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DEPARTMENT OF
WATER RESOURCES

Indian Creek Ranch Owners Association, Inc.

Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone (208) 424-7800
Facsimile: (208) 424-8774
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	
	)	Subcase No. 37-22490
	)	
Case 39576	)	AFFIDAVIT OF DANA L. HOFSTETTER
	)	
	)	
_____	)	

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Dana L. Hofstetter, being first being duly sworn upon oath, deposes and says:

(1) I am Dana L. Hofstetter, counsel of record in this matter for the Indian Creek Ranch Owners Association, Inc. ("ICROA").

(2) Attached hereto as Exhibit A is a true and correct copy of the 1900 *Caldwell v. Tucker* decree for the historic Indian Creek Ranch irrigation Water Right No. 37-296 from Indian Creek.

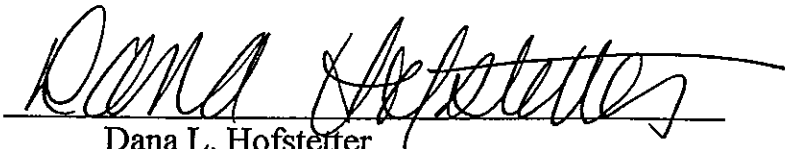
(3) Attached hereto as Exhibit B is a true and correct copy of the deed by which the ICROA obtained title to the common areas of the Indian Creek Ranch Subdivision in Blaine County, Idaho.

(4) SRBA Claim No. 37-22490 is intended to cover the historic stock water uses of Indian Creek.

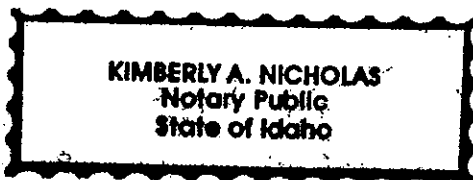
(5) Attached hereto as Exhibit C is a true and correct copy of an excerpt from the Indian Creek Ranch subdivision CC&R's indicating that residents of the subdivision remain able to keep horses.

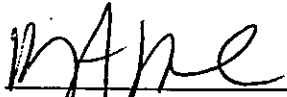
FURTHER YOUR AFFLIANT SAYETH NAUGHT.

DATED this 30th day of June, 2010.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 30th day of June, 2010.




Notary Public in and for the State of Idaho
Residing at: 11088 W State St Boise ID
My Commission Expires: 12/14/2012 83702

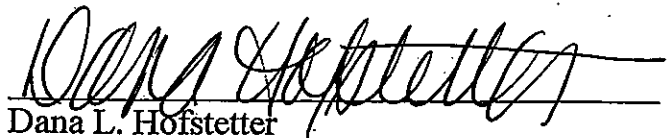
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including attachments) this 30th day of June, 2010, by U.S. Mail postage pre-paid to:

IDWR Director
P.O. Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449


Dana L. Hofstetter

5

39-14X

In the District Court of the Fourth Judicial District
of the
State of Idaho, in and for the County of Blaine.

A. Caldwell and Alturas Water Company,

Plaintiffs,

vs.

S. M. Tucker, Nancy M. Tucker, S. T. Tucker, Emma
C. Tucker, George H. Knight, I. I. Lewis, and
Henry Guyer, Defendants.

)))-----((

This cause came on regularly to be tried before the Court and a jury. The plaintiffs appeared by their counsel, F. E. Ensign and G. M. Parsons, and all of the defendants, except Lewis and Guyer, who did not answer nor appear at the trial, by their counsel, Lyttleton Price and L. L. Sullivan. A general verdict was rendered against the plaintiffs and the jury also rendered a special verdict of facts submitted to it. The cause being thereupon argued and submitted to the Court for its decision and judgment and the Court being fully advised, after due deliberation it decided the same and filed its decision in writing and its findings of fact and conclusions of law. Wherefore, by reason of the law and the premises, it is ordered, adjudged and decreed: JUN 05 1936

That the defendant, Nancy M. Tucker, is the owner and entitled to the possession and use of all the waters of Indian Creek, a stream flowing into the Easterly side of Wood River Valley about two miles

EXHIBIT

A

above the town of Hailey, in Blaine County, Idaho. That neither of the plaintiffs has any right, title or interest in or to said water or any part thereof. EXCEPT AND PROVIDED, however, that the Alturas Water Company has the right and is entitled to the use, during that part of the year when said waters are not necessarily and ~~properly~~ properly used and in use for the purpose of irrigation on the lands of said Nancy M. Tucker and the lands lying along said creek above the reservoir of said water company, of as much of said water as its pipe line will now convey from its said reservoir delivered through its system of mains and service connections to the town of Hailey which is hereby adjudged and decreed to it, to be used by it in said quantity and at the time stated. *37-1216* *¶ 12 P.98 37-6 - Frost Decree*

It is further ordered that the defendants have and recover their costs and disbursements expended herein, taxed at Sixty eight & 90/100 dollars.

