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TRS Survey
on the 20th day of Oct 1999 at 11:35
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instruments on page 480

Kris Larson
County Recorder

195833

H. Madden
Deputy

21⁰⁰ chg
TRS

**Amended Plat
of
Kootenai Orchards**

Declaration of Covenants, Conditions and Restrictions

This Declaration, made this 20 day of October, 1999, is by Kootenai Orchards Development Co., LLC, herein referred as the "Declarant."

The Declarant is the owner of all the real property set forth and described on that certain Plat entitled Amended Plat of Kootenai Orchards, consisting of individual lots numbered 1 through 15 recorded in the office of the County Recorder of Boundary County, Idaho Instrument # 195834, on 10-20-99 in map book 2, pages 72.

There are 15 lots as set forth on the Amended Plat of Kootenai Orchards. These 15 lots comprise an aggregate single project unit (herein referred to as the "Unit") of real property known as the Amended Plat of Kootenai Orchards and more particularly described as follows:

Be it known that Kootenai Orchards Development Co., L.L.C. has caused to be laid out into Lots a portion of the West half of the Northwest Quarter (W 1/2 NW 1/4) of Section Twenty-two (22); the Southwest Quarter (SW 1/4) and the South Half of the Northwest Quarter (S 1/2 NW 1/4) of Section Fifteen (15), Township Sixty (60) north, Range One (1) West of the Boise Meridian, Boundary County, Idaho lying south and east of county Road Number 4, more particularly described as follows:

Beginning at a point on the north line of the S 1/2 of the NW 1/4 of said Section 15 which is S 89°55'27" E, 976.29 feet from the northwest corner of the SW 1/4 of the NW 1/4 of the Section; said point also being on the easterly right of way of County Road No. 4; thence continuing along the north line of the S 1/2 of the NW 1/4, S 89°55'27" E, 525.72 feet, thence S 02°24' 43" W, 544.94 feet; thence on a non-tangential curve to the right (radial bearing = S 11°03' 56" E) having a central angle at 10°59'38" and a radius of 581.59 feet, for an arc distance of 111.60 feet (chord = N 84°25'53" E, 111.42 feet); thence S 00°04' 18" E, 60.00 feet; thence N 89°55'42" E, 38.14 feet; thence S 00°35' 10" E, 887.20 feet; thence S 89°32' 02" W, 504.92 feet; thence S 00°27' 58" E, 2787.19 feet; thence

S 00°05'58" W, 1422.91 feet; thence on a non-tangential curve to the left (radial bearing = S 60°22'53" E) having a central angle of 00°33'22" and a radius of 2819.20 feet, for an arc distance of 27.37 feet (chord = S 29°20'26" W, 27.37 feet); thence S 29°03'45" W 386.36 feet; thence N 89°54' 02" W, 888.54 feet, to the easterly right of way of County Road Number 4; thence, along said right of way, N 00°05'58" E, 1779.45 feet; thence N 00°27'58" W, 3179.38 feet; thence on a curve to the right having a central angle of 46°10'57" and a radius of 168.00 feet, for an arc distance of 135.41 feet (chord = N 22°37'30" E, 131.78 feet); thence N 45°42'59" E, 182.44 feet; thence on a curve to the right having a central angle of 04°42'33" and a radius of 1434.19 feet, for an arc distance of 117.88 feet (chord = N 48°04'15" E, 117.84 feet); thence on a curve to the left having a central angle of 15°31'06" and a radius of 798.01 feet, for an arc distance of 216.14 feet (chord = N 42°39'59" E, 215.48 feet); thence N 34°54'26" E, 198.13 feet; thence on a curve to the right having a central angle of 12°51'40" and a radius of 2303.87 feet, for an arc distance of 517.15 feet (chord = N 41°20'16" E, 516.07 feet); thence N 47°46'07" E, 90.32 feet to the TRUE POINT OF BEGINNING; encompassing an area of 154.73 acres.

All roads contained within the above described plat are hereby dedicated to the public.

It is the desire and intention of the Declarant to sell 15 lots to the general public. Before doing so the Declarant has subjected them to, and imposed upon them, mutual and beneficial restrictions, covenants, conditions and charges hereinafter referred to as "CC&R's," under a general plan or scheme of improvements for the benefit of all of the parcels in the unit, and future owners of said lots.

Declarant declares that all of said lots are held and shall be conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved subject to the following CC&R's, all of which are declared and agreed to be in furtherance of a plan for the division, improvement, and sale of said parcels are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the property described in the map, and all of them shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the real property or any part thereof subject to such CC&R's.

1. Applicability and Term

These CC&R's shall apply to all of the lots described by the lot number and description as recorded with the Boundary County Recorders Office. These CC&R's shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until Dec. 31, 2015, after which time the same shall be extended for a successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the parcels subject thereto has been recorded, agreeing to change these CC&R's in whole or in part.

