

SANDCREEK PONDEROSA SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR PHASES I AND II OF THE SANDCREEK PONDEROSA SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS:

That Paul Hopperdietzel (hereinafter referred to as OWNER) being the Owner of the following described real property situated in Fremont County, State of Idaho, which is more particularly described as follows, to-wit:

A PARCEL OF LAND SITUATED IN FREMONT COUNTY, STATE OF IDAHO, TOWNSHIP 10 NORTH, RANGE 41 EAST OF THE BOISE MERIDIAN, SECTIONS 34 AND 35. MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 35, T10N, R41E, THENCE N00°07'01"W FOR A DISTANCE OF 2665.99 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4NW1/4) OF SECTION 35, T10N, R41E. THENCE N00°16'30"W FOR A DISTANCE OF 1319.62 FEET TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4NW1/4) OF SECTION 35, T10N, R41E. THENCE N89°49'02"W FOR A DISTANCE OF 1322.99 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4NW1/4) OF SECTION 35, T10N, R41E. THENCE S89°51'59"W FOR A DISTANCE OF 1327.10 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE1/4NE1/4) OF SECTION 34, T10N, R41E. THENCE S00°12'09"E FOR A DISTANCE OF 1316.96 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE1/4NE1/4) OF SECTION 34, T10N, R41E. THENCE S00°01'56"E FOR A DISTANCE OF 2664.96 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) OF SECTION 34, T10N, R41E. THENCE S89°50'40"E FOR A DISTANCE OF 1015.30 FEET TO THE MEANDER CORNER BETWEEN SECTION 34, T10N, R41E, AND SECTION 3, T9N, R41E, SAID POINT BEING AN EXISTING 3" BLM BRASS CAP. THENCE S89°59'36"E FOR A DISTANCE OF 313.47 FEET TO THE SOUTHWEST CORNER OF SECTION 35, T10N R41E, B.M., SAID POINT FALLING IN THE UPPER ARCADIA RESERVOIR. THENCE S89°59'36"E FOR A DISTANCE OF 553.53 FEET TO THE MEANDER CORNER BETWEEN SECTION 35, T10N, R41E AND SECTION 2, T9N, R41E, SAID POINT BEING AN EXISTING 3" BLM BRASS CAP. THENCE S89°51'19"E FOR A DISTANCE OF 773.40 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 242.7 ACRES MORE OR LESS.

wishes to protect his interest and that of subsequent lot owners and homeowners on said premises, and in order to insure the uniform and desirable use, occupancy, and improvements on said real property, do hereby impress the above-described real property with the following covenants and restrictions:

29-21158-L
ALLIANCE TITLE & ESCROW
P.O. BOX 732
REXBURG, ID 83440

**ARTICLE I
DEFINITIONS**

Microfilm No. 449537
29 Day Dec 1997
At 5:58 O'clock PM
MICKIE FUNKE
FREMONT CO. RECORDER
Fee \$ 63- Deputy
Recorded At Request of
ALLIANCE TITLE & ESCROW

1.1 ASSOCIATION

"Association" shall mean and refer to Sandcreek Ponderosa Home Owners Association, it's successors and assigns.

1.2 COMMON AREA

"Common Area" shall mean all real property owned by the Association for the common use and enjoyment of its owners. The Common Area shall also be used for any utilities, including drain fields, septic tanks, power lines, telephone lines, and water lines. The Common Area to be owned by the Association is described on the Sandcreek Ponderosa Subdivision final plat. The Common Area will be transferred when 35% of the lots are sold and a variable Home Owners Association is functioning.

1.3 DECLARANT

"Declarant" shall mean and refer to the Sandcreek Ponderosa Partnership, a partnership consisting of property owners, its assigns and heirs.

1.4 LOT

"Lot" shall mean and refer to any parcel of land shown upon the recorded Sandcreek Ponderosa Subdivision final plat with the exception of any common areas.

1.5 OWNER

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, including contract buyers and owners of a beneficial interest, but excluding those having such interest merely as security for the performance of an obligation.

1.6 PROPERTIES

"Properties" shall mean and refer to that certain real property know as the Sandcreek Ponderosa Subdivision in accordance with the plat filed for record on the property.

1.7 BOARD OF DIRECTORS/DESIGN COMMITTEE

The board of directors/design committee shall consist of five members elected by the Home Owners Association on alternate years at the annual Home Owners meeting.

