

INSTRUMENT NO. 85609

State of Idaho)
County of Adams) ss.

Filed for record at the request of
Timberline Title & Escrow
40 min. past 15 o'clock P.M.
this 14th day of March, 1994

DECLARATION OF
PROTECTIVE RESTRICTIONS AND COVENANTS
ADAMS COUNTY, IDAHO

MICHAEL FISK, RECORDER
by Peggy Linbal
Deputy

Fee \$24.00

DB

THIS DECLARATION, Made as of the 29th day of September
1993 by BALBACH LOGGING, INC., ~~Whispering Pine Estates, a partnership~~ hereafter
referred to as "Grantor";

WITNESSETH:

WHEREAS, Grantor is the owner of all that certain real estate situated in Adams County, Idaho, more particularly described in the plat of Whispering Pine Estates, (hereafter referred to as the "Subdivision"), recorded on the 29th day of September, 1993, as instrument No. 84823 records of Adams County, Idaho; and

WHEREAS, it is the desire and intent of the Grantor to create a residential community in which certain standards shall be established for the mutual protection of all residents, with due regard for the preservation and protection of the environment, and the restrictions and covenants established in this Declaration are intended to serve such objectives;

NOW, THEREFORE, Granter hereby declares that all property in the Subdivision (as herein defined) is and shall be held, conveyed, encumbered, leased, and used subject to the following uniform covenants, restrictions, and equitable servitudes in furtherance of a plan for the subdivision, improvement and sale of said property, and to enhance the value, desirability, and attractiveness of such property. The restrictions set forth herein shall run with the real property included within the Subdivision; 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 any interest therein; and shall inure to the benefit of an shall be binding upon grantor, its successors in interest, and may be enforced by Grantor, by the Owner or such Owner's successors in interest.

DEFINITIONS 1. In construing this instrument, the following definitions shall be applied:

"Subdivision" means SUBDIVISION, according to the official plat thereof now on file in the office of the County Recorder of Adams County, Idaho.

"Lot" means an officially designated and numbered lot on the official plat of the Subdivision. If any lot as shown on said official plat shall be re-subdivided pursuant to law and these Covenants (and this clause shall not be construed to authorize any such re-subdivision) into two or more tracts of land, under different ownerships, then each such separate tract into which said original lot was re-subdivided shall constitute a separate "lot" within the meaning of this instrument. The terms "Grantee" or "Owner" shall mean the record title holder or holders of any "lot", together with the heirs, successors, and assigns of such party or parties.

GENERAL
PROVISIONS

2. By acceptance of any conveyance of any property the Subdivision the Grantee and Grantee's heirs, personal representatives, successors, and assign covenant with the Grantor, and its successors and assigns, and with all other Grantees or subsequent owners of property in said subdivision, that these covenants shall inure to the benefit of and be binding upon all such parties.

RE-SUBDIVISION

3. In consideration of the approval of the plat of the Subdivision in accordance with subdivision standards applicable to Adams County subdivisions, such plat shall not be amended by re-subdivision. All structures shall be for non-commercial usage, and property may not be subdivided into smaller parcels.

USE OF LAND

4. The Grantee herein, his heirs, successors and assigns, shall use the above described real property and estate for agricultural, residential, or recreational purposes exclusively. That no buildings shall be erected, or altered or placed or permitted to remain on any acreage other than residential structures and garage building and outbuildings used in connection with said residence. That the design, exterior color scheme, and exterior building materials shall blend with the natural surroundings. This covenant does not, however, restrict the rental of the premises or improvements upon the premises for residential purposes.

STRUCTURES

5. Plans of all structures to be erected on any building sites embraced in the plat must be submitted to architectural committee, hereinafter called "Committee", which shall exercise the rights herein. Complete plans and specifications of all proposed buildings and structures, together with a detailed plan showing proposed location on the particular building site, shall be submitted to the Committee before construction or alteration is started and such construction or alteration shall not be commenced until written approval thereof is given by the Committee. Grantee agrees that the actions of the Committee, in and for Grantor shall be wholly discretionary with said Committee, which discretion shall be binding upon Grantee whether exercised or not, and said committee shall not be deemed to have a duty to act in any particular instance. If said Committee does not approve or discharge said plans and specifications within thirty (30) days after the same have been submitted to it, such approval will not be required and the provisions of this section will be deemed to have been fully complied with.

