

INSTRUMENT No. 200128967

01025951/CH/SK

FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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This First Amendment to the Declaration of Covenants, Conditions and Restrictions executed by the undersigned is effective immediately upon the filing thereof. The Declaration was previously recorded with the Canyon County Recorder as Instrument No. 200106990 on February 27, 2001.

The Declaration is amended to read as follows:

Richard A. and Shari K. Porter, hereinafter collectively Declarant or Declarants, make this Declaration.

RECITALS: is amended to read as follows:

A. Declarants are the owners of certain real property located in Canyon County, Idaho, known as the Rich Porter Lemp Park Addition, hereinafter the Addition, and more particularly described in Exhibit A and in the Record of Survey, Exhibit B.

B. The parcels in the Addition were created from original tracts in Lemp Park Addition. The parcels are referred to hereafter variously as property, lot or parcel. The only parcels subject to this Declaration shown on the Record of Survey are Parcels 38A, 38B, 39A, 39B, 40A, 40B, 41A, 41B, and 42B. Other tracts or portions of the tracts, lots or parcels in the Addition, or in Lemp Park Addition may be brought under this Declaration and subject to its provisions as if originally a part hereof.

C. Declarant desire to impose upon the parcels certain protective covenants, conditions, restrictions, reservations, limitations and easements (CCRs) for the benefit of the parcels and all present and subsequent owners thereof and all conveyances of the parcels or any part thereof shall be subject to this Declaration. Declarant reserves the right to amend this Declaration until the last parcel in the Addition is sold. Provided however, that unless executed by the then parcel owners, such amendment shall apply only to those parcels unsold at the time of the Amendment.

ARTICLE I: PROPERTY USE RESTRICTIONS is amended to read as follows:

A. This agreement specifically excludes parcel 42A from these Covenants.

D. Only the following animals shall be allowed: i. No more than 1.25 large animals per acre are allowed, including but not limited to cows and horses, or not more than 2 small animals per acre, including sheep, goats or llamas; ii. Dogs, cats, rabbits, chickens or similar domestic animals may be kept only as pets, must be confined to the parcel and not allowed to roan free; barking and other noises must be controlled and not allowed to become a nuisance to other parcel owners; iii. Exotic birds such as emu and ostrich, swine and other similar animals are not allowed.

E. Other than otherwise provided, perimeter fencing of the parcels is not required. If constructed, such fencing must be a minimum of four to five feet in height, three or four rail, white, and of vinyl, wood, steel or other suitable materials as determined by the Architectural Control Committee (ACC) and must be kept in good repair. Parcel 42B adjacent to Lansing Lane must be fenced. Such fencing shall be constructed on the property line.

F. Easements for installation and maintenance of utilities, irrigation, and drainage facilities, including common facilities, shall be reserved as shown on the Record of Survey, and as provided in any instruments pertaining to the providers of such utility services.

**ARTICLE III. HOMEOWNERS ASSOCIATION** is amended to read as follows:

A. **Organization.** Richard Porter Lemp Park Addition Homeowners Association shall be organized as an Idaho non-profit Corporation not later than the sale of the last parcel in the Addition. The Association shall be charged with the duties and vested with the powers prescribed by law and set forth in this Declaration, the Association's Articles of Incorporation and Bylaws. In the event of any inconsistency between the Declaration and the Association's Articles or Bylaws, the language of the Declaration shall control.

B. **Membership.** Every owner of a parcel shall be a member of the Association. Membership shall be appurtenant and may not be separate from ownership of any parcel. Provided however, that there shall be not more than one (1) vote per parcel regardless of the number of owners. And further provided, that any parcel for which there are outstanding assessments shall be ineligible to vote on any proposition until all assessments are satisfied.

D.

1. Assessments shall be set by the Board of Directors and approved by a vote of sixty percent of the parcels eligible to vote. Unless changed by a vote of sixty percent of the parcels entitled to vote, the annual assessment shall be that amount last approved by a vote of the eligible parcels.

2. Assessments levied by the Association shall be used exclusively to provide for the maintenance of the common facilities as well as to promote the recreation,

health, safety, enjoyment and welfare of the residents of the Addition, including but not limited to the enforcement of this Declaration. Such assessments may include associated expenses such as insurance, attorney fees, landscaping and its maintenance and other similar items necessary or appropriate to the maintenance of the Addition.

3. The Board of Directors shall adopt Bylaws for the conduct of the Association, which shall provide for meetings and other procedures including notices.

4. Assessments adopted by the Association are due and payable on the date set. Such assessments become delinquent thirty days after the due date, at which time interest shall accrue at the rate of fifteen percent per year. In the event legal proceedings are required to collect any assessment, regardless of whether pursued to litigation, the Association shall be entitled to collect, in addition to the assessment, all costs incurred to collect the assessment, including attorney fees and court costs. The assessment amount, accrued interest and other costs shall constitute and may be filed as a lien against the property until paid. Any such lien shall continue to accrue interest until paid.

