we concluded that that was within the Board's authority, because by dedicating these

190 properties to the public that it basically increased the value of the subdivided lots to an extent

191 that there was compensation made to the trust. So basically, even though you don't get paid for

192 the roads per se, the trust and the endowments are compensated through that increased value

193 for the lots. And so, as part of this platting process, we do not change those previous

194 dedications. They are taking title to these roads. The associations will take title to these roads

195 subject to whatever the legal effect of those past dedications are, and that has not been

196 litigated, so it's still an open question. But regardless of whether the dedication is to the public,

197 or for some reason the court was to conclude that it was just to the members, or the lessees

198 and owners of those lots, either way the value of the lots has increased to the point that there is

199 compensation to the endowments.

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**Governor Otter:** So, the public then is defined as the owners of the adjacent lots?

**Mr. Strack:** Governor, in our research we concluded that the public meant the public.

**Secretary of State Ysursa:** The public.

**Governor Otter:** Okay.

**Mr. Strack:** And so that, there is obviously always an argument that—and there's some case law that would suggest that when you say the public, in some cases you can mean just the public who are buying the lots. Generally, the courts will conclude that a public dedication means all of the public. So, that's still an open question and I think Mr. Millemann realizes that question is still out there, and they're taking it subject to whatever that dedication language is because we do not amend the previous dedications.

**Governor Otter:** Mr. Millemann, is that right?

**Mr. Millemann:** Governor, members of the Board, that is correct that the transfer of the roads, common areas, and lake access lots is subject to all vested rights. We have a different view of the consequence of the prior dedications. We believe the public referred to in those dedications was in fact the lessees and owners of land in the development.

**Governor Otter:** Well, but that's a pretty convenient definition defined for you folks. But is there any precedent to say otherwise?

**Mr. Millemann:** There is no court precedent, Governor. Over the years there have been opinions from the Attorney General's Office on a variety of topics which suggested that the dedications were intended to be to owners and lessees. I would say it is not necessary for the resolution of these documents to ultimately resolve that issue; we do agree that the transfer is appropriate and that the value has been added to the endowment lots by the dedications in the past.

**Governor Otter:** Okay, I guess then a further question. And that's what the Department is holding, right Tom?

**Director Schultz:** I don't understand your question, sir.

**Governor Otter:** That the public is defined as those who own the lots and the right-of-ways.

239 **Director Schultz:** Yeah. Governor, members of the Board that was the conclusion drawn by the legal  
240 counsel on this issue. That it's the—

241

242 **Governor Otter:** So then the question comes if the Land Board gets sued, or if the Department gets  
243 sued, will the association join in that suit to defend the Land Board's decision?

244

245 **Mr. Millemann:** I can't speak for the association but I would be incredibly surprised if they did not. It is  
246 a matter of critical interest to owners and lessees within the Payette Lakes platted area. As I  
247 say, we completely agree that the constitutional principles regarding auction do not apply to  
248 this, and that's for the simple reason that what really happened here when this was originally  
249 platted, although the language may have been somewhat inartful, was the dedication of those  
250 common areas, and roads, and lake access lots for the benefit and use of the public.

251

252 As such, we agree that it is a sound conclusion that the endowment lots have received and will  
253 continue to receive value for that dedication. And this—and further that these areas are  
254 actually held subject to the rights of existing owners and lessees. And those are parts of the  
255 issues that we've struggled with over the last year, but I think it is an appropriate posture to  
256 transfer those to this association.

257

258 **Governor Otter:** Okay. Any other questions or comments?

259

260 **Director Schultz:** So, Governor, we need a motion on this item.

261

262 **Controller Woolf:** Governor, there is a gentlemen in the back there—

263

264 **Attorney General Wasden:** Governor.

265

266 **Governor Otter:** Yes, sir. Wait a minute Wasden. Yeah, come on forward.

267

268 **Mr. Jay Gustavsen:** My name is Jay Gustavsen and I represent the Sharlie-Grouse Association. I,  
269 unfortunately, yesterday stuck a letter from our office to all of you under your doors yesterday.  
270 I don't know if you, yes, received that or not. Basically, the Sharlie-Grouse Neighborhood  
271 Association is to the south of Sylvan Beach, which is being exempt from this in my  
272 understanding, and that's simply what the Sharlie-Grouse Neighborhood Association is asking,  
273 to be exempt from this.

274

275 In the event that this goes through, they can opt in at a later date. But at this point they would  
276 like the Exhibit C to exclude them from this draft association.

277

278 **Governor Otter:** Any comments or questions for Jay?

279

280 **Secretary of State Ysursa:** Governor, I'd like to hear some comments from the Department on this  
281 issue; Ms. Langford or Mr. Follett.

282

283 **Ms. Langford:** Mr. Governor, Mr. Secretary, and Robert if you would come up please. So, in the back of  
284 the attachments, let's see, the very last attachment, I believe, is the reply back to Mr. Gustavsen  
285 as representative of the Sharlie-Grouse Neighborhood. And this is actually drafted by Robert  
286 Follett; we had talked quite extensively about this. So, the letter is dated the 8th of October and  
287 reiterates what was summarized in the actual memo as, "in the best interest of the endowment  
288 lands the State does not intend to further fragment the ownership with regard to the roads,  
289 easements, etc."

290

291 That same type of response that you see drafted to the Sharlie-Grouse Neighborhood is also  
292 being provided back to the Sylvan Beach Mutual Corporation as well. So, they are being treated  
293 consistently. If there are other transactions or interests, discussions that they would like to  
294 conduct, they could always do that with the association after we complete platting, recordation  
295 of the CC&R's, recordation of the bylaws, and creation of that larger association for the  
296 southwest corner of the lake. And Robert, did you want to clarify anything?

297

298 **Mr. Robert Follett:** No. Robert Follett with Deputy Attorney General. I believe Kate indicated really the  
299 import of the matter, and that is that neither the Sylvan Beach Association nor the Sharlie-  
300 Grouse Association would be deeded any separate roads; they will all go to the primary  
301 association. And the members of Sylvan Beach, and the members of Sharlie-Grouse, can  
302 become part of the entire membership of the association, and negotiate within the association,  
303 you know, how they would like.