As to all improvements, construction and alterations upon building sites, the Committee shall have the right to refuse to approve any design, plan, floor area or color for such improvements, construction or alterations, which is not suitable or desirable, in its opinion, for any reason, aesthetic or otherwise, and in so passing upon such design, the Committee shall have the privilege in its discretion to take into consideration the suitability of the proposed building or other structure, and the materials of which it is to be built and the exterior color scheme, to the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of the building or other structure or alterations therein as planned on the outlook of the adjacent or neighboring property, and the effect or impairment that said structure will have on the view of surrounding building sites, and any and all other factors which, in the Committee's opinion, shall affect the desirability of such proposed structures, improvements or alterations. Actual construction shall comply substantially with the plans and specifications as so approved.

Said Committee shall be composed of Dan Balbach, President, which committee shall in the future be appointed in the manner provided by a lot owners

association and on the conditions as the Grantor shall designate. Grantee specifically agrees with Grantor, in consideration of all the provisions of these restrictions and the grant made shall incur no liability for any omission or act by any of said above named parties under Section 4 of these restrictions. In the event of death or resignation of a member, the remaining members shall have full authority to act, and may appoint a replacement.

**BUILDING
MATERIALS**

6. All buildings (including outbuildings) erected upon any building site in this subdivision shall be finished, painted and maintained in good repair so as to not be offensive to any other property owners in the Subdivision. All buildings will have roofs of any material so long as it blends with the natural surroundings, excluding any non-colored metal roofs.

LOCATION

7. No building shall be located on any property nearer than fifty (50) feet to any property line with a fifty (50) foot minimum set back from roads.

SIZE

8. The Square footage requirements will require no less than 800 square feet on the ground floor on a two story building, and a minimum of no less than 1200 square feet per dwelling.

**TEMPORARY
STRUCTURES**

9. No pick-up campers, motor homes, trailer homes nor mobile homes of any kind shall be placed permanently on any lot nor parcel of said land. Temporary use of campers, trailers and motor homes shall not exceed two weeks during any one month period. Except, mobile homes may be placed upon a lot or parcel during construction of a permanent dwelling, but such mobile home may not remain on said lot or parcel for more than one (1) year.

NUISANCES

10. No nuisances, offensive or illegal activities shall be carried on upon any property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the subdivision including but not limited to snowmobiles and/or motorcycles. The use of any firearms shall not be permitted on said property. All owners shall conform to the County ordinances and State Laws relating to noxious weed control and if they fail to do so the homeowners shall have the right to come on the premises and do

premises. Machinery, construction equipment, and building materials shall be stored at locations where the same are not visible from the roadways within the Subdivision, except during the time of actual construction of buildings and improvements wherein the same are used.

PROSECUTION
OF WORK

15. The construction of the dwelling house and structures shall be prosecuted diligently, continuously and without delays from time of commencement thereof until such dwelling house and structure are fully completed and painted, unless prevented by causes beyond the control of the Grantee and only for such time that cause continues, and in any case, exterior construction must be completed within twelve (12) months of date of commencement of construction.

FENCES

16. No fence, hedge or boundary wall situated anywhere upon a lot shall have a height greater than (6) feet above the ground graded surface where such fence, hedge or wall is situated. All fences built within the subdivision shall be kept and maintained in good repair and appearance so as to be inoffensive to other property owners in the Subdivision and shall be built to local standards. No gate shall be built on outside fences.

SIGNS

17. No signs or billboards of any kind or for any use shall be erected, posted or displayed upon any building site. The name of a resident or a dwelling house upon a building site may be displayed upon a name or address plaque. The Grantor reserved the right to display signs upon lots or building sites remaining in the ownership of the Grantor during the period that those building sites are for sale by the Grantor or its agents.

ROADWAYS

18. The responsibility of dust abatement on the gravel roads in the subdivision is the responsibility of the individual lot owners and/or the homeowners and not the responsibility of the County Highway District or the Adams County Road Department. All dust abatement shall be performed with W.P.A. approved materials.

VEGETATION
LANDSCAPING
EXCAVATION

19. Each lot owner shall landscape his lot either by doing improved landscaping, consisting of pasture, ornamental trees and shrubs, and/or

what is necessary to make the property conform to such laws and ordinances at the Grantees expense.

ANIMALS

11. Household pets (dogs, cats, etc.) may be kept as long as they are not raised for commercial purposes. These household pets must be cared for and restrained so they are not a nuisance to other residents in the subdivision. Three (3) large animals (horses or cattle) shall be allowed per lot. No more than two (2) adult dogs will be allowed per lot. These animals shall be properly fenced and cared for. No pigs, sled dogs, hound dogs or other animals likely to cause undesirable noise, odors, or other noxious conditions shall be permitted.