**ARTICLE II
PROPERTY RIGHTS**

2.1 OWNERS' EASEMENTS OF ENJOYMENT:

Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions.

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- 2.1.1** The right of the Association to charge reasonable admission and other fees for the use of any recreational facility and its operation has been approved by an affirmative vote of at least fifty-one percent (51%) of the lot owners of record.
- 2.1.2** The right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for a period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- 2.1.3** The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless approved by an affirmative vote of at least fifty-one percent (51%) of the lot owners of record.
- 2.1.4** The right of the Association to designate the use and development of other Common Areas; to regulate all hunting and fishing in and upon the Common Area; and to regulate snow machine operation in or upon the Common Area. (Other recreational vehicles; horses, and all terrain vehicles)
- 2.1.5** The Sandcreek Ponderosa Subdivision shall follow, but not be bound by the Idaho Fish and Game regulations for hunting and fishing. There shall be no big game or bird hunting in the Sandcreek Ponderosa Subdivision. Only small firearms shall be used for rodent control or target practice in designated areas. Lot owners shall be issued a fishing permit by the manager. Friends, guests, and relatives shall be issued a temporary permit for fishing. Catch and release of fish shall be encouraged. There shall be an annual lot assessment to provide funds for fisheries. Commercial pond permit number ____ as provided by Idaho Code.
- 2.1.6** The Association shall retain all mineral rights to the common areas and lots for the good of the Home Owners Association.

2.2 DELEGATION OF USE

Any owner may delegate, in accordance with the bylaws his right of enjoyment to the common area and facilities to the members of his family, guests or contract purchasers who reside on the property.

**ARTICLE III
SANDCREEK PONDEROSA HOMEOWNERS ASSOCIATION**

3.1 ASSOCIATION MEMBERSHIP:

Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

3.2 ASSOCIATION RULES:

The Board of Directors of the Sandcreek Ponderosa Homeowners Association may, from time to time, in its sole discretion, adopt, amend, and repeal by majority vote, rules and regulations to be known as Sandcreek Ponderosa Homeowners Association Rules. A copy of the Sandcreek Ponderosa Homeowners Association rules, as they may from time to time be changed, amended, or repealed,

certified by any member of the Board of Directors shall be available to each lot owner requesting the same from any member of the Board of Directors and shall have the same force and effect as if they were a part of the Sandcreek Ponderosa Declaration of Covenants, Conditions and Restrictions. The Board of Directors shall record the same.

3.3 POWERS AND DUTIES OF THE BOARD OF DIRECTORS:

The board of directors of the Association shall have the powers and duties necessary for the administration, operation and maintenance of the Sandcreek Ponderosa Subdivision as a Recreation Area. Such powers and duties of the board shall include, but shall not be limited to the following, all of which shall be done for and on behalf of the owners of lots within the Sandcreek Ponderosa Subdivision:

- 3.3.1** To administer and enforce the covenants, restrictions, easements, conditions, uses, limitations and obligations and all other provisions set forth in this Declaration, or any duly enacted amendment thereto.
- 3.3.2** To prepare a budget for the Association, at least annually, and to remit any excess of assessments over expenses and reserves to the owners at the end of each operating year.
- 3.3.3** To prepare and maintain accurate books and records of receipt, expenditures, assets and liabilities of the Association, and of the obligations of each owner thereto. The books and records shall be open for inspection by any owner or any representative of an owner duly authorized in writing, at any reasonable time or times during normal business hours.
- 3.3.4** To enter into contracts and to incur such costs and expenses as may be required to enforce the terms of the Declaration or any duly enacted amendment thereto, or as may be necessary to keep in good order, condition and repair all of the Common Area and all items of common personal property acquired by or on behalf of the Association.

3.4 INDEMNIFICATION AND EXCULPATION:

Contracts or other commitments made by the board shall be made as an agent for the owners, and board members shall have no personal responsibility on any such contract or commitment, except as owners. Pursuant thereto, every member of the board shall be indemnified by the owners against all reasonable costs, expenses and liabilities, including legal fees, actually and necessarily incurred by or imposed upon him in connection with any claim, action suit, proceeding, investigation or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his having been a member of the board, whether or not he continues to be a member of the board at the time of incurring or imposition of such costs, expenses or liabilities, except in relation to matters as to which he shall finally be adjudged in such action, suit, proceeding, investigation or inquiry, to be liable for willful misconduct, gross negligence or in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel elected by the board. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law and shall incur to the benefit of the legal representatives of such person.