304

305 But we believe that for the endowments and for the endowment land that we're retaining, and  
306 that we will obviously continue to have access across those roads for the same purposes to  
307 reach our property, that it is in the best interest of the endowments to transfer all of those  
308 roads and common areas as one body, so that we don't have fragmentation which might—and  
309 I'm not saying that anybody necessarily would, but we don't want the possibility of different  
310 associations trying to close off areas. We just thought it would be the cleanest thing, and the  
311 most equitable scenario, to have all of those roads and common areas handled by the  
312 association.

313

314 **Governor Otter:** Further comments or questions?

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316 **Attorney General Wasden:** Governor.

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318 **Governor Otter:** Mr. Wasden.

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**Attorney General Wasden:** I move that the Board approve the Department's recommendation, with the addition that the Department be directed to prepare a report to the Board presenting options for either leasing or disposing of the five lots adjacent to Syringa Park.

**Secretary of State Yursa:** Second.

**Governor Otter:** I'm sorry, would you restate that motion.

**Attorney General Wasden:** Sure. I move that the Board approve the Department's recommendation, with the addition that the Department be directed to prepare a report to the Board presenting options for either leasing or disposing of the five lots adjacent to Syringa Park.

**Governor Otter:** You've heard the motion's been made and seconded, is there further discussion? Being no further discussion, the question is shall the motion as made by the Attorney General be adopted by the Board? All those in favor signify by saying aye.

**All:** Aye.

**Governor Otter:** Opposed, nay. The ayes have it.

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**END OF THIS AGENDA ITEM**

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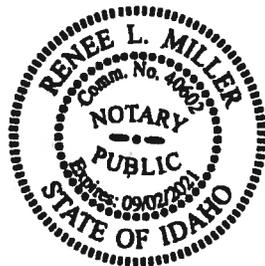
TRANSCRIBER'S CERTIFICATE

STATE OF IDAHO )  
 ) ss.  
COUNTY of ADA )

I, Renée Miller, a Notary Public in and for the State of Idaho, residing at Boise, County of Ada, State of Idaho, do hereby certify:

That the foregoing transcript of the proceedings relating to the matters of the *Southwest Payette Lake CC&Rs* for the State Board of Land Commissioners of the State of Idaho, recorded on October 15, 2013, was produced via audio recording and thereafter reduced to typewriting, proofed and verified for accuracy by me, and that the foregoing nine (9) pages contains a full, true and correct record of the oral conversations related to said matter to the best of my ability, given the speakers' enunciation and the quality of the audio recording itself.

I hereunto set my hand and seal this 20th day of March 2019.



A handwritten signature in cursive script that reads "Renée Miller".

Renée Miller  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires 9-2-2021

EXHIBIT 8 TO  
AFFIDAVIT OF COUNSEL IN SUPPORT OF  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

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RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Instrument # 381830  
 VALLEY COUNTY, CASCADE, IDAHO  
 11-14-2013 02:34:04 No. of Pages: 20  
 Recorded for : DEPARTMENT OF LANDS  
 DOUGLAS A. MILLER Fee: 0.00  
 Ex-Officio Recorder Deputy  
 Index to: RESTRICTIVE COVENANT



DECLARATION OF  
 COVENANTS, CONDITIONS, AND RESTRICTIONS

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

VALLEY COUNTY, IDAHO

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration"), is made on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by the State Board of Land Commissioners, by and through the Idaho Department of Lands (the "State Land Board"), with reference to the following facts:

A. The State Land Board is the owner of \_\_\_\_\_ residential Lots located at Payette Lake, Valley County, Idaho, known as AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES. The land encumbered by this Declaration is more particularly described as follows:

All land currently owned by the State Land Board, located within the Plats of AMENDED CEDAR KNOLL ACRES, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; AMENDED PINECREST ADDITION, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_; and SOUTHWEST PAYETTE COTTAGE SITES, according to the Plat filed the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Book "\_\_\_\_\_" of Plats, Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_, records of Valley County, Idaho. Said land is identified more specifically by subdivision name, block and lot in Exhibit "A".

Hereafter, the term "Owners" shall refer to the owners of the Lots bound by this Declaration together with the owners of such Lots which may hereafter be made subject to this Declaration by the deeded owners ("Pre-Existing Owners") of the Lots identified in Exhibit "B" and depicted on the Plats for purposes of identification ("Pre-Existing Lots"). The Pre-Existing Lots identified in Exhibit "B" are not currently owned by the State Land Board, and the Pre-Existing Owners have not yet agreed that Pre-Existing Lots which they own shall be subject to this Declaration. However, the Pre-Existing Owners may at any time subject their Pre-Existing Lots to this Declaration as provided in Section 2.3 below.

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 Payette Lakes Cottage Sites Owners Association, Inc., which Association will operate and maintain certain properties and facilities within the Plats and assume maintenance obligations by virtue of deeded ownership and an easement 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 and the State's Lessees as provided herein and in the Addendum hereto, their successors-in-interest and assigns, the 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. 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 Land Board and its Lessees.

1.2 Affirmative Vote of the Membership. The Affirmative Vote of a Majority of the Membership shall be achieved on any particular matter upon the vote of at least fifty-one percent (51%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Affirmative Vote of sixty-seven percent (67%) of the Membership shall be achieved on any particular matter upon the vote of at least sixty-seven percent (67%) of the votes of the Members who are present in person or by proxy at a properly scheduled Membership meeting at which a quorum is established. The Board shall have the right to submit any matter requiring Membership approval to the Membership by mailed ballot, in which case the approval of the matter shall require the specified percentage (i.e., 51% or 67%) of the total votes of the Membership.

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

1.4 Assessment. 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 Common Assessments, Special Assessments, Local Improvement

Assessments or Local Maintenance Assessments, as those terms are more specifically defined in the Bylaws.

1.5 Association. Association shall mean the Payette Lakes Cottage Sites Owners 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 as provided herein, and any successor-in-interest thereto.

1.6 Association Documents. Association Documents shall mean the various governing documents of the Association, including: (a) the Articles of Incorporation; (b) the Bylaws; (c) this Declaration; (d) all Rules and Regulations promulgated by the Board; and, (e) all amendments and supplements to any of the aforementioned documents.

1.7 Association Expenses. Association Expenses shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area, expenses incurred by the Association in meeting its obligations and in the administration of the Association, and any reasonable reserve for such purposes as determined by the Board. Association expenses may be levied and collected by the Board as Common Assessments, Special Assessments, Local Improvement Assessments or Local Maintenance Assessments.