Dated, December 24, 1900.

C. O. Stockslager,

District Judge.

Certificate of True Copy.

STATE OF IDAHO,

County of Blaine } ss.

I, *W. P. Morse*

Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the foregoing is a true and correct copy of the original *Decree*

in the above entitled action now on file of record in my office. Given under my hand and the seal of said Court, at office in Hailey, this, the *21st* day of *July A.D. 1909*.

Attest:

By *Geo. M. Good*

Deputy

Clerk.

JUN 05 1996

JUN 05 1996

3485

WARRANTY DEED

(14)

For Value Received

INDIAN CREEK RANCHES, a limited partnership,

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

INDIAN CREEK RANCH OWNER'S ASSOCIATION, INC., whose address is
P.O. Box 1538, Hailey, Idaho 83333

Hereinafter called the Grantee, the following described premises situated in Blaine County, Idaho, to-wit:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: January 31, 1978

Indian Creek Ranches,

by John H. Koppes

STATE OF IDAHO, COUNTY OF BLAINE
On this 31st day of January, 1978,
before me, a Notary Public in and for said State, personally appeared JOHN H. KOPPES, known to me to be one of the
partners of the partnership
that executed the within
instrument, and he acknowledged to me that such partnership
executed the same.

JAN 23 1978

Owen M. Muck

Residing at:

Hailey

Notary Public
Idaho

STATE OF IDAHO, COUNTY OF BLAINE

I hereby certify that this instrument was filed for record
at the request of *Titelment Inc.*

at 11 minutes past 9:00 o'clock A.M.,
this 1 day of Feb.
1978, in my office, and duly recorded in Book
of Deeds at page

MARIE MCILVA
Ex-Officio Recorder

By

Hazel Barber

Deputy

Fees \$3.00
Mail to:

Instrument No. 180037

Barber No. 530

EXHIBIT

B

PARCEL I: (Common Area)

TOWNSHIP 3 NORTH, RANGE 18 EAST OF THE BOISE MERIDIAN, BLAINE COUNTY, STATE OF IDAHO:

SECTION 22: SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 23: Lots 2 and 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{4}$ SW $\frac{1}{4}$
THE LULU MILL SITE, Lot No. 37
SECTION 26: W $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{4}$ SE $\frac{1}{4}$
SECTION 27: W $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$
SECTION 28: SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$
SECTION 33: NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$
EXCEPT One Acre, more or less, lying North of
the Indian Creek road situated in the E $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 34: E $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, W $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$
SW $\frac{1}{4}$ SE $\frac{1}{4}$

TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE BOISE MERIDIAN, BLAINE COUNTY, STATE OF IDAHO.

SECTION 7: SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{4}$ SE $\frac{1}{4}$, Lot 4

EXCEPTING THEREFROM all that land platted as INDIAN CREEK RANCHES NO. 1, recorded in Book 8 of Plats, page 17, records of Blaine County, Idaho.

ALSO EXCEPTING THEREFROM all that land platted as INDIAN CREEK RANCH SUBDIVISION NO. 2, recorded in Book 13 of Plats, page 14, records of Blaine County, Idaho.

ALSO EXCEPTING THEREFROM a tract of land lying in Section 27, Township 3 North, Range 18 East of the Boise Meridian, more particularly described as follows:

Commencing at the Northeast corner of said Section 27; thence S. 57° 54' 08" W., 3134.65 feet to the TRUE POINT OF BEGINNING; thence
S. 40° 43' 1" W., 361.51 feet; thence
N. 18° 12' 43" W., 406.36 feet; thence
N. 49° 02' 00" W., 221.17 feet; thence
S. 80° 18' 48" W., 72.62 feet; thence
N. 35° 31' 22" E., 576.00 feet; thence
S. 20° 29' 48" E., 761.81 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM all that land platted as INDIAN CREEK RANCH SUBDIVISION NO. 3, recorded in Book 13 of Plats, page 15, records of Blaine County, Idaho.