- 3.4.1** No member of the board or employee of the Association shall be liable for acts of default of any other members or employee, or for any loss sustained by the owners as the result thereof, unless the same has resulted from his own willful misconduct or negligence.

- 3.4.2 OWNERS** All owners shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS:

Each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and to pay to the Association:

- (1) annual assessments or charges, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

4.2 PURPOSE OF ASSESSMENTS:

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the property and for the improvement and maintenance of the Common Area, and of the homes situated upon the properties.

4.3 MAXIMUM ANNUAL ASSESSMENT:

The Board of Directors shall fix the annual assessment.

4.4 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and community property related thereto, provided that any such assessment shall have the consent of fifty-one percent (51%) of the votes of the lot owners who are voting in person or by proxy at a meeting duly called for this purpose.

4.5 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZES UNDER SECTIONS 4.3 AND 4.4:

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

4.6 UNIFORM RATE OF ASSESSMENT:

Both annual and special assessments must be fixed at a uniform rate for all lots owned and shall be collected on an annual basis.

4.7 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS:

The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors.

4.8 EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION:

Any assessment not paid within ninety (90) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

4.9 SUBORDINATION OF THE LIEN TO MORTGAGES:

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien.

4.10 FORECLOSURE OF LIENS:

To evidence the lien for which provision is made in Section 4.1 of this Article, the Board shall prepare a written notice of lien assessment setting forth the amount of unpaid indebtedness plus accrued interest, the name of the owner of the lot, and legal description of the lot. Such notice shall be signed by a member of the Board and shall be recorded in the Office of the county clerk and Ex-Officio Register of Deeds for Fremont County, Idaho. Such lien shall attach from the due date of the assessment. In any suit to foreclose the lien against the owner of a lot, the Association, acting by and through the Board, may represent itself in like manner as any mortgages of real property. The Board, acting on behalf of the Association, shall have the power to bid and acquire such lot at a foreclosure sale, and to lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with such lot or unit. The delinquent owner shall be required to pay the costs and expenses, including attorney's fees, for the filing of any lien, and any foreclosure proceedings related thereto. Suit to recover a money judgment for unpaid assessments, together with all interest, costs and reasonable attorney's fees, shall be maintainable without foreclosing or waiving the lien.

**ARTICLE V
DESIGN**

5.1 DESIGN APPROVAL:

Members of the Board of Directors will, in addition to duties set forth elsewhere in these covenants, serve as a design review committee for all construction proposed for the subdivision.

5.2 DESIGN COMMITTEE DUTIES:

It shall be the duty of the design committee to consider and act upon such proposals for plans submitted to it from time to time, to adopt design committee rules pursuant to Section 5.4 of this Article, and to perform such duties from time to time delegated to it by the restrictive covenants.

5.3 DESIGN COMMITTEE MEETINGS:

Meeting of the design committee shall be held, without notice and as often as necessary to

properly perform its duties hereunder.

5.4 DESIGN COMMITTEE RULES:

The design committee may, from time to time, and in its sole discretion, adopt, amend and repeal by two-thirds vote, rules and regulations, to be known as "Design Committee Rules." A copy of the design committee rules, as they may from time to time be adopted, amended or repealed, certified by any member of the design committee, shall be available for each lot owner requesting the same from any member of the design committee, and shall have the same force and effect as if they were set forth in and were a part of the Sandcreek Ponderosa restrictions. The design committee shall record the same if deemed necessary.

ARTICLE VI DESIGN STANDARDS

6.1 GENERAL STANDARDS:

The following standard and restrictions are applicable to the construction, remodeling, alteration, and exterior refinishing of any and all improvements and site preparations upon each lot.

6.2 DESIGN CHARACTER:

Structures of a low, rambling and informal character, relating to the terrain and physical condition of the Subdivision, are encouraged.

(a) All improvements shall be of new construction. Trailer homes shall not be permitted.

(b) Exterior material shall be of rough sawn natural wood, peeled log, stone, exposed aggregate concrete or other similar rough textured natural materials. Where exteriors of natural wood are utilized, the term shall be construed to exclude plywood, pressed wood or pressed board, and shall apply to all siding fascia, porches, decks and all other exterior areas, except soffits, doors, garage doors and windows. No fiberglass garage doors shall be permitted. Metal doors must be painted and maintained according to the manufacturer's specifications. Roof materials shall be cedar shake or shingle, heavy-weight asphalt shingle, decra-bond, or similar ribbed metal with a flat non-reflective color finish, sod or built-up roof with native gravel surface. The term "heavy-weight asphalt shingle" shall be construed to mean nothing less than 325 pounds per square.