1.8 Association Facilities. Association Facilities shall mean all property owned or leased by the Association or otherwise held or used by the Association, or which is under the Association's management or control by, through or under contractual arrangements, licenses or other arrangements, including property furnished by Declarant, real property or interests therein, improvements on real property, and personal property and equipment.

1.9 Benefitted Lots. Benefitted Lots shall mean groups of Lots which have like interests or needs, which Lots may already be grouped as a Neighborhood, which are so designated for the following purposes: (a) to determine, assess and budget Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) to determine, assess and budget Local Maintenance Assessments, as defined at Article 8 of the Bylaws; and/or, (c) to otherwise facilitate the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members.

1.10 Board or Board of Directors. The Board or Board of Directors shall be the Board of Directors of the Association, as it shall be constituted from time to time.

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

1.12 City. City shall mean the City of McCall.

1.13 City Code. City Code shall mean the McCall City Code.

1.14 Common Area. Common Area shall mean the property identified on the Plats as Common Area. Absent such designation, the term "Common Area" as used herein shall include but not necessarily be limited to all roads, easements, rights-of-way, and lake access lots which are shown on the Plats. Common Area shall also include additional property or property rights obtained by the Association in the future.

1.15 County. County shall mean Valley County, Idaho.

1.16 County Code. County Code shall mean the Valley County Land Use and Development Ordinance, as amended, superseded or repealed.

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

1.18 Lot. Lot shall include a platted parcel of land that is part of the Plats, other than Common Area, as well as all Pre-existing Lots which become subject to this Declaration as provided below in Article 2.

1.19 Member. Member shall mean a member of the Association, as further defined in Article 2. Every Owner of a Lot subject to this Declaration now or at a later time shall automatically be a Member of the Association, except where said Lot Owner is the State Land Board, in which case the Member shall be the Lessee of the Lot, if any, as provided in that certain Addendum being filed of record with this Declaration. Notwithstanding the foregoing, Pre-Existing Owners are not automatically Members, but may join voluntarily and may thereupon become a Member, as set forth in Section 2.3(c).

1.20 Mortgage. Mortgage shall mean a recorded mortgage, deed of trust, real estate contract, or other instrument creating a voluntary security interest in any Lot.

1.21 Mortgagee. Mortgagee shall mean a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, leasehold, or other holder of a perfected voluntary security interest in any Lot.

1.22 Neighborhood. Neighborhood shall mean a group of Lots designated by the Board as a separate Neighborhood for purposes of: (a) determining, assessing and budgeting Local Improvement Assessments, as defined at Article 8 of the Bylaws; (b) determining, assessing and budgeting Local Maintenance Assessments, as defined at Article 8 of the Bylaws; (c) electing Directors to the Board; (d) providing input and information to the Board with regard to proposed services, maintenance, improvements or other issues uniquely affecting the Neighborhood; and/or (e) otherwise facilitating the recognition of the group of Lots in furtherance of the purposes of this Declaration and the Bylaws. The Board may make such designation either of their own volition or in their discretion at the request of Members. The initially designated Neighborhoods are identified on the attached Exhibit "C".

1.23 Owner or Owners. Owner or Owners shall include 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 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."

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

1.25 Plats. Plats shall refer to the recorded plats for AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION and SOUTHWEST PAYETTE COTTAGE SITES, and any amendments thereto.

1.26 Pre-Existing Owner or Pre-Existing Owners. Pre-Existing Owner or Pre-Existing Owners shall mean owners of Pre-Existing Lots.

1.27 Pre-Existing Lots. Pre-Existing Lots shall mean the Lots identified in attached Exhibit "B".

1.28 Project Documents. Project Documents shall mean the Plats and the Association Documents.

1.29 Property or Project. Property or Project shall mean all Lots subject to this Declaration as described in Exhibit A to this Declaration, and all common areas, easements and other Lots depicted on the Plats, together with all buildings, improvements and structures thereon.

1.30 State Land Board. The State Land Board shall mean the State Land Board, acting by and through the Idaho Department of Lands, collectively.

## **ARTICLE 2. ASSOCIATION MEMBERSHIP**

2.1 Organization of Association. The Association shall be incorporated under the name of Payette Lakes Cottage Sites Owners 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.

(a) Classes. There shall be two classes of membership in the Association, which shall consist of the following:

(i) Current Owners. The owners of the Lots which are depicted in the Plats, excluding Common Area and Lessees of Lots as provided in the attached Addendum; and

(ii) Pre-existing Owners-Permanent Memberships. Pre-existing Owners who elect to join the Association and subject their Lots to this Declaration and the Association Documents.

(iii) Pre-Existing Owners-Provisional Membership. Pre-Existing Owners who elect to join the Association as provided below.

(b) Automatic Membership. The Owner of a Lot, except a Pre-Existing Owner, 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association. The Lessees of Lots shall be considered Owners as provided in the Addendum.

(c) Voluntary Membership.

(i) Pre-existing Owners-Permanent Memberships. A Pre-Existing Owner may voluntarily become a Permanent Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter be subject to all terms and conditions of this Declaration, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. Once a Pre-Existing Owner submits its Pre-Existing Lot(s) to this Declaration, then the Pre-Existing Owner shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(ii) Pre-existing Owners-Provisional Memberships. A Pre-existing Owner may voluntarily become a Provisional Member of the Association provided that it must contemporaneously subject its Pre-Existing Lot to this Declaration by the recordation of a statement (the "Statement") signed by any and all then current owners of said Pre-Existing Lot(s), sworn to, notarized, and recorded in the office of the Valley County recorder, legally describing the Pre-Existing Lot(s), and stating and agreeing that said Lot(s) shall forever thereafter

be subject to all terms and conditions of this Declaration, subject to an option to withdraw as a Member, as described below, and that such action is in the interest of their Pre-Existing Lot(s), and that they do so of their own free will. The Association shall provide the Statement for the Pre-existing Owner's use as aforesaid. A Pre-existing Owner desiring to utilize this Provisional Membership shall notify the Association of such election not later than one (1) year after the date on which the Declaration is filed of record with Valley County, Idaho. The failure to timely do so shall result in a waiver of the right to utilize the Provisional Membership. Once a Provisional Member submits its Pre-Existing Lot(s) to this Declaration, then the Provisional Member shall, for all purposes herein, thereafter be referred to, and treated as, an "Owner" and Member. The option to withdraw as a Member may be exercised at any time within five (5) years of the date of the Statement upon delivery of written notice to the Association in form provided for this purpose by the Association (the "Notice") of the exercise of the option to withdraw. Such Notice shall be delivered not less than one hundred eighty (180) days prior to the date of withdrawal. The Association shall then execute the Notice and cause it to be filed of record with Valley County. In the event the Provisional Member does not elect to exercise its option to withdraw as provided herein, then it shall be deemed a Permanent Member. The aforesaid option to withdraw shall be personal to the Provisional Member, and may not be exercised by any other person, entity, assignee or successor-in-interest. A Pre-Existing Owner who becomes a Member 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 and its successor-in-interest shall become a Member. Membership shall be in accordance with the Articles and the Bylaws of the Association.