ALSO EXCEPTING THEREFROM a tract of land lying in Section 27, Township 3 North, Range 18 East of the Boise Meridian, more particularly described as follows:

Commencing at the Southwest corner of said Section 27; thence N. 27° 10' 47" E., 3750.22 feet to the TRUE POINT OF BEGINNING; thence
S. 58° 27' 12" E., 633.61 feet; thence
S. 79° 14' 51" W., 503.85 feet; thence
S. 21° 25' 02" W., 298.04 feet; thence
38.00 feet along a curve to the right with a central angle of 5° 07' 01", a radius of 425.50 feet and a long chord of 37.99 feet that bears N. 70° 13' 16" W., thence
164.01 feet along a curve to the right with a central angle of 32° 27' 24", a radius of 289.52 feet and a long chord of 161.82 feet that bears N. 51° 25' 59" W.; thence
N. 35° 12' 25" W., 225.03 feet; thence
16.20 feet along a curve to the left with a central angle of 6° 18' 19", a radius of 147.25 feet and a long chord of 16.19 feet to the TRUE POINT OF BEGINNING.

JAN 28 1996

feet that bears N. $38^{\circ} 22' 36''$ W.; thence
41.44 feet along a curve to the right with a central angle of
 $67^{\circ} 13' 24''$, a radius of 35.32 feet and a long chord of 39.10
feet that bears N. $7^{\circ} 53' 59''$ W.; thence
N. $52^{\circ} 42' 43''$ E.; 105.49 feet; thence
225.08 feet along a curve to the left with a central angle of
 $10^{\circ} 59' 44''$, a radius of 1172.84 feet and a long chord of 224.74
feet that bears N. $47^{\circ} 12' 45''$ E.; thence
N. $41^{\circ} 42' 58''$ E.; 184.00 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, Township 3
North, Range 18 East of the Boise Meridian, Blaine County, Idaho.

JAN 23 1996

AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
INDIAN CREEK

This Amended Declaration of Covenants, Conditions and Restrictions of Indian Creek (hereinafter referred to as the "Declaration") is made effective the 24th day of January, 2003, by the Indian Creek Ranch Owners Association, Inc. (hereinafter referred to as "ICROA"), an Idaho nonprofit corporation, and the owners of all the real property within the Indian Creek Subdivisions or that has been incorporated into Indian Creek, more particularly described as follows:

Indian Creek Ranch No. 2, Blaine County, Idaho, according to the official plat thereof in Book 13 of Plats, page 14, recorded on February 2, 1976, records of the County Recorder, Blaine County, State of Idaho.

Indian Creek Ranch No. 3, Blaine County, Idaho, according to the official plat thereof in Book 13 of Plats, page 15, recorded on March 8, 1976, records of the County Recorder, Blaine County, State of Idaho.

Indian Creek Ranch No. 4, Blaine County, Idaho, according to the official plat thereof recorded as Instrument No. 264759 on July 18, 1985, records of the County Recorder, Blaine County, State of Idaho.

Indian Creek Ranch No. 5, Blaine County, Idaho, according to the official plat thereof recorded as Instrument No. 438550 on April 26, 2000, records of the County Recorder, Blaine County, State of Idaho.

Indian Creek Ranch No. 6, Blaine County, Idaho, according to the official plat thereof recorded as Instrument No. 442995 on September 8, 2000, records of the County Recorder, Blaine County, State of Idaho.

(hereinafter collectively referred to as "Indian Creek").

At the time this Declaration is recorded, it shall amend and completely replace any and all prior covenants, conditions and restrictions appearing of record in the Office of the Blaine County Recorder as affecting or purporting to affect all the real property comprising Indian Creek. The covenants, conditions and restrictions contained in this Declaration are in addition to any other land use restrictions, zoning ordinances, laws, rules, plat notes, and decisions of governmental and judicial authorities including Blaine County, Idaho.