(c) Exterior finishes shall be semi-transparent or heavy bodied stains, or pigmented or clear non-glossy preservatives. Glossy painted finishes shall not be permitted. All exposed metals shall have a dull colored finish, or shall be flat color anodized or painted.

(d) Exterior colors. Color samples, on pieces of all exterior materials and roofing materials to be used, shall be submitted to the design committee for approval.

6.3 BUILDING DESIGN:

(a) No more than one single family residence shall be constructed on any lot. A detached guest suite, without cooking facilities may be submitted to the design committee for approval.

(b) The minimum floor area of any single family residence shall be no less than 1,000 square feet, exclusive of a garage, carport or unenclosed porches or decks.

(c) The maximum building height of any residential structure shall not exceed thirty (30) feet, and two-story houses shall not be permitted, except with specific approval of the design committee. If a bi-level, tri-level, or two-story house is permitted, the same shall be designed so that not more than twenty (20%) of the perimeter of the house and attached garage or carport, excluding gable ends, shall exceed a wall height of ten (10) feet, measured from finished grade to fascia. The maximum height of detached garages, carports or accessory buildings shall not exceed twenty (20) feet. Except as is otherwise

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provided herein, all heights shall be measured at any cross-section of the structure from finished grade to the highest point of the structure immediately above. For the purposes of this Section, the elevation of finished grade shall not be more than two (2) feet above existing grade. Minor projections such as chimney's or other structures not enclosing habitable space shall not be subject to the maximum height restrictions. Solar collectors shall be subject to maximum height restrictions.

(d) Roofs shall have a maximum pitch of eight (8) feet in twelve (12) feet.

(e) Exposed foundations of concrete or masonry construction shall not have an exposed surface which exceeds a height of 30 inches above finished grade.

6.4 SITE DESIGN:

(a) The minimum setback on any lot to any side or back property line shall not be less than thirty(30) feet and to any front property line shall not be less than thirty (30) feet. Set backs from Common Area property lines may be waived, and other setbacks may be increased at the discretion of the design committee in order to enhance variety in the development and to preserve views from neighboring lots.

(b) Finish grading, including landscaping and driveways, on all sites shall assure drainage of surface water from the buildings and avoid concentrating runoff on adjacent properties. The entire site, including landscaping and driveways, shall have positive drainage to common open space or rights-of-way and shall utilize swells as required. Drainage and elevation plans for each lot shall be submitted to the design committee for approval along with other required specifications at the time of application for a Building Permit.

(c) Fencing shall comply with the fence design standards adopted by the design committee. No fences shall be constructed forward of the front setback line of any lot. To facilitate a foot path around the lake and to provide a wildlife corridor, migration route. Fences shall be classified into the following general categories:

(1) Privacy fence is a fence which is architecturally integrated with a building and is located within the building setback lines. Privacy fences may be of solid construction and may be of the same height as the building to which they are attached.

(2) Control fence is a fence which is located on an interior side or rear property line and is intended primarily to limit the access of residents or animals. Control fences shall be of visually open construction and shall not exceed four (4) feet in height.

(3) Open space fence is a fence which is located on any property line which abuts a common open space or right-of-way. Open space fences shall be of a uniform design adopted by the architectural committee and shall not exceed thirty-eight (38) inches in height.

(4) Utilities shall be installed underground where ever the terrain is suitable. Overhead power lines shall be raptor friendly. Each lot shall be connected to an approved water and sewage disposal system approved by the county. No large dish shall be installed on any structure or lot so that it is visible from any other lot.

ARTICLE VII

LAND CLASSIFICATIONS, USE AND RESTRICTIVE COVENANTS

7.1 LAND CLASSIFICATIONS:

All land within Sandcreek Ponderosa Subdivision has been classified into the following areas:

- (a) Residential Lots
- (b) Common Area
- (c) Commercial Lot

as more particularly shown on the final plat of the Sandcreek Ponderosa Subdivision.