(d) Rights and Duties of Memberships. The two above-described classes of Memberships shall equally enjoy the rights and privileges and be subject to the duties and obligations afforded by this Declaration and the Association Documents.

**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 or used except for single-family residential purposes by the Owner, its family, and its guests and invitees, or by a single-family tenant. No more than one (1) Single-Family Dwelling and such associated accessory structures as are allowed by the County Code or City Code, whichever may be applicable to the Lot, shall be allowed on any Lot. All docks placed on or appurtenant to a Lot shall be in accordance with applicable laws. An Owner may not assign or convey a right of use of a dock to anyone other than the dock's permitted owners of record.

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 and the applicable County Code or City Code, meet applicable snow load requirements for Property (i.e., under the applicable County Code, City Code or building codes), and are installed on a permanent foundation shall be allowed.

3.4 Permits; Construction Standards. Each Owner shall comply with all applicable federal, state, and local laws, rules, codes 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 the County Code or City Code which is applicable to the Lot. Notwithstanding the foregoing, any structures or land uses which exist at the time of the recordation of this Declaration and which were approved by the State Land Board or which were in compliance with all applicable Codes when constructed are permitted to continue and shall be subject to the applicable code provisions for non-conforming uses or non-conforming structures.

3.5 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 in conformity with the International Urban-Wildlands Interface Fire Code.

3.6 Protection of Forest Resources. Other forest resources shall be protected, such as archeological resources, sensitive plant and animal species, water quality and fish habitat, as required by applicable federal, state, and local laws, rules, codes and regulations.

3.7 Fences. Fences on Lots shall comply with the provisions of the applicable County Code or City Code.

3.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance, as defined by Idaho law. All exterior heating and cooling devices must be screened from the view of neighboring properties and all reasonable measures must be taken by the Owners of such devices to mitigate noise to adjoining properties. Without waiving an Owner's rights to seek relief under Idaho law, for purposes of a demand that the Association take action, the Association shall have sole discretion to determine whether the subject activity constitutes a nuisance under the terms of this Section.

3.9 Household Pets. No animals, of any kind, except for household pets shall be raised, bred, or kept on any portion of the Property. Pets must be kept within the boundaries of the Lot unless accompanied by and under the positive control of the Owner. Consistent and/or chronic barking by dogs, or threatening or aggressive behavior by an animal, shall be considered a nuisance. The Board may create such additional Rules and Regulations with regard to household pets as it deems reasonable appropriate.

3.10 Preexisting Structures. Any structure or improvement which is in place as of the date of recordation of this Declaration and which is not in conformity with any of the provisions of Article 3.2, 3.3, 3.4 or 3.7 above may be maintained and repaired in its current condition. In the event that such structure or improvement is replaced, then the replacement shall conform to all provisions of this Declaration and existing zoning ordinances, as amended.

**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 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 and such Assessment may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. No Owner of a Lot may exempt himself or herself from liability for Assessments by waiver of the use or enjoyment of any of the Common Area (if any) or any other part of the Property, 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. However, neither sale nor transfer pursuant to mortgage foreclosure or by deed in lieu of foreclosure nor extinguishment, as aforesaid, shall affect or extinguish the personal liability of the Owner for unpaid Assessments.

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 which are unpaid at 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 which are then owing to 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. 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 or construction of improvements thereon, 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 non-judicial (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 or consent in writing to 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 Owner whose title is derived through foreclosure or otherwise.

**ARTICLE 6.**  
**COMMON AREA AND OWNERS' RIGHTS**

6.1 Common Area: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The vested property rights of Pre-existing Owners, the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of any recreational facilities which may be located within the Common Area; and,
- (d) The vested property rights of Pre-existing Owners, the right of the Board to suspend the right of an Owner to use any Common Area or any recreational facilities located within the Common Area (i) for any period during which any Assessment charged against such Owners Lot remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association, after notice and a hearing as provided in the Bylaws.

6.2 Use by Others. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees ("Sub-owners"), subject to reasonable Board regulation. All such Sub-Owners shall be subject to the provisions of Article 3 of this Declaration and to all applicable Rules and Regulations which are promulgated by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot, unless provided to the contrary in the Lease. An Owner shall be responsible and liable for the actions of its Sub-owners and for any violations by such Sub-owners of the terms of this Declaration and the Rules and Regulations which are promulgated by the Board.

6.3 Owners' Rights and Obligations Appurtenant. All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in the Association under this Declaration are hereby declared to be and shall be appurtenant to the title to the Lot owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Lot. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Lot shall be deemed to

constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.4 Limitation on Rights. Neither the Association nor any Owner shall have the right to grant any rights of use of the Common Area to the owners of property located outside of the Property or to members of the general public.

**ARTICLE 7.**  
**DURATION AND AMENDMENT**

7.1 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 this Article 7.

7.2 Amendment. Amendments to this Declaration may be proposed by the Board. Notice of the subject matter of any 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. The amendment shall be adopted upon the Affirmative Vote of sixty-seven percent (67%) of the Members.

7.3 Approval of Land Board. Notwithstanding the foregoing, the following special voting provisions shall apply: the State Land Board 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.

7.4 Certificate. 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 8.**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

8.1 Annexation. The Association may subject additional property which is located within the exterior boundaries of the Plats to the provisions of this Declaration with the consent of the owner of such property and the Affirmative Vote of a Majority of the Membership. Such annexation shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the

Association, and by the owner of the annexed property. Any such annexation shall be effective upon recording unless otherwise provided therein.

8.2 Withdrawal. The Association may withdraw property from the provisions of this Declaration with the consent of the Owner of such property and the Affirmative Vote of a Majority of the Membership. Such withdrawal shall be accomplished by recording a Supplemental Declaration with the Office of Recorder of the County, describing the property being withdrawn.