If any provision of this Declaration is more restrictive than other land use restrictions, zoning ordinances, laws, rules, plat notes, and decisions of governmental and judicial authorities,

AMENDED DECLARATION - 1

Instrument # 477479

HARLEY, BLAINE, IDAHO

2003-01-27

11:17:00 No. of Pages: 154

Recorded for: INDIAN CREEK RANCH OWNERS

MARSHA RHEMANN

Fee: 462.00

Ex-Officio Recorder Deputy

Index to: AMENDED COVENANTS & RESTRICTIONS

145099 & 161905

EXHIBIT

C

including, but not limited to Blaine County, Idaho, the provisions of this Declaration shall be controlling. This Declaration does not supplant any land use restrictions which are enforced, and must be satisfied, independent of this Declaration, including those that may impact individual parcels of real property within Indian Creek.

Indian Creek is an area of much natural beauty, including distinctive terrain features and pastoral areas and it is the desire and intent of ICROA and the individual owners to create a community for residential use, in which such natural beauty shall be substantially preserved for the enjoyment and convenience of the persons living in Indian Creek. The covenants, conditions and restrictions established by this Declaration are intended to secure such objectives.

Now, therefore, ICROA and the individual owners hereby declare that Indian Creek is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions and restrictions in order to enhance the value, desirability and attractiveness of such real property. The restrictions set forth herein shall run with the real property included within Indian Creek; shall be binding upon all persons having or acquiring any interest in such real property or any part thereof; shall inure to the benefit of every portion of such real property; and shall inure to the benefit and be binding upon ICROA and the individual owners, their family members, invitees and successors in interest, and may be enforced by ICROA, by any owner or an owner's successors in interest.

A. LAND CLASSIFICATION AND DEFINITIONS

1. "Board" shall mean the Board of Directors for the Indian Creek Ranch Owners Association.

2. "Committee" shall mean the Design Review Committee for the Indian Creek Ranch Owners Association.

3. "Common Area" shall mean any area described in a recorded instrument or shown on a recorded plat which is either clearly identified as such on a recorded plat or in a recorded instrument or which is not classified on a recorded plat or instrument as a parcel of real property otherwise designated for residential purposes, including all Roads, as that term is defined below. A Lot may be changed to Common Area by approval of ICROA prior to a recorded declaration of the Lot owner conveying the Lot to ICROA.

4. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, above and below ground, including but not limited to residences, buildings, outbuildings, garages, carports, Roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping approved or required by the Committee as part of the Committee's approval of new construction or a remodel, poles, signs, exterior air conditioning or other utility units or enclosures and satellite dishes. Landscaping beyond the landscaping

approved or required by the Committee as part of new construction or a remodel is not considered an Improvement for the purpose of this definition.

5. "Indian Creek Ranch Owners Association" or "ICROA" shall mean the Idaho nonprofit corporation, which was created to provide for the maintenance, preservation and architectural control of the Lots and Common Area within Indian Creek and whose purposes and powers are set forth in the Articles of Incorporation of Indian Creek Ranch Owners Association, Inc.

6. "Lot" shall mean any tract of real property now or hereafter separately described in a recorded instrument or shown on a recorded plat within Indian Creek or that has been incorporated into Indian Creek, that may have been formerly referred to as a Ranch, not including Common Area.

7. "Property" shall mean any and all real and/or personal property which is now or may hereafter be subject to this Declaration, including Lots or Common Area, and including, but not limited to Roads and driveways or rights of way and any and all Improvements, as that term is defined below.

8. "Road" shall mean any and all private streets, roads, or ways meant for motorized vehicular traffic of any kind that appear now or hereafter on any recorded plat of Indian Creek. For the purpose of this Declaration, Indian Creek Road, as shown on the recorded plats of Indian Creek, is not defined as a Road.

B. USE OF PROPERTY

1. Residential Use/Single Family Dwelling. No Lot shall be used for any purpose (including any retail or wholesale or commercial activity, except as conditionally permitted in this Declaration) other than for the residence of a family. If otherwise permitted by Blaine County, an attached or detached Accessory Dwelling may also be used as a residence on a Lot.