7.2 GENERAL RESTRICTION:

The following general restrictions shall apply to all land, regardless of classification:

(a) No building, structure, sign, fence, refinishing or improvement of any kind shall be erected, placed or permitted to remain on any structure, lot or tract, and no excavation or other work which in any way alters any lot from its natural or improved state existing on the date such lot was first conveyed in fee by declarant to an owner shall be erected, placed, done, or permitted to remain on any structure, lot or tract until the plans, specifications and exterior material samples and color selections, therefore have been approved in writing by the design committee. Plans for buildings for the refinishing or improvement of the same shall include scaled floor plans, exterior elevations indicating height, a list of exterior materials, and a site plan. Plans and elevations shall clearly show all external features and materials for all structures. They shall show garages, porches, decks, stoops, chimneys, bents, doors and windows, trim, and special architectural features. Site plans shall show the elevations of finished floors and existing and finished grades, existing trees or shrubs, and shall show the entire site and the location of all right-of-ways, easements, buildings, decks, driveways, parking areas, fences and utilities,

(b) The sum of Twenty-five (\$25.00) for each residential lot shall be submitted, along with the proposed building, site, or alteration plans to the design committee to cover the expenses of reviewing said plans. Said amount may be increased from time to time by the design committee.

(c) Two copies of any proposed plans and related data shall be furnished to the design committee, for its records. Any approval given by the design committee shall not constitute a warranty, express or implies of compliance with any applicable building or safety codes or for any other purposes other than the authority for the person submitting the plan to commence construction.

(d) All exterior improvements covered by the specifications contained in the application for which notice to proceed is issued must be completed within two (2) years of issuance of the notice to proceed.

(e) A speed limit of 15 miles per hour is hereby imposed on all roads within the Sandcreek Ponderosa Subdivision.

(f) Motorized vehicles shall be restricted to approved roadways only, or other areas which the Association may designate within the Subdivision.

(g) Property Owners cannot file wildlife damage claims against the Fish and Game.

7.3 RESIDENTIAL AREA RESTRICTIONS:

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7.3.1 Each residential lot shall be used exclusively for residential purposes, and no more than one (1) family, including its servants and transient guests, shall occupy such residence. No commercial, retail or other business activities shall be conducted on or from any residential lot, provided, however, that nothing in this subparagraph (a) shall be deemed to prevent:

(a) Any artist, artisan or craftsman from pursuing his artistic calling upon the lot or dwelling unit owned by such artisan, if such artist, artisan or craftsman also uses such lot or dwelling unit for residential purposes, is self-employed and has no employees working in such lot or in such dwelling unit, and does not advertise any product or work of art for sale to the public upon such lot or dwelling unit.

(2) The leasing of any lot from time to time by the owner thereof, subject, however, to all of the restrictions as may be adopted from time to time by the Association.

(b) Each residential lot, and any and all improvements from time to time located thereon, shall be maintained by the owner thereof, in good condition and repair, and in such a manner as not to create a fire hazard, all at such owner's sole cost and expense. Maintenance by the owner shall include, but not be limited to, periodic staining of any exterior wood siding, and landscaping and maintenance of yards, including weed control. If any owner fails to perform maintenance responsibilities, after written request by the Association to do so, the Association may perform maintenance work at the owner's expense.

(c) No noxious or offensive activity shall be carried on, or upon any lot, nor shall anything be done or placed thereon which may become a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other owners in the enjoyment of their lots, or in their enjoyment of Common Areas. In determining whether there has been a violation of this paragraph recognition must be given to the premise that owners, by virtue of their interest and participation in Sandcreek Ponderosa are entitled to the reasonable enjoyment of the natural benefits and surroundings of the subdivision. Without limiting any of the foregoing, no exterior speakers, horns, bells or other sound devices, except security devices used exclusively to protect the security of the lots and improvements located thereon, shall be placed or used upon any lot.

(d) No domestic animals or fowl shall be maintained on any lot other than not more than two generally recognized house or yard pets, provided, however, that such animals shall at all times be restrained or leashed and provided further that subject to the provisions of subparagraphs (a) (c) above, and subject to such limitations as may from time to time be set forth in the bylaws of the Association. Horses shall not be permitted to be kept on any lot other than the Common Area subject to the rules and regulations of the homeowners Association.

(e) No signs whatsoever, including, but not limited to, commercial, political and other similar sign, visible from neighboring property, shall be erected or maintained upon any lot except those signs which have received the specific approval of the design committee.