#### ARTICLE 9. GENERAL PROVISIONS

9.1 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.

9.2 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 Plats, the Addendum, this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association.

9.3 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.

9.4 Effect of Provisions of Declaration. Each provision of this Declaration and the Bylaws, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration and the Bylaws, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration and the Bylaws: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner; (c) shall, as a personal covenant, be binding on such Owner and such Owner's respective heirs, personal representatives, successors and assigns; and, (d) shall be deemed an equitable servitude, running, in each case, as a burden with and upon the title to all Lots within the Property.

9.5 Enforcement and Remedies.

(a) In General. Each provision of this Declaration shall be enforceable by any Owner who has made written demand on the Association to enforce such provision and thirty (30) days have lapsed without appropriate action having been

taken, by a proceeding for a prohibitive or mandatory injunction. In addition to any other remedy available at law or in any of the Association Documents, each provision of this Declaration with respect to an Owner or property of an Owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction and/or by a suit or action to recover damages, and/or, in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by exclusion of such Owner and such Owner's Lessees, Sub-owners and Guests from use of any Common Area or Association facility. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including injunction bond premiums, and its attorneys' fees incurred, including fees incurred on appeal.

(b) Fines. In addition to the provisions of Section 9.5(a), the Board shall be entitled to impose fines and penalties for violations of this Declaration in amounts to be provided in the Rules and Regulations. Fines and penalties may be assessed only against a Member of Association, and only if the violator is the Member or a member of the Member's family or a Sub-owner, guest, invitee, lessee, contractor, subcontractor, employee or agent of the Member. Fines and penalties may be increased in the case of a continuing violation, where the Member has failed to abate the violation within the time allowed therefore by the Board in written notice to the Member. In the case of a single incident, the fine or penalty may not be assessed unless the Member has received at least one prior written notice from the Board that the violation may subject the Member to fine(s). Fines and penalties imposed pursuant to this Section may be collected as an assessment as provided in the Bylaws and this Declaration. Non-payment of assessments shall not subject a Member to fines; rather, the remedy therefore shall be as provided in the Bylaws and as may otherwise be provided in this Declaration.

9.6 Limited Liability. Neither the Board, nor any member, agent or employee of the Board, nor the Association, nor State Land Board, Director, agent or employee of the Idaho Department of Lands, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

9.7 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

9.8 Waiver. Failure by the Association to enforce any provisions of the Association Documents shall not operate as a waiver of any such provision or of the Association's right to enforce such provision or any other provision of this Declaration or the Association Documents.

9.9 Notice of Sale. Any Owner, with the exception of Lessees, desiring to sell or otherwise transfer title to his or her Lot shall give the Association at least seven (7)

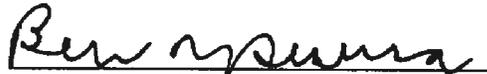
days' prior written notice of the name and address of the purchaser or transferee, the name of the closing agent for such transfer and the closing date of such transfer.

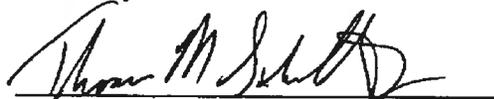
IN WITNESS WHEREOF, the State Land Board has caused this Declaration to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the Director, Idaho Department of Lands.

STATE BOARD OF LAND COMMISSIONERS

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

Countersigned:

  
Secretary of State

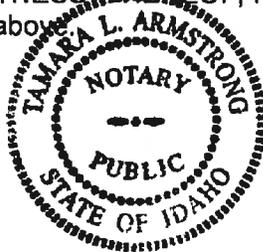
  
Director, Idaho Department of Lands

\*\*\*\*\*

THE STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

On this 13<sup>th</sup> day of November, 2012, 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 STATE OF IDAHO  
Residing at Boise, Idaho  
My Commission expires: 12/26/18

**EXHIBIT A**

(Listing of replatted Endowment lands)

Address #	Street Name	Subdivision	Block	Lot
995	Cedar Crest DR	Amended Cedar Knoll Acres	1	1
2269	Lovers LN	Amended Cedar Knoll Acres	1	2
2272	Warren Wagon RD	Amended Cedar Knoll Acres	1	3
2261	Lovers LN	Amended Cedar Knoll Acres	1	4
2280	Lovers LN	Amended Cedar Knoll Acres	2	1
2276	Lovers LN	Amended Cedar Knoll Acres	2	2
2270	Lovers LN	Amended Cedar Knoll Acres	2	3
2269	Tamarack RD	Amended Cedar Knoll Acres	2	4
990	Pinehaven PL	Amended Cedar Knoll Acres	3	1
2255	Tamarack RD	Amended Cedar Knoll Acres	3	2
2261	Tamarack RD	Amended Cedar Knoll Acres	3	3
2267	Payette DR	Amended Cedar Knoll Acres	4	1
2258	Wagon Wheel RD	Amended Cedar Knoll Acres	5	1
975	Pinehaven PL	Amended Cedar Knoll Acres	5	2
998	Spruce Way	Amended Cedar Knoll Acres	5	3
980	Spruce Way	Amended Cedar Knoll Acres	5	4
2245	Tamarack RD	Amended Cedar Knoll Acres	5	5
955	Pinehaven PL	Amended Cedar Knoll Acres	6	1
2251	Payette DR	Amended Cedar Knoll Acres	6	2
2245	Payette DR	Amended Cedar Knoll Acres	6	3
2248	Warren Wagon RD	Amended Cedar Knoll Acres	7	1
2225	Payette DR	Amended Cedar Knoll Acres	7	2
2235	Tamarack RD	Amended Cedar Knoll Acres	7	2
2239	Tamarack Way	Amended Cedar Knoll Acres	7	3
2242	Warren Wagon RD	Amended Cedar Knoll Acres	7	4
950	Chipmunk TR	Amended Cedar Knoll Acres	8	1
2230	Tamarack RD	Amended Cedar Knoll Acres	9	1

Road Lot

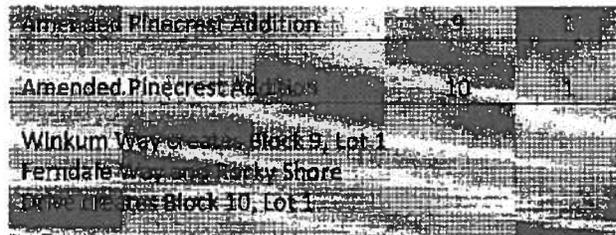
Amended Cedar Knoll Acres	10	1
Lovers Lane, Pine Haven Place, Tamarack Road and Spruce Way		