2. Home Occupations/Businesses Conditionally Permitted. Commercial or business activity within Indian Creek is expressly forbidden, with the exception that some home occupations/businesses may be compatible with residential use and may be conditionally permitted by ICROA. No home occupation/business shall be conducted in Indian Creek without a ~~conditional use permit from ICROA~~.

a. Criteria for Evaluating Conditional Use Permits. The granting of a home occupation/business special use permit by ICROA shall be based on the criteria of an owner's ability to eliminate the unfavorable impact of:

- i) Noise,
- ii) Dust,

- iii) Traffic,
- iv) Sight pollution, and
- v) Objectionable odors.

b. Procedure to Obtain Conditional Use Permit. The procedure for applying for a home occupation/business conditional use permit from ICROA is as follows:

i) Written application shall be made to the Board, and such application shall include evidence of the owner's compliance with all applicable county and state ordinances and laws and a brief explanation of the manner in which the applicant will mitigate the impact of noise, dust, traffic, sight pollution and objectionable odors upon the subdivision.

ii) The Board will approve or deny the request within 30 days of the first Board meeting following the application, unless the Board requests the attendance of the applicant at the next meeting of the Board, in which case the Board will approve or deny the request in writing, within 30 days of the second meeting of the Board. The Board shall provide the applicant with a written decision approving or denying the conditional use permit within 30 days of the meeting.

c. Granting or Denying Conditional Use Permit. Any home occupation/business conditional use permit from the ICROA shall be granted or denied at the sole discretion of a majority of a quorum of the Board. If granted, it shall continue to be conditioned upon the above-referenced criteria, shall be reviewed by the Board at least annually for compliance, and is revocable at any time by a majority of a quorum of the Board for noncompliance with any condition of the permit. ICROA may use any and all legal means available to enforce its rules regarding the operation of home occupations/businesses.

3. Signs. No sign or other advertising device of any nature shall be placed upon any Property, except as permitted by the Committee.

4. No Temporary Improvements. No temporary improvements, mobile home, manufactured or premanufactured home, trailer, yurt, tepee, tent or other structure of any type shall be used temporarily or permanently as a residence on any Property; provided, however, temporary and recreational use of a camper, tepee, tent or similar structure will be permitted.

5. Containers. All containers, trash cans, receptacles of any description and/or tanks (whether for gas, oil, or any other substance) shall be enclosed or screened from view.

6. Storage. No lumber, metals, bulk materials, refuse, trash, abandoned or nonoperational vehicles and/or equipment shall be kept, stored or allowed to accumulate on any Lot except building materials during the course of construction or materials or substances used in reasonable agricultural activities and kept in a reasonable and orderly manner. No trailers, campers, or other equipment shall be kept or stored on any Property.

except within an enclosed building or structure. No view of the public and other Lot owners. Additionally, no machinery or equipment shall be placed or operated upon any Lot except such machinery as is customarily and ordinarily used in the maintenance of a private residence located on a similar size parcel of real property.

7. Waste Disposal/Septic Systems. No cesspool, septic tank or other sanitation or sewage collection or disposal system or device shall be installed, maintained or used upon any Property without the approval of the South Central Health District of the State of Idaho, any other governmental body having jurisdiction over such matters and the Committee, and unless it is in compliance with any and all applicable regulations.

8. Mining. No Property shall be used for the purpose of boring, mining, quarrying, exploration for or removal of water, oil or other hydrocarbons, minerals, gravel or earth, except that wells may be dug to provide water for domestic purposes, as that term may be defined by the State of Idaho Department of Water Resources or any other governmental body having jurisdiction over such matters.

9. Noxious Weeds. No noxious weeds shall be allowed to accumulate on any Property.

10. Nuisance. All Lots and all Improvements shall be kept and maintained by the owner thereof, in a clean, safe, attractive and slightly condition and in good repair. No noxious or offensive activity shall be carried on any or in any Property, nor shall anything be done or placed on or in any Property, which is or may become a nuisance, disturbance or annoyance to other Lot owners or the general public.

11. Hazards. No activities shall be conducted on any or in any Property, which are or could be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon in or on any Property.

12. Offensive Lights, Noises or Odors. No light nor reflection of light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare. No sound shall be emitted from any Property which is unreasonably loud or annoying. No odor shall be emitted from any Property which is noxious or offensive to others.

13. Livestock and Pets. No livestock, including, but not limited to poultry, cows, pigs or sheep, nor exotic or dangerous pets or animals may be kept on any or in any Property, provided that this covenant shall not operate to prohibit the keeping of a reasonable number of household pets and horses. An owner shall restrict the owner's household pets and/or horses to an owner's Lot, unless accompanied by or under the direct control of the Lot owner.

14. Exterior Finishes. All roofs, exterior siding, and exterior colors on any improvement within Indian Creek must be approved by the Committee. Roofing materials may