E. Common Facilities, Ditches and Easements:

1. There is a private road providing access for the parcels commonly known as Reflection Lane. Declarant is also providing a pressurized irrigation system to provide irrigation water to each of the parcels. Both the private road and the pressurized irrigation system shall be deemed facilities common to all parcels, hereinafter Common Facilities. The Board may adopt additional rules or regulations as part of the Association Bylaws pertaining to the Common Facilities, which are consistent with this Declaration. The Board shall set and the Association shall approve assessments sufficient for the construction, maintenance, or improvement of the Common Facilities. Such assessments shall be set annually after a review of the Common Facilities by the Board or a committee selected for such purpose. The Board shall determine what maintenance or improvement shall be accomplished in the calendar year and set the assessment amount, which shall be submitted to a vote by the eligible parcels in the Addition. If any of the facilities require maintenance or improvement in order to provide service to the parcels, such necessary assessment shall be approved by the Association. Provided however, that in the event the assessment set by the Board exceeds necessary maintenance or improvement, such excess assessment amount shall be subject to the vote of sixty percent of the parcels eligible to vote.

2. There are easements reserved on the Record of Survey for the common facilities, including the pressurized irrigation system. No permanent structure shall be constructed or maintained within any of the easements except fencing approved by the ACC. Further, no activities shall take place on or near any of the easements that would interfere with the common facilities. In the event a parcel owner or someone acting under the control or supervision of the parcel owner obstructs any common facility or damages it in anyway, that parcel owner shall immediately correct such obstruction or damage at the owner's sole expense. The Association shall have the right to correct such obstruction or damage and the parcel owner shall reimburse the Association not later than thirty (30)

days after receiving an invoice or billing for such expenses. Any such expenses shall be deemed a lien against the parcel until paid as if an assessment adopted by the Association.

3. There is a pond located on Parcel 42B which provides irrigation water for the pressurized irrigation system which is more particularly described in Exhibit C. The Association shall be responsible for the maintenance of the pond to the extent required for the maintenance of the water available for the pressurized irrigation system. The owner of Parcel 42B shall be responsible for any other maintenance or improvement to the pond. No activity shall take place on Parcel 42B, including within the pond or the easement for the pond which shall interfere with the delivery of irrigation water to the irrigation system.

4. There are ditches for irrigation and drainage crossing various parcels in the Addition. No rubbish, trash or garbage of any sort, including landscape trimmings such as grass clippings shall be deposited in or near any such ditches. No activities shall take place in or near such ditches that would in any way impede the flow of water or drainage within the ditches. The ditches serve properties other than the parcels in the Addition. The owners of such parcels shall have the right of access, ingress and egress, as well as the right to perform necessary maintenance activities. A prescriptive easement of twenty-five (25) feet on either side of the centerline of the drainage ditch that is located on the northern boundaries of parcels 38B through 42B. The irrigation and drainage district/company shall have the right of ingress and egress as well as the right to perform maintenance activities within the easement.

#### F. Architectural Control.

1. In order to protect the quality and value of all homes built in the Addition, and for the continued protection of the parcel owners, an Architectural Control Committee (ACC), consisting of three members shall be appointed by Declarant. These members shall serve until a Board of Directors is elected by the Association, at which time the Board shall select the ACC members. Until the last parcel is sold, Declarant shall be a member of the ACC and shall have the controlling vote upon any matter properly before the ACC. The initial ACC members shall be Richard A. Porter, Shari K. Porter and Sherry Maupin. The ACC members shall not be entitled to compensation for services performed pursuant to these covenants.

2. Approval by Committee. No structure, including but not limited to fences, walls, patio or deck covers or components of any structure, shall be constructed, erected, maintained, altered or modified on any parcel or portion of any common area or facility in the Addition without the prior written approval by the ACC. Plans and specifications for any such proposed construction or alteration shall be submitted to the ACC showing the nature, utility of workmanship and materials, harmony of exterior design with existing structures, location with regards to topography, finish grade elevations and neighboring parcels. In the event that the ACC fails to approve the proposed construction within thirty (30) calendar days, the proposed construction shall be deemed to be denied.

**ARTICLE IV. WATER SYSTEMS, IRRIGATION AND SEPTIC SYSTEMS**

A. Declarant does not warrant any water source, supply or quality. The parcel Owners are solely responsible to obtain potable water supply to their parcel. Declarant provides only the pressurized irrigation system, which shall be a facility common to all parcels in the Addition (hereinafter common irrigation facility).

ARTICLE V. is amended to read as follows:

**ARTICLE V. TERM OF DECLARATION:** The terms and condition of these CCRS shall be appurtenance with and run with the land and shall be binding upon all parties hereto and all persons claiming under them for a period of ten (10) years after the sale of the last parcel in the Addition. Thereafter the CCRs may be amended or terminated only by an instrument or instruments in writing, signed and acknowledged by the owner or owners of the legal title to not less than two-thirds of the legally created parcels. Such termination or amendment shall become effective upon filing of such instrument or instruments for record in the office of the Recorder of Canyon County, Idaho.