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
 AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

Address #	Street Name	New Subdivision	New Block	New Lot
997	Happy Day Way	Amended Pinecrest Addition	1	1
2088	Warren Wagon RD	Amended Pinecrest Addition	1	2
2078	Warren Wagon RD	Amended Pinecrest Addition	1	3
996	Rocky Shore DR	Amended Pinecrest Addition	1	4
991	Happy Day Way	Amended Pinecrest Addition	1	5
990	Rocky Shore DR	Amended Pinecrest Addition	1	6
2079	Warren Wagon RD	Amended Pinecrest Addition	2	1
2073	Warren Wagon RD	Amended Pinecrest Addition	2	2
2045	Warren Wagon RD	Amended Pinecrest Addition	3	1
2037	Warren Wagon RD	Amended Pinecrest Addition	3	2
2025	Warren Wagon RD	Amended Pinecrest Addition	3	3
2019	Warren Wagon RD	Amended Pinecrest Addition	3	4
2005	Warren Wagon RD	Amended Pinecrest Addition	4	1
2060	Warren Wagon RD	Amended Pinecrest Addition	5	1
2050	Warren Wagon RD	Amended Pinecrest Addition	5	2
2040	Warren Wagon RD	Amended Pinecrest Addition	5	3
2043	Ferndale Way	Amended Pinecrest Addition	5	4
2047	Ferndale Way	Amended Pinecrest Addition	5	5
2053	Ferndale Way	Amended Pinecrest Addition	5	6
2063	Ferndale Way	Amended Pinecrest Addition	5	7
2067	Ferndale Way	Amended Pinecrest Addition	5	8
991	Rocky Shore DR	Amended Pinecrest Addition	5	9
2072	Ferndale Way	Amended Pinecrest Addition	6	1
2066	Ferndale Way	Amended Pinecrest Addition	6	2
2052	Ferndale Way	Amended Pinecrest Addition	7	1
2046	Ferndale Way	Amended Pinecrest Addition	7	2
2042	Ferndale Way	Amended Pinecrest Addition	7	3
2035	Payette DR	Amended Pinecrest Addition	7	4
2057	Warren Wagon RD	Amended Pinecrest Addition	8	1

Road Lot

Road Lot



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
 AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

Address #	Street Name	Subdivision Name	Block	Sites
993	Grouse Way	SW Payette Cottage Sites	1	1
2402	Warren Wagon RD	SW Payette Cottage Sites	1	2
Community Beach Common Area		SW Payette Cottage Sites	2	1
2336	Warren Wagon RD	SW Payette Cottage Sites	3	1
Warren Wagon Common Area		SW Payette Cottage Sites	3	1
Wagon Wheel Bay Common Area		SW Payette Cottage Sites	4	1
991	Wagon Wheel RD	SW Payette Cottage Sites	5	1
965	Wagon Wheel RD	SW Payette Cottage Sites	6	1
Wagon Wheel Point Common Area		SW Payette Cottage Sites	7	1
Pine Haven Common Area		SW Payette Cottage Sites	8	1
2244	Payette DR	SW Payette Cottage Sites	9	1
2238	Payette DR	SW Payette Cottage Sites	10	1
2234	Payette DR	SW Payette Cottage Sites	10	2
2230	Payette DR	SW Payette Cottage Sites	10	3
Chipmunk Trail Common Area Lot 47 and original Chipmunk Trail access		SW Payette Cottage Sites	11	1
2210	Payette DR	SW Payette Cottage Sites	11	2
2206	Payette DR	SW Payette Cottage Sites	11	3
997	Chipmunk TR	SW Payette Cottage Sites	12	1
2212	Warren Wagon RD	SW Payette Cottage Sites	12	2
2209	Payette DR	SW Payette Cottage Sites	12	3
2205	Payette DR	SW Payette Cottage Sites	12	4
Squarrell Lane Common Area		SW Payette Cottage Sites	13	1
997	Squirrell LN	SW Payette Cottage Sites	14	1
2168	Payette DR	SW Payette Cottage Sites	15	1
2162	Payette DR	SW Payette Cottage Sites	15	2
2152	Payette DR	SW Payette Cottage Sites	15	3
Payette Drive Common Area		SW Payette Cottage Sites	15	4
2140	Payette DR	SW Payette Cottage Sites	15	5
2130	Payette DR	SW Payette Cottage Sites	15	6
2142	Warren Wagon RD	SW Payette Cottage Sites	16	1
2134	Warren Wagon RD	SW Payette Cottage Sites	16	2
2113	Payette DR	SW Payette Cottage Sites	17	1
2108	Payette DR	SW Payette Cottage Sites	18	1
2104	Payette DR	SW Payette Cottage Sites	18	2
996	Happy Day Way	SW Payette Cottage Sites	19	1
2084	Payette DR	SW Payette Cottage Sites	20	1
978	Rocky Shore DR	SW Payette Cottage Sites	20	2
Picnic Point Common Area (Rocky Shore Drive)		SW Payette Cottage Sites	20	3

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

Address #	Street Name	Subdivision Name	Block	Lot
2074	Payette DR	SW Payette Cottage Sites	21	1
		SW Payette Cottage Sites	22	1
2056	Payette DR	SW Payette Cottage Sites	22	2
2034	Payette DR	SW Payette Cottage Sites	23	1
980	Syringa Way	SW Payette Cottage Sites	24	1
	Syringa Way Common Area	SW Payette Cottage Sites	24	2
1996	Payette DR	SW Payette Cottage Sites	24	3
1982	Warren Wagon RD	SW Payette Cottage Sites	24	4
1958	Warren Wagon RD	SW Payette Cottage Sites	25	1
1952	Warren Wagon RD	SW Payette Cottage Sites	25	2
1941	Warren Wagon RD	SW Payette Cottage Sites	26	1
1911	Warren Wagon RD	SW Payette Cottage Sites	27	1
1907	Warren Wagon RD	SW Payette Cottage Sites	27	2
1903	Warren Wagon RD	SW Payette Cottage Sites	27	3