(f) All garbage and trash shall be placed and kept in bear proof covered containers which shall be maintained so as not to be visible from neighboring property. The collection and disposal of garbage and trash shall be done once a week. The Homeowners Association may provide for common collection points in the future.

(g) There shall be no exterior fires whatsoever except barbecue fires contained within receptacles and such fires as may from time to time be permitted by the Association rules. Each residence shall maintain a brush-rubbish free green belt around the buildings for fire suppression and safety. They

shall also provide fire extinguishers and water hoses for adequate fire suppression.

(h) No stripped down or junked motor vehicle or any sizable part thereof or any other apparatus or machinery shall be permitted to be parked or located on any lot, street or portion of the Common Area in the Sandcreek Ponderosa Subdivision.

(i) Feeding of wildlife shall be prohibited, with the exception of song birds if the feeders are not accessible to bears.

(j) Property Owners cannot file wildlife damage claims against the Fish and Game.

(k) An area around the Swan Pond will be closed to public entry from March 1st to July 1st to allow the Trumpeter Swan and water fowl nesting.

ARTICLE VIII ADDITIONAL COVENANTS - MISCELLANEOUS AREAS AND FUTURE DEVELOPABLE PROPERTY

8.1 USE OF MISCELLANEOUS AREAS AND FUTURE DEVELOPABLE PROPERTY:

No property owner shall have the right to use, occupy or possess any of the miscellaneous areas or future DEVELOPABLE property by reason of owning a lot in the subdivision unless otherwise approved of by the Association.

8.2 HOMEOWNERS ASSOCIATION:

When the miscellaneous or Common Areas are conveyed to the homeowners Association, the homeowners Association shall thereafter have the right and duty to determine the usage to be made of the miscellaneous or Common Area.

8.3 CONVEYANCE OF COMMON AREA, RESERVATION OF EASEMENTS AND RIGHT-OF- WAY; RECLASSIFICATION OF LAND AREA:

8.3.1 Declarant shall transfer and convey to the Association and the Association shall accept, all to its right, title and interest to all to the real property designated Common Area on the final subdivision plat. Such Common Area is subject to the following exceptions, liens, encumbrances, and easements:

- (a) The lien of real property taxes and assessments not delinquent;
- (b) Such easements and right-of-ways on, over or under all or any part thereof as may be reserved to declarant to grant to any owner or participating facility for the use thereof in accordance with the provisions of the Sandcreek Ponderosa subdivision restrictions;
- (c) Such easements and right-of-ways on, over or under all or any part thereof as may be reserved to declarant for access to real property contiguous to Common Area;
- (d) Easements and right-of-ways on, over or under all or any part thereof are hereby reserved to

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declarant or which may be granted by declarant to or for the benefit of the United States of America, the State of Idaho, Fremont County, other political subdivision or public organization, or any utility corporation, any participating facility, and project, or any lot, for the purpose of construction, erecting, operating and maintaining thereon, therein and thereunder, at that time or at any time in the future:

(aa) Roads, streets, walks, driveways bicycle and horse paths, parkways and park areas, wildlife corridors, migration routes.

(bb) Poles, wires and conduits for the transmission of electricity for lighting, heating, power, telephone, television and other purposes and for the necessary attachments in connection therewith.

(cc) Private sewers, sewage disposal systems, land drains and pipes, water systems, water, heating and gas lines or pipes and any and all equipment in connection therewith.

8.3.2 The obligations imposed, directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation to the United States of America, the State of Idaho or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation.

8.3.3 Any other lien, encumbrance or defect of title of any kind whatsoever which does not materially and actually prejudice the owners and guests in their use and enjoyment of such property, and specifically, the lien of original sellers.

(b) The land classification of any real property within the subdivision which is not common area may be changed to Common Area by the transfer of such property to the Association from all persons having any right, title or interest therein. The Association shall accept such property and such property shall there upon become Common Area in accordance with such designation. Notwithstanding the foregoing, declarant may change the land classification of any such property as to which it is the owner by designation such property "Common Area." Declarant shall convey such property to the Association which shall accept the same, and such property shall thereupon become Common Area.

8.4 ASSIGNMENT OF POWERS:

Any and all of the rights and powers vested in declarant pursuant to the Sandcreek Ponderosa restriction may be delegated, transferred, conveyed or released by declarant to the Association, the Association shall accept the same, effective upon the recording by the declarant of a notice of such delegation, transfer, assignment conveyance or release.

