

**DECLARATION OF RESTRICTIVE COVENANTS**

**638144**

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**AFFECTING THE PLAT OF THIRD ADDITION TO THE PINES SUBDIVISION**

**REAL PROPERTY:** Lots 1,2,3,4,5, and 6 in the THIRD ADDITION TO THE PINES SUBDIVISION

**PURPOSE:** The purpose of these covenants is to preserve the natural endowments of the real property, and insofar as possible, to keep the real property desirable, valuable and attractive. The further purpose of these covenants is to prevent or limit degradation, erosion and disfiguration of the real property.

The covenants hereinafter provided are to run with the land and shall be binding upon all persons claiming under the Grantor and their successors in interest and assigns.

**I.**

**DURATION**

These covenants shall initially run for a period of thirty (30) years. At the expiration of the thirty (30) year period these covenants shall automatically extend for successive ten (10) year periods until at least a majority of the property owners vote to terminate said covenants. These covenants may be amended at anytime by a unanimous vote of all the property owners.

**II.**

**LAW**

Use of the property within the subdivision shall at all times be in conformity with the zoning, building, planning, environmental and subdivision rules, regulations, statutes and ordinances of Bonner County, the State of Idaho and the United States of America.

**III.**

**RESIDENTIAL, COMMERCIAL, AND FURTHER SUBDIVISION**

- (1) All of the lots in said subdivision are restricted to residential use and commercial use as set forth herein.
- (2) Commercial use in the subdivision shall consist of only the following:
  - a) An in home office shall be allowed.
  - b) No commercial activity is allowed that would create an unsightly environment or create a nuisance to other lot owners.

#### IV.

#### HOUSES

Each lot shall be used for a single family residence with a minimum square footage as described herein. A single level building shall have a minimum square footage of 1500 square feet. A two level building shall have a minimum square footage of 2000 square feet with the first level consisting of not less than 1200 square feet. No residence shall be larger than two (2) levels in height above ground. These dimensions are exclusive of any decks and garages. Each dwelling shall have a minimum of a two (2) car garage with closing doors. Only newly constructed houses may be placed on a lot and no previously constructed home may be moved to a lot from any other location. All construction must be approved in advance by a majority vote of the Property Owners Association.

#### MOBILE AND MANUFACTURED HOMES

Mobile homes and manufactured homes, as defined by Idaho Code Section 39-4105, shall not be allowed and are expressly prohibited.

#### ALL STRUCTURES

All structures must have metal, tile, or composition roofing. Wood shakes are strictly prohibited. Metal roofs must be painted and non-reflective. All structures must be situated on a permanent foundation. Exterior covering shall consist of wood, brick, stone, glass, vinyl, steel or architectural concrete. 4'x8' sheet siding (T-1-11) is prohibited. All structures must be painted, stained, or colored with colors that blend with the surrounding natural area. All chimneys are to be stone, brick or metal. Any conflict between lot owners regarding construction or finish of a structure shall be referred to the Property Owners Association for resolution. A majority vote will be sufficient to decide any conflict.

#### FIRE

In the event of a structure fire, the structure shall be rebuilt within one (1) year or the owner must have the foundation filled in and any structure torn down and disposed of.

#### V.

#### RECREATIONAL VEHICLES

Recreational tents, trailers and motor homes may be stored on the lots. They may not be utilized as a primary or secondary residence except during the first 12 months of construction of the primary family residence and in accordance with Bonner County Ordinances. Snowmobiles, motorcycles and four wheelers may not be used on the real property except on designated easements and roadways.

**VI.**

**OUTBUILDINGS**

Outbuildings and garages may be constructed on the real property contemporaneously with, or after, the construction of the single family residence. Said outbuildings and garages will be constructed similar in design, construction and color to the single family residence constructed on the lot. All construction must be approved in advance by a majority vote of the Property Owners Association.

**VII.**

**STORAGE**

No bulk materials, metals, lumber, refuse, yard debris, trash, machinery, derelict vehicles, hazardous or toxic chemicals shall be kept, stored or allowed to accumulate on any lot except building materials during the course of construction of an approved structure and machinery as is usual in the construction or maintenance of a private residence. Outside wood piles will be permitted but must be tidy and orderly at all times. Outside storage of trash shall be contained and confined in no more than five (5) standard size garbage cans.

All septic tanks must be pumped at least once every three (3) years.

**VIII.**

**SETBACK**

No single family residence shall be placed within or over a setback area. The setback line from all sides of each lot will be that set forth in Bonner County Code.

**IX.**

**FIREWORKS**

No fireworks will be discharged within the subdivision.

**X.**

**ROADS AND EASEMENTS**

All road easements and utility easements within the subdivision shall be pursuant to the Plat of THIRD ADDITION TO THE PINES SUBDIVISION and shall be as shown on said Plat. All road easements shall also be easements for utilities (electricity, telephone, cable TV, gas lines, sewer lines, water lines). Where possible, all utility lines shall be underground.