Road Lot

SW Payette Cottage Sites 28 1

Road Lot

SW Payette Cottage Sites 29 1

Road Lot

SW Payette Cottage Sites 30 1

Road Lot

SW Payette Cottage Sites 31 1

Sylvan Creek Road and Sharpe Lane create Block 28 Lot 1  
 Sharpe Way, Sharpe Lane, Community Beach Road and  
 Goose Lane create Block 29 Lot 1  
 Squirrel Lance, Wagon Wheel Bay Road, Happy Day Way,  
 Cedar Crest Drive, Payette Drive, 30' Access Road and  
 Chipmunk Tail Road create Block 30 Lot 1  
 Payette Drive and Syringa way create Block 31 Lot 1

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
 AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

**EXHIBIT B**

(Listing of deeded lots not included in replatting activity)

<b>DEEDED LOTS NOT INCLUDED IN REPLATTING</b>		
<b>Subdivision</b>	<b>Block</b>	<b>Lot</b>
Cedar Knoll Acres	1	2
Cedar Knoll Acres	1	4
Cedar Knoll Acres	1	6
Cedar Knoll Acres	1	7
Cedar Knoll Acres	1	8
Cedar Knoll Acres	2	2
Cedar Knoll Acres	3	7
Cedar Knoll Acres	5	4
Cedar Knoll Acres	6	2
Cedar Knoll Acres	6	6
Cedar Knoll Acres	6	8
Cedar Knoll Acres	7	1
Cedar Knoll Acres	7	2
Cedar Knoll Acres	7	4
Cedar Knoll Acres	7	5

<b>DEEDED LOTS NOT INCLUDED IN REPLATTING</b>		
<b>Subdivision</b>	<b>Block</b>	<b>Lot</b>
Pinecrest Addition	2	1
Pinecrest Addition	4	2
Pinecrest Addition	3	5
Pinecrest Addition	3	8
Pinecrest Addition	5	2
Pinecrest Addition	6	2
Pinecrest Addition	6	5
Pinecrest Addition	6	6

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
 AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

DEEDED LOTS NOT INCLUDED IN REPLATTING	
Subdivision Name	Lot
Payette Cottage Sites	1
Payette Cottage Sites	2
Payette Cottage Sites	3
Payette Cottage Sites	4
Payette Cottage Sites	5
Payette Cottage Sites	6
Payette Cottage Sites	7
Payette Cottage Sites	10
Payette Cottage Sites	11
Payette Cottage Sites	12
Payette Cottage Sites	21
Payette Cottage Sites	22
Payette Cottage Sites	23
Payette Cottage Sites	24
Payette Cottage Sites	27
Payette Cottage Sites	28
Payette Cottage Sites	30
Payette Cottage Sites	31
Payette Cottage Sites	34
Payette Cottage Sites	35
Payette Cottage Sites	41
Payette Cottage Sites	42
Payette Cottage Sites	43
Payette Cottage Sites	44
Payette Cottage Sites	48
Payette Cottage Sites	49
Payette Cottage Sites	50
Payette Cottage Sites	54
Payette Cottage Sites	55
Payette Cottage Sites	56
Payette Cottage Sites	57
Payette Cottage Sites	58
Payette Cottage Sites	59
Payette Cottage Sites	60
Payette Cottage Sites	61
Payette Cottage Sites	62
Payette Cottage Sites	63
Payette Cottage Sites	64
Payette Cottage Sites	65
Payette Cottage Sites	66

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
 AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

<b>DEEDED LOTS NOT INCLUDED IN REPLATTING</b>	
<b>Subdivision Name</b>	<b>Lot</b>
Payette Cottage Sites	67
Payette Cottage Sites	70
Payette Cottage Sites	71
Payette Cottage Sites	73
Payette Cottage Sites	74
Payette Cottage Sites	75
Payette Cottage Sites	76
Payette Cottage Sites	103
Payette Cottage Sites	104
Payette Cottage Sites	106
Payette Cottage Sites	141
Payette Cottage Sites	142
Payette Cottage Sites	143
Payette Cottage Sites	144
Payette Cottage Sites	145
Payette Cottage Sites	146
Payette Cottage Sites	147
Payette Cottage Sites	148
Payette Cottage Sites	149
Payette Cottage Sites	150
Payette Cottage Sites	151
Payette Cottage Sites	152
Payette Cottage Sites	153
Payette Cottage Sites	155
Payette Cottage Sites	156
Payette Cottage Sites	157
Payette Cottage Sites	158
Payette Cottage Sites	159
Payette Cottage Sites	160
Payette Cottage Sites	163
Payette Cottage Sites	164
Payette Cottage Sites	171
Payette Cottage Sites	172
Payette Cottage Sites	173
Payette Cottage Sites	174
Payette Cottage Sites	175
Payette Cottage Sites	176
Payette Cottage Sites	177
Payette Cottage Sites	178
Payette Cottage Sites	187
Payette Cottage Sites	201

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
 AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

<b>DEEDED LOTS NOT INCLUDED IN REPLATTING</b>	
<b>Subdivision Name</b>	<b>Lot</b>
Payette Cottage Sites	202
Payette Cottage Sites	203
Payette Cottage Sites	204
Payette Cottage Sites	205
Payette Cottage Sites	206
Payette Cottage Sites	207
Payette Cottage Sites	208
Payette Cottage Sites	209
Payette Cottage Sites	210
Payette Cottage Sites	211
Payette Cottage Sites	212
Payette Cottage Sites	213
Payette Cottage Sites	214
Payette Cottage Sites	215
Payette Cottage Sites	216
Payette Cottage Sites	217
Payette Cottage Sites	218
Payette Cottage Sites	219
Payette Cottage Sites	220
Payette Cottage Sites	221
Payette Cottage Sites	222

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit B  
AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

**EXHIBIT C**  
(Initial Neighborhoods)

The Sylvan Beach Mutual Corporation will remain in place as an association separate and distinct from the Association. The boundaries of the property which is deemed to be included in the said Mutual Corporation shall be the external boundaries of the lots who participate in the Sylvan Beach Mutual Corporation and said area shall be generally described as follows: Originating at the northern boundary of the Amended Payette Lake Cottage Sites plat and extending south along the eastern boundary of Warren Wagon Road to the southwest corner of Lot 164, thence easterly along the southern boundary of said Lot 164 to the southeast corner of said Lot 164, thence northerly along the eastern boundary of said Lot 164 to the northeast corner of said lot, thence easterly along the northern boundary of Sharlie Lane to the northeast corner of Sharlie Lane, thence southerly to the southwest corner of lot 178, thence easterly to the Lake along the southern boundary of said Lot 178.