8.5 NOTICES: DOCUMENTS: DELIVERY:

Any notice or other document permitted or required by the Sandcreek Ponderosa restrictions to be delivered may be delivered either personally or by mail.

8.6 RECREATION FACILITIES:

The homeowners Association shall have the right to construct such recreational facilities in any portion of the Common Area that may be approved by fifty-one percent (51%) vote of the members voting at any regular or special meeting called in accordance with the provision of these covenants.

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ARTICLE IX
ENFORCEMENT, DURATION AND AMENDMENT

9.1 ENFORCEMENT:

The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.2 DURATION OF RESTRICTIONS:

All of the covenants, conditions and restrictions set forth in these covenants shall continue and remain in full force and effect at all times against said property and the owners thereof, subject to the right of amendment or modification provided for in this Article.

9.3 AMENDMENT:

This declaration may be amended by an instrument signed by not less than ninety percent (90%) of the lot owners, and thereafter by an instrument signed by not less than fifty-one percent (51%) of the lot owners, which instrument must be recorded in the Office of the County Clerk of Fremont County, Idaho. The declarant shall have the right, during such time as it owns not less than thirty-five percent (35%) of the lots, in number, to change or modify these covenants, and all lots within the Sandcreek Ponderosa Subdivision including those previously sold shall be subject to such changes. Such amendments shall be duly executed by the declarant and placed of record in the Office of the County Clerk of Fremont County, Idaho.

9.4 VIOLATION CONSTITUTES NUISANCE:

Every act or omission, whereby any restriction, condition or covenant in this declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance and may be abated by declarant or his successors in interest and/or by any lot owner; and such remedies shall be deemed cumulative and not exclusive.

9.5 CONSTRUCTION AND VALIDITY OF RESTRICTIONS:

All of said covenants, conditions and restrictions contained in this declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof invalid, or for any reason becomes unenforceable, no other condition, covenant or reservations, or any part thereof invalid, or for any reason becomes unenforceable, no other condition, covenant or reservation, or any part thereof shall be thereby affected or impaired; and the declarant, grantor and grantee, their heirs, successors and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause and phrase be declared invalid or inoperative or for any reason becomes unenforceable.

9.6 VARIANCES:

The Design Committee may allow reasonable variances and adjustments of the foregoing covenants, conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the covenants contained herein, or to grant variances for the purpose of enhancing views, utilizing a lot to better advantage, preventing the removal of trees, and enhancing the

placement of improvements on the property, provided this may be done in conformity with the intent and purposes hereof, and also provided in every instance that such grants or adjustments shall not be materially detrimental or injurious to other property or improvements in the neighborhood. Any variances or adjustments of these conditions, covenants and restrictions granted by the design committee, or any acquiescence or failure to enforce any violation of the conditions and restrictions herein, shall not be deemed to be a waiver of any of the conditions and restrictions in any other instance.

Paul W. Hopperdietzel
PAUL W. HOPPERDIETZEL

Donna M. Hopperdietzel
DONNA M. HOPPERDIETZEL

Dave Parke
DAVE PARKE

Mary Lou Parke
MARY LOU PARKE

Thomas Parke
THOMAS PARKE

Marie Parke
MARIE PARKE

Grandfather Clause will apply on square footage of the existing homes 3/27/97 WR 9 Paul

Walter B. Dole
WALTER B. DOLE

Barbara A. Dole
BARBARA A. DOLE

James E. Hall
JAMES E. HALL

Julie E. Hall
JULIE HALL

Tom Seamons
TOM SEAMONS

Michelle Seamons
MICHELLE SEAMONS

Lyle E. Thompson
LYLE E. THOMPSON

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PAUL W. HOPPERDIETZEL

DONNA M. HOPPERDIETZEL

DAVE PARKE

MARY LOU PARKE

THOMAS PARKE

MARIE PARKE

WALTER B. DOLE

BARBARA A. DOLE

JAMES E. HALL

JULIE HALL

Tom Seamons
X TOM SEAMONS

Michelle Seamons
X MICHELLE SEAMONS

LYLE I. THOMPSON

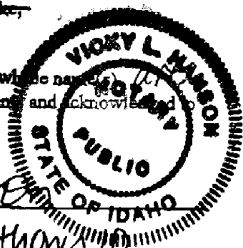
449527

**NOTARY ACKNOWLEDGEMENT FOR THE SANDCREEK
PONDEROSA SUBDIVISION DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

STATE OF Idaho, COUNTY OF Bannock
On this 24th day of November 1997
before me, a Notary Public in and for said State, personally
appeared

~~Paul W. Hopper, Daniel and Donna M. Hopper, Daniel,~~
~~Tom Seamons and Michelle Seamons,~~
~~Dave Parke and Mary Lou Parke,~~
~~Thomas Parke and Masha Parke,~~
~~Lyle L. Thompson~~

known to me to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged
me that they executed the same.