**ARTICLE VI.** is amended to read as follows:

A. **ENFORCEMENT PROVISIONS:** Any Lot Owner shall have the right to enforce any or all of the provisions hereof against any parcel within the Addition and owner(s) thereof. Provided however, that only the Association shall be entitled to obtain compliance with unpaid assessments. Whether an action is prosecuted to judgment, the prevailing party shall be entitled to reasonable attorneys' fees and costs. In the event of judgment against any person, the court may award injunction against any person for violation, required compliance as the court deems necessary, award such damages, costs and expenses as well as such other or further relief as may be deemed just and equitable, provided that the prevailing party shall be awarded reasonable attorneys' fees.

WHEREFORE, the undersigned have executed this Amendment on the dates following their respective signatures thereto.

DECLARANT:

Richard A. Porter  
Richard A. Porter

Dated: July 17-01

Shari K. Porter by Richard A. Porter  
Shari K. Porter

Dated: July 17-01

Bart Summers  
Bart Summers

Parcel: 388 Dated: July 17-01

Nanette Summers  
Nanette Summers

Franco  
Maupin Homes, Inc.

Sherry Maupin  
Maupin Homes, Inc.

Franco  
Maupin Homes, Inc.

Sherry Maupin  
Maupin Homes, Inc.

[Signature]  
Selling Home Company, Inc.

[Signature]  
Hunter Homes, Inc.

Parcel: 38B Dated: July 17, 01

Parcel: 40B Dated: July 17, 01

Parcel: 40B Dated: July 17, 01

Parcel: 39A Dated: July 17, 01

Parcel: 39A Dated: July 17, 2001

Parcel: 38A Dated: July 18, 01

Parcel: 40A Dated: July 18, 2001

Parcel: \_\_\_\_\_ Dated: \_\_\_\_\_

Parcel: \_\_\_\_\_ Dated: \_\_\_\_\_

Parcel: \_\_\_\_\_ Dated: \_\_\_\_\_

Parcel: \_\_\_\_\_ Dated: \_\_\_\_\_

STATE OF IDAHO )  
 ) ss  
COUNTY OF CANYON

On this 17<sup>th</sup> day of JULY, 2001, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Fred Maupin and Sherry Maupin known or identified to me to be an officer or agent of Maupin Homes, Inc., an Idaho corporation and acknowledged that s/he was authorized to and did execute the same on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

ALAN D. MILLS  
Notary Public  
State of Idaho

Alan D. Mills  
NOTARY PUBLIC FOR THE STATE OF IDAHO  
Residing at: MIDDLETON  
My Commission expires: AUG. 30, 2005

STATE OF IDAHO )  
COUNTY OF Canyon ) ss

On this 18<sup>th</sup> day of July, 2001, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Steve Edwards known or identified to me to be an officer or agent of Hunter Homes, Inc., an Idaho corporation and acknowledged that s/he was authorized to and did execute the same on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Ann Hamburg  
NOTARY PUBLIC FOR THE STATE OF IDAHO  
Residing at: Melba  
My Commission expires: 1/28/03

STATE OF IDAHO )  
COUNTY OF CANYON ) ss

On this 18<sup>th</sup> day of JULY, 2001, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared SARA SEIDL known or identified to me to be an officer or agent of Seidl Home Company, an Idaho corporation and acknowledged that s/he was authorized to and did execute the same on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

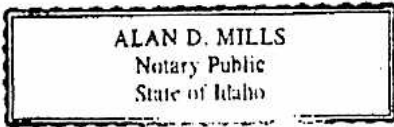
ALAN D. MILLS  
Notary Public  
State of Idaho

Alan D. Mills  
NOTARY PUBLIC FOR THE STATE OF IDAHO  
Residing at: MIDDLETON  
My Commission expires: AUG. 30, 2005

STATE OF IDAHO )  
 ) ss  
COUNTY OF CANYON )

On this 17<sup>th</sup> day of JULY, 2001, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Bart and Nanette Summers known or identified to me to be the persons whose names are subscribed to this instrument and acknowledged that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

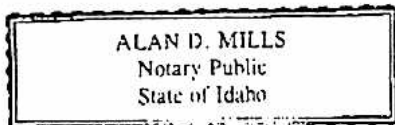


Alan D. Mills  
NOTARY PUBLIC FOR THE STATE OF IDAHO  
Residing at: MIDDLETON  
My Commission expires: AUG. 30, 2005

STATE OF IDAHO )  
 ) ss  
COUNTY OF CANYON )

On this 17<sup>th</sup> day of JULY, 2001, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Richard A. Porter and Shari K. Porter known or identified to me to be the persons whose names are subscribed to this instrument and acknowledged that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Alan D. Mills  
NOTARY PUBLIC FOR THE STATE OF IDAHO  
Residing at: MIDDLETON  
My Commission expires: AUG. 30, 2005