Heavenly Heights is designated as a Public Road that is Privately Maintained to the Cul-de-sac, and a private easement after that. Private road maintenance agreements for Heavenly Heights in the THIRD ADDITION TO THE PINES will be signed by

all landowners and pass from owner to owner upon sale or transfer of property. Refer to "Road Maintenance Association Formation Agreement" for Heavenly Heights (Public Road), and "Road Maintenance Association Formation Agreement" for Heavenly Heights (Private Road) for details.

## **XI.**

### **SIGNS**

No signs or billboards of any kind shall be erected on any lot or by any owner for any purpose whatsoever, except such small signs as may be necessary for identification of a residence, except as approved in advance by the Property Owners Association. This provision shall not be utilized to prevent standard size "For Sale" signs on the real property.

## **XII.**

### **WATER AND SEWER**

Each structure or residence designed or utilized for occupancy by persons shall provide their own water and waste disposal system in accordance with all local, state and federal regulations.

- 1) All septic tanks must be pumped at least once every three (3) years.
- 2) A drain field easement for Lot 1, as shown on the plat, is located on Lot 7 of the Second Addition to the Pines.
- 3) A common drain field easement for Lots 2,3,4 ,5 & 6, as shown on the plat, is located on lot 6.
  - a) A common drain field for all five residences is engineered to State standards.
  - b) The two drain field beds are designed to be alternated periodically (every six months during peak use). This will be responsibility of the homeowners utilizing the drain field system.
  - c) Each owner of Lots 2,3,4 ,5 & 6 shall bear the costs equally of maintenance, repair or replacement of the drain field.
  - d) Each owner of Lots 2,3,4 ,5 & 6 shall bear the cost of maintenance or replacement of septic lines to the drain field, which service such owner's lot.
  - e) The drain field shall be used solely for residential non-commercial purposes, including standard household uses.
  - f) The Utility Easement for septic line from the lots to the drain field is identified on the plat.

## **XIII.**

### **ANIMALS**

Domestic animals and pets, not exceeding four (4) in number, are allowed for each lot. No animal or pet shall be allowed to run at large or disturb the peace and serenity in the subdivision. All owners shall abide by County regulations as to animals.

**XIV.**

**GROUND COVER AND VEGETATION**

All surface areas in the subdivisions not occupied by buildings, structures, houses, or parking areas shall be kept in a natural condition (including trees, grass or garden). Surface areas damaged by construction shall be seeded and returned to a natural condition. All owners must comply with the storm water management plan in said Plat.

**TIMBER**

Timber may be sold, cut and removed from any lot, including that necessary to build an allowed structure, roadway or utility line or for purposes of fire prevention, or for view shed management. Diseased, dying or dead timber shall be immediately removed by the lot owner. Clear cutting of trees is not permitted and reforestation is mandatory.

**MINING**

No mining, quarrying, tunneling or excavating for any substance, including minerals, petroleum, gravel, sand, rock, above or below ground, shall be permitted. This provision shall not preclude that excavation necessary for a sewer system, roadway, or foundation for an allowed building.

**XV.**

**LEASE**

Rental or leasing of any of the residences is permitted. The owner of each lot, which is leased or rented to another person, shall include in every lease or rental agreement a reference to these covenants and an obligation on the part of the renter or lessee to abide by them.

**XVI.**

**OUTSIDE BURNING**

Outside burning of any vegetation or materials shall be allowed only in April, May, November and December of each year, or in accordance with local or State burning regulations. Property owners/tenants shall secure the appropriate burn permits from local authorities as required.

**XVII.**

**FENCES**

All fences must be neat in appearance, uniform in construction and maintained in good order. They must be approved in advance by a majority vote of the Property Owners Association.