WATER

12. The Grantor is under no obligation to deliver irrigation water, or to furnish rights of way in connection with the delivery of domestic or irrigation water to any lot or building site in the Subdivision. All property owners shall insure that no owner, agent, guest or invitee in any way obstructs or places any item or re-routes or damages said irrigation ditch, since said ditch carries irrigation water through the property and is owned and maintained by the irrigation company responsible for said ditch. Any and all damage to the ditch or interference with its use, or plugging up of said ditch shall be the responsibility of the respective party or that party's agents, licensees or guest which cause the damage.

SEWAGE
DISPOSAL

13. All buildings shall be constructed with septic tanks or individual sewage disposal systems located and constructed in accordance with the requirements, standards, and recommendations of the Department of Public Health. Approval of such system, as installed, shall be obtained from such authority.

REFUSE AND
DUMPING

14. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, abandoned automobile bodies, or other waste material. All such materials shall be kept in sanitary containers. All incinerators (if permitted by law) and other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No junk machinery, trailers, trucks, appliances or unsightly material of any sort or nature, or junk automobiles shall be kept on any of said

leave it in its natural state or a combination thereof. It is the intent of this provision to insure that each lot owner does maintain a vegetation cover and/or provide landscaping to insure that said lands do not blow or are not covered by dead vegetation or no vegetation at all. All vegetation shall be watered or maintained, whether natural or improved.

In addition to this landscaping and vegetation cover, there shall be no excavation of stone, sand, dirt, gravel, minerals or any other natural minerals from any of the lots.

WETLANDS

20. There shall be no use or construction within the wetlands which are shown on the final plat, except what is specifically allowed by the rules and regulations set down by the United States Army Corps of Engineers.

TIMPER
REMOVAL

21. No trees shall be removed without written consent of the "Committee". The only exception is the removal of trees within seventy five (75) feet of building for lawn and sunlight. Dead or dying trees may be removed.

INVALIDATION

22. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other covenants or provisions hereof, all of which shall remain in full force and effect.

TERM

23. These restrictions shall run with the land described herein and shall be binding upon the parties hereto and all successors in title or interest to said real property or any part thereof, until July 1, 2010, at which time said restrictions shall be automatically extended for successive periods of ten (10) years.

Where any restrictions, easement of dedication herein varies from the requirements of the subdivision or other ordinances of Adams County having jurisdiction and the requirements of the county ordinances relating to subdivision are more restrictive, said more restrictive requirements shall be deemed to be a part hereof as if set forth herein as part of these restrictive covenants. This limitation shall apply in particular to locations, public easements and ways where the same are particularly required by such ordinances but not

set forth herein.

ENFORCEMENT 24. If any party shall violate or attempt to violate any of the covenants herein contained, and shall persist in such violation or attempt after ten days notice in writing served or delivered upon such party, then any other person or persons owning any real property in said subdivision may prosecute any proceedings at law or in equity against such party, either to prevent such violation or to recover damages therefor, and in any such proceedings the prevailing party shall be entitled to recover reasonable attorney fees and court costs from the other party or parties.

Balbach Logging

IN WITNESS WHEREOF, this instrument has been executed by the undersigned, on behalf of ~~Whispering Pine Estates, a partnership, pursuant to the authority granted in Paragraph XXXXXX of the General Partnership Agreement of said partnership, recorded as Instrument No. XXXXX, records of Adams County, Idaho.~~

BALBACH LOGGING INC., BY:
~~Whispering Pine Estates,~~
~~a partnership, by XXXX~~
~~authorized partner~~

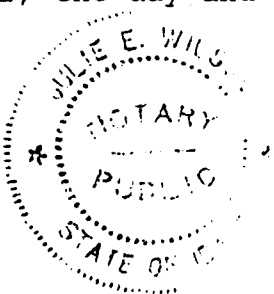
Dan W. Balbach Pres.
Dan W. Balbach, President

Paige P. Balbach Sec.
Paige P. Balbach, Secretary

STATE OF IDAHO)
) SS
County of ADAMS)

On this 14th day of March, in the year 1994, before me, Julie E. Wilson, a Notary Public in and for the said State, personally appeared DAN W. BALBACH known to me to be the PRESIDENT AND PAIGE P. BALBACH known to me to be the SECRETARY of the corporation that executed this instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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



Julie E. Wilson
Notary Public
Residing at: Council
Comm. Expires: May 20, 1993