2. Mutuality of Benefit and Obligation

The CC&R's and agreements set forth herein are for mutual and reciprocal benefit of each and every lot in the properties known as the Amended Plat of Kootenai Orchards, and are intended to create reciprocal rights between the respective owners of all said lots, to create a privity of contract and estate between the grantees of said lots, their heirs,

successors, and assigns, operate as covenants running with the land for the benefit of each and all other lots in the Unit and their respective owners.

**3. Size and Placement of Structural Improvements
Including Pre-manufactured Structures**

Every residence, dwelling and/or summer cabin constructed on the lot shall be constructed so that it shall contain a minimum of 1000 sq. ft. of fully enclosed floor area devoted to living purposes (exclusive of roofed and unroofed porches, terraces, garages, carports, and other outbuildings.)

No one shall be permitted to construct a building for human habitation until such person has provided a source of water fit for human consumption, either by drilling a well on the property or by water piped in through a public or private utility, and no such construction will be permitted until such person has first installed a suitable sewage disposal system meeting all ordinances in effect in Boundary County, Idaho or by authority of Panhandle Health District at the time of such construction.

Temporary structures including motor or mobile homes will be permitted for a period of one (1) year during construction of a permanent dwelling. Water and appropriate sewer disposal system(s) are mandatory during this construction period. Out houses or other primitive human waste facilities are strictly forbidden at any time. Portable chemical toilets are acceptable as temporary facilities as long as they are serviced on a weekly basis.

Each lot shall have the following set backs which limit the extent of the portion of such parcel upon which any improvement can be constructed. The following dimensions shall govern for front, side and rear set backs on all lots.

- A. Thirty (30) feet from the front line of each lot fronting on a publicly dedicated road, or thirty (30) feet from the easement line for lots fronting on private roads on which street easements are improved,
- B. Fifteen (15) feet from each lot side line,
- C. Twenty Five (25) feet from the rear line of each lot.

4. General Restrictions and Requirements

The following general restrictions and requirements shall apply as to the construction or activities conducted on any lot in the Unit.

- A. All plumbing fixtures, dishwashers, toilets, or sewerage disposal systems shall be approved by Boundary County, Panhandle Health District or appropriate State agency.
- B. No stripped-down, partially-wrecked or junk motor vehicles or sizable part thereof shall be permitted to be parked on any street in the Unit, or on any lot in such a manner as to be visible to the occupants of other lots within the Unit or to users of any street therein.
- C. Every tank for the storage of fuel installed outside any building shall be either buried below the surface of the ground or screened with suitable fencing or shrubbery.
- D. No owner of any lot shall build or permit the building thereon of any dwelling house that is to be used as a model house or exhibit unless written permission to do so shall have been obtained from Declarant.
- E. All lots, whether occupied or unoccupied, and any improvement placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of the accumulation of rubbish or debris thereon. In the event any such lot or improvement in the Unit

- should not be maintained as required herein, the Declarant or any of its agents may perform the necessary work, the cost of which shall be borne by the owner of record of the affected lot.
- F. No noxious or offensive activities shall be carried out on any lot nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.
 - G. No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications.
 - H. All structures constructed or placed on any lot shall be constructed with a substantial quantity of new material and no used structures shall be relocated or placed on any lot, except by written approval of Declarant.
 - I. Signs of customary and reasonable dimensions, approved by the Declarant, shall be permitted to be displayed on any lot advertising same for sale. All other signs, billboards, or advertising structures of any kind are prohibited except on application to and permission granted from the Declarant.
 - J. No trash, ashes, garbage or other refuse shall be dumped or stored on any lot, street, or other area in the Unit. Each property owner is responsible for payment of the landfill tax and or individual trash removal fees which ever is applicable.
 - K. No improvement which has been partially or wholly destroyed by fire, earthquake or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of destruction.
 - L. Every building, dwelling or other improvement, the construction or placement of which is begun on any lot, shall be completed within twelve (12) months after the beginning of construction or placement.
 - M. No mobile home, motor home, trailer, or recreational vehicle shall be placed on any lot for purposes of residential usage, except temporarily for a period not to exceed twelve (12) months in conjunction with construction for a residence on each lot. Exception to this regulation is by written approval of the Declarant or its appointed agent.
 - N. Manufactured homes will be permitted if they are of new construction; being built within 1 year of lot purchase, or upon written approval by Declarant.
 - O. Each lot ownership which engages in light agricultural pursuits, i.e., horses, cows, pigs, etc., is required to maintain its pasture, paddock, barnyard pens and or any other such facility in a clean and orderly manner, particularly referencing obnoxious odors as may be generated from manure and breeding areas for flies and other insect pests. Failure to maintain these areas in reasonable and proper fashion may cause the Declarant or Committee to perform necessary work, the cost of which shall be borne by owner of record for the affected lot.
 - P. No species of Echinacea can be grown unless it is Echinacea Angustifolia. This applies to commercial, recreational, ornamental, or subsistence activities.
 - Q. Pets will not be allowed to become a nuisance in the neighborhood or to the wildlife in nearby wildlife habitat areas.