## XVIII.

### PROPERTY OWNERS ASSOCIATION

- (1) The property owners of THIRD ADDITION TO THE PINES SUBDIVISION shall be added to the PROPERTY OWNERS ASSOCIATION for the FIRST ADDITION & SECOND ADDITION TO THE PINES, thereby including all the property owners of the three Additions to the Pines into one Association. Membership in the association shall expire automatically upon the termination of ownership. Every property owner shall be a member of that association. Each lot shall have one (1) vote in the association for its owners. Each lot's owners shall appoint in person or by proxy, one person to cast their lot's vote for all matters coming before the association. If the owners of a lot are unable/unwilling to appoint a single voting representative, they shall forfeit their vote on that issue. If any owners cast a vote representing a certain lot it will be conclusively presumed, that for all purposes, that they were acting on the authority or consent of all owners of the same lot.
- (2) The association shall hold a meeting, at least annually, in January of each year. Any member may request a meeting, providing they give at least 30 days advance notice, to each lot owner, of the date, time, place and purposes of the meeting. This notice must be written and shall be delivered in person, by mail using certified return receipt to the last address on file with the association, or by fax. Until all property owners are residing on their lots, they may attend such meeting by telephone conference with each member paying their share of the phone charges. If a member fails to respond to the certified return receipt mail meeting notice, the member's vote shall be counted as in favor of all motions coming before the association at that meeting.
  - a) A minimum of 50% of the lots must be represented in person, by telephone conference, or by proxy to conduct an annual meeting. A minimum of 50% of the voting lot owners must be represented to conduct the business of the association and constitute a quorum.
  - b) Each year at the first (annual) association meeting the first order of business shall be to elect the three (3) officers of the association, a chair, treasurer and secretary. They shall serve approximately (1) year, until the next annual meeting. The second order of business shall be to set the next year's annual budget, including special assessment fee levels, as appropriate. If a majority cannot agree on the fees, they shall remain at the current level for the next year. All assessments become due and payable on the first day of May of each year, or such other date as may be agreed upon by the association.
  - c) Neither the association nor any member shall be liable to any person or association for any loss, damage, or injury arising out of, or in any way connected with the performance of any association duties hereunder. The association shall review all proposals solely on the basis of best interest of the property owners, aesthetic considerations, and the overall benefit or detriment which would result to the immediate vicinity or to the subdivision as a whole. While taking into consideration the aesthetic

aspects, the association shall not be responsible for reviewing, nor shall its approval of any design or plan be deemed approval of such plan or design from the standpoint of structural safety or conformance by building or other codes.

- d) Each property owner agrees, by either signing these covenants or acceptance of a Deed, to covenant and agree to pay to the association (1) annual assessments or charges; (2) special assessments to be fixed, established and collected from time to time as authorized for capital improvement and repair. The annual and special assessment, together with such interest thereon and cost of collection thereof as herein provided, shall be a charge on the land and shall be a continuous lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due.
- e) The assessments levied by the association, shall be used exclusively for the purpose of maintaining the subdivision roads, storm water management systems and other improvements to the subdivision as authorized by the association.
- f) If the assessments are not paid on the day when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.
- g) If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 10% per annum, and the association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.
- h) The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments

thereafter becoming due, nor from the lien of any such subsequent assessment.

- (3) The PROPERTY OWNERS ASSOCIATION, shall have the following powers:
- a) Assess an annual fee for the maintenance and construction of improvements as it deems necessary to benefit the owners. This fee is set at \$10.00 for the first year or portion thereof;
  - b) Assess an annual fee for the control of storm water run off and maintenance, plowing and improvement of all easements and roads as it deems necessary to benefit the owners.
  - c) Enforcement of all covenants and restrictions;
  - d) Promulgation of rules and regulations;
  - e) Upon the determination that there exists on a private area or easement, an undesirable or unsafe condition, the right to request and enforce the correction or removal thereof;
  - f) Provision of such services to owners as it shall deem to be of benefit to the owners;
  - g) Establish by majority (51%) vote the annual fees, and if necessary, a special assessment for the unexpected cost of construction or re-construction or repair or replacement of a capital improvement, including storm water management and roads: Special assessments may not exceed \$1,000.00 per year without unanimous consent of all property owners.

#### **XIX.**

#### **CONSTRUCTION**

All construction of any kind must be completed within two (2) years of the commencement of that construction, except that an extension may be granted by the association. However, the exterior of all structures must be completed within one (1) year.

#### **XX.**

#### **CONDUCT**

There shall be no conduct or condition existing on the lots that is injurious to the health or safety of anyone. No behavior that is indecent or offensive to the senses shall be allowed. No one shall engage in any activity which obstructs the usage of the property or interferes with the comfortable enjoyment of property by lot owners.

#### **XXI.**

#### **VIOLATION**

If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for any person owning real property in the subdivision or the Property Owners Association to institute proceedings at law or in equity to enforce the provisions of this instrument. The prevailing party shall be entitled to its attorneys fees incurred in any such action.

XXII.

INVALIDATION

Invalidation of one or more of the provisions of this instrument by court order shall not effect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, This instrument is executed this 6<sup>th</sup> day of November, 2003.

*Nick Dean Nicolls*  
NICK DEAN NICOLLS  
President, Silver Nicoll Inc

State of Idaho )

County of Bonner ;

On this 6 day of November, 2003, before me, the undersigned, A Notary Public in and for said State, personally appeared NICK DEAN NICOLLS, President Silver Nicoll Inc., known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same.

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



*Christy Penewit*  
NOTARY PUBLIC for Idaho  
Residing at Sagle ID 83866  
Commission expires: 1/23/09

FILED BY  
*Marie Scott*  
2003 NOV -6 A 2:48  
MARIE SCOTT  
BONNER COUNTY RECORDER  
*MS* DEPUTY