The following six (6) Neighborhoods in the platted subdivisions will be initially created:

1. The Wagon Wheel Bay Neighborhood: Running from the above-described southern boundary of the Sylvan Beach Mutual Corporation (which would be the northern boundary of the Wagon Wheel Bay Neighborhood) to a southern boundary described as follows: From Warren Wagon Road easterly along the south boundary of Cedar Crest Drive, to Payette Drive, thence northerly along the east boundary of Payette Drive, thence easterly to the Lake along the common boundary of Lots 64 and 65, Amended Payette Lake Cottage Sites.
2. The Pine Haven Neighborhood: Running from the southern boundary of the Wagon Wheel Bay Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Pine Haven Place, thence easterly extending to the Lake across Payette Drive and along the northern boundary of Lot 57, Amended Payette Lake Cottage Sites.
3. The Chipmunk Trail Neighborhood: Running from the southern boundary of the Pine Haven Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 4, Bl. 12, Southwest Payette Cottage Sites, thence easterly extending across Payette Drive and to the Lake along the southern boundary of Lot 3, Bl. 11.
4. The Squirrel Lane Neighborhood: Running from the southern boundary of the Chipmunk Trail Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Lot 1, Bl. 1, Amended

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS – Exhibit C  
AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND SOUTHWEST PAYETTE COTTAGE SITES

Pinecrest Addition, thence southerly along the west boundary of Lot 5, Bl. 1, thence easterly along the southern boundary of Lot 5, Bl. 1, extending across Payette Drive, thence northerly along the east boundary of Payette Drive to the common boundary of Lots 30 and 31, thence easterly along said common boundary to the Lake.

5. The Picnic Point Neighborhood: Running from the southern boundary of the Squirrel Lane Neighborhood (which would be the northern boundary of this Neighborhood) to a southern boundary line described as follows: From Warren Wagon Road easterly along the southern boundary of Wild Rose Street, thence across Payette Drive to the eastern boundary of Payette Drive, thence northerly along the said eastern boundary of Payette Drive to the South boundary of Lot 1, Block 23, Southwest Payette Cottage Sites, thence easterly along said southern boundary of Lot 1, Block 23 to Payette Lake; also including the Lots on the west side of Warren Wagon Road.
6. The Wild Rose Neighborhood: Running from the southern boundary of the Picnic Point Neighborhood (which would be the northern boundary of this Neighborhood) to the southern boundary of the platted properties, excluding the property identified as "State Subdivision-Future Plat" on the State Subdivision – Southwest Payette Cottage Sites Plat.

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
AMENDED CEDAR KNOLL ACRES, AMENDED PINECREST ADDITION AND  
SOUTHWEST PAYETTE COTTAGE SITES**

**VALLEY COUNTY, IDAHO**

**TABLE OF CONTENTS**

ARTICLE 1. DEFINITIONS .....	2
1.1 Addendum .....	2
1.2 Affirmative Vote of the Membership .....	2
1.3 Articles .....	2
1.4 Assessment .....	2
1.5 Association .....	3
1.6 Association Documents .....	3
1.7 Association Expenses .....	3
1.8 Association Facilities .....	3
1.9 Benefitted Lots .....	3
1.10 Board or Board of Directors .....	3
1.11 Bylaws .....	3
1.12 City .....	3
1.13 City Code .....	3
1.14 Common Area .....	4
1.15 County .....	4
1.16 County Code .....	4
1.17 Declaration .....	4
1.18 Lot .....	4
1.19 Member .....	4
1.20 Mortgage .....	4
1.21 Mortgagee .....	4
1.22 Neighborhood .....	4
1.23 Owner or Owners .....	4
1.24 Person .....	5
1.25 Plats .....	5
1.26 Pre-Existing Owner or Pre-Existing Owners .....	5
1.27 Pre-Existing Lots .....	5
1.28 Project Documents .....	5
1.29 Property or Project .....	5
1.30 State Land Board .....	5
ARTICLE 2. ASSOCIATION MEMBERSHIP .....	5
2.1 Organization of Association .....	5
2.2 Duties and Powers .....	5
2.3 Membership .....	5
(a) One Class .....	5
(b) Automatic Membership .....	6

(c) Voluntary Membership..... 6

ARTICLE 3. CONSTRUCTION STANDARDS AND USE RESTRICTIONS ..... 7

    3.1 Single-Family Residential Use..... 7

    3.2 Mobile Homes..... 8

    3.3 Manufactured or Modular Homes ..... 8

    3.4 Permits; Construction Standards ..... 8

    3.5 Fire Hazards ..... 8

    3.6 Protection of Forest Resources ..... 8

    3.7 Fences..... 8

    3.8 No Noxious or Offensive Activity..... 8

    3.9 Household Pets ..... 8

ARTICLE 4. ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS ..... 9

    4.1 Creation of the Lien and Personal Obligation of Assessments ..... 9

    4.2 Transfer of Lot by Sale or Foreclosure ..... 9

ARTICLE 5. RIGHTS OF MORTGAGEES..... 10

    5.1 No Impairment..... 10

    5.2 Subordination ..... 10

    5.3 Amendment of Declaration ..... 10

    5.4 Mortgagee Protection Clause ..... 11

ARTICLE 6. COMMON AREA AND OWNERS' RIGHTS ..... 11

    6.1 Common Area ..... 11

    6.2 Use by Others..... 11

    6.3 Owners' Rights and Obligations Appurtenant ..... 11

ARTICLE 7. DURATION AND AMENDMENT ..... 12

    7.1 Duration ..... 12

    7.2 Amendment ..... 12

    7.3 Approval of Director..... 12

    7.4 Certificate ..... 12

ARTICLE 8. ANNEXATION AND WITHDRAWAL OF PROPERTY ..... 12

    8.1 Annexation..... 12

    8.2 Withdrawal..... 13

ARTICLE 9. GENERAL PROVISIONS ..... 13

    9.1 Invalidity of Any Provision..... 13

    9.2 Conflict of Project Documents ..... 13

    9.3 Addendum ..... 13

    9.4 Effect of Provisions of Declaration..... 13

    9.5 Enforcement and Remedies ..... 13

        (a) In General..... 13

        (b) Fines..... 14

    9.5 Limited Liability ..... 14

    9.6 Successors and Assigns..... 14

    9.7 Waiver ..... 14

    9.8 Notice of Sale ..... 14

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

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**VALLEY COUNTY, IDAHO**