5. Variances

The Declarant may allow reasonable variances and adjustments of these CC&R's in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein, provided, however, that such is done in conformity with the intent and purposes hereof and provided also that in every instance such variances or adjustments will not be materially detrimental or injurious to other property or improvements in the neighborhood. Variances and adjustments of size of set back requirements may be granted hereunder, if in accordance with all applicable regulatory agency requirements.

6. Kootenai Orchards Committee

Every person or legal entity, including the Declarant, who acquired title, legal or equitable, to any lot in the Unit will be afforded the opportunity to form a Home Owners Association, herein referred to as the Committee, for purposes of managing the affairs of the neighborhood within the confines of the boundaries of the Unit.

Said Association will by necessity file Articles of Incorporation and establish By-Laws governing its operation. Said Committee shall have the right to levy dues, create an architectural committee, govern road maintenance or road dedication to the County, and to manage the business and affairs of the Home Owners Association.

7. Easements, Roads or Streets

The following are guidelines for private road(s) to be constructed for ingress and egress to and from Kootenai Orchards.

Owners will provide appropriate sized culverts, per Boundary County Specifications, at all driveway/road intersections to assure proper drainage, and will further provide for additional culverts on their lot(s) should their driveway(s) cause drainage problems on adjoining lots.

The Owners acknowledge their private ownership of the road(s) within the confines of Kootenai Orchards and do hereby grant unconditional ingress and egress to all other owners within the Development's boundaries, as well as, any emergency and service vehicles.

It is understood that the roads and streets within the Unit have not been accepted for dedication by the County and remain private roads and owners or developer may offer the County roads for dedication at a later date, upon meeting all County specifications and standards for public roads.

The Declarant has dedicated easement areas for the installation and maintenance of public utilities within the road rights of way and easements across certain parcels. These easements and rights of way are perpetual. Owners of these lots may be required to participate in weed control or other easement maintenance activities as prescribed by said utility. The Declarant, upon transfer of title to the new owners, transfers any and all right of way/easement maintenance responsibility to the lot's owners.

8. Grantor's Title

Declarant shall convey fee title to lots within the Unit by warranty deed subject to, among other things:

- a. These restrictions,
- b. Easements and rights of way of record.

9. Remedies

The Declarant or any party to whose benefit these CC&R's inure may proceed at law or in equity to prevent the occurrence, continuance, or violation of any of the CC&R's and

the Court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

The remedies hereby specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of any aggrieved party to invoke an available remedy in respect to violation of any of these Restrictions shall be held to be a waiver by the party of, or an estoppel of that party to assert, any right available upon the recurrence or continuance of said violation or the occurrence of a different violation.

10. Rights of Lien Holders

A breach of any of the provisions, conditions, restrictions, covenants, easements, or reservations herein contained shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith or for value on any of said lots or improvements thereon, provided however, that any subsequent owner of said property shall be bound by said provisions, conditions, restrictions, covenants, easements, and reservations whether such owner's title was acquired by foreclosure or at a trustee's sale or otherwise.

11. Grantee's Acceptance

The grantee of any lot subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such lot, shall accept such deed or contract upon and subject to each and all of these Restrictions and the agreement herein contained, and also the jurisdiction, rights, and powers of Declarant, and by such acceptance shall for himself, his heirs, personal representatives, successors, and assigns, covenant, consent and agree to and with Declarant, and to and with grantees and subsequent owners of each of the lots within the Unit, to keep, observe, and comply with and perform said Restrictions and agreements. Each such grantee also agrees, by such acceptance, to assume, against Declarant, its successors or assigns, all liability for any claim or damage arising or occurring on such lot, including but not limited to events or conditions occurring on adjacent or nearby lots or lands; provided, however, that the foregoing shall not be construed to mean that such grantee would be liable for the conduct of others on adjacent or nearby lots or lands.

12. Partial Invalidity

In the event that any one or more of the Restrictions herein set forth shall be held by any Court of competent jurisdiction to be null and void, all remaining Restrictions shall continue unimpaired and in full force and effect.

13. Captions

The captions of the various paragraphs of this Declaration are for convenience only and are not a part of the Declaration and do not in any way limit or imply the terms or provisions thereof.