Vicki L. Hanson
Notary Public,

Residing at St Anthony
Comm. Expires 10-18-2003

449527

placement of improvements on the property, provided this may be done in conformity with the intent and purposes hereof, and also provided in every instance that such grants or adjustments shall not be materially detrimental or injurious to other property or improvements in the neighborhood. Any variances or adjustments of these conditions, covenants and restrictions granted by the design committee, or any acquiescence or failure to enforce any violation of the conditions and restrictions herein, shall not be deemed to be a waiver of any of the conditions and restrictions in any other instance.

PAUL W. HOPPERDIETZEL

DONNA M. HOPPERDIETZEL

DAVE PARKE

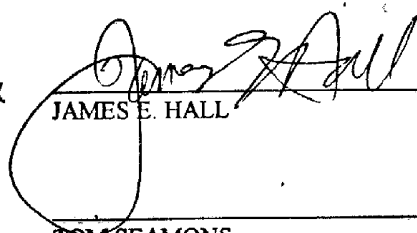
MARY LOU PARKE

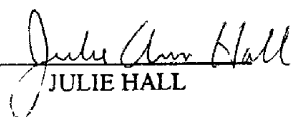
THOMAS PARKE

MARIE PARKE

WALTER B. DOLE

BARBARA A. DOLE

x  JAMES E. HALL

x  JULIE HALL

TOM SEAMONS

MICHELLE SEAMONS

LYLE I. THOMPSON

449527

**NOTARY ACKNOWLEDGEMENT FOR THE SANDCREEK
PONDEROSA SUBDIVISION DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

STATE OF Idaho, COUNTY OF Ada
On this 10th day of December
before me, a Notary Public in and for said State, personally
appeared

James E. Hall and Julie Hall

known to me to be the person(s) whose name(s)
subscribed to the within instruments and acknowledged to
me that they executed the same.

Kay J. Eason
Notary Public,
Residing at Boise, Idaho
Comm Expires 1-27-2000



449527

placement of improvements on the property, provided this may be done in conformity with the intent and purposes hereof, and also provided in every instance that such grants or adjustments shall not be materially detrimental or injurious to other property or improvements in the neighborhood. Any variances or adjustments of these conditions, covenants and restrictions granted by the design committee, or any acquiescence or failure to enforce any violation of the conditions and restrictions herein, shall not be deemed to be a waiver of any of the conditions and restrictions in any other instance.

Paul W. Hopperdietzel
PAUL W. HOPPERDIETZEL

Donna M. Hopperdietzel
DONNA M. HOPPERDIETZEL

Dave Parke
DAVE PARKE

Mary Lou Parke
MARY LOU PARKE

Thomas Parke
THOMAS PARKE

Marie Parke
MARIE PARKE

WALTER B. DOLE

BARBARA A. DOLE

JAMES E. HALL

JULIE HALL

TOM SEAMONS

MICHELLE SEAMONS

Lyle I. Thompson
LYLE I. THOMPSON

Charles Sorenson
CHARLES SORENSON

Patricia Sorenson
PATRICIA SORENSON

**NOTARY ACKNOWLEDGEMENT FOR THE SANDCREEK
PONDEROSA SUBDIVISION DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

STATE OF Idaho, COUNTY OF Madison
On this 29 day of December, 1997
before me, a Notary Public in and for said State, personally
appeared
Paul W. Hopperdietzel and Donna M. Hopperdietzel,
~~Don Sorenson and Michelle Sorenson,~~
Dave Parke and Mary Lou Parke,
Thomas Parke and Marie Parke,
Lyle L Thompson
Charles Sorenson and Patricia Sorenson
known to me to be the person(s) whose name(s)
subscribed to the within instruments and acknowledged to
me that they executed the same

Samuel S Young
Notary Public
Residing at Rexburg ID
NOTARY Public Expires 5-1-2001
PUB. C.
STATE OF IDAHO