

STATE OF IDAHO }
County of Boundary } ss
Filed By: Donna Mast
on 4-4-05 at 12:30 pm
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By Deputy

Fee \$ 33.00 PD
Mail to HC 01 Box 329A
Naples, ID 83847

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WHISPERING PINES SUBDIVISION

(In Section 16, Township 62 North, Range 2 East,
Boise Meridian, Boundary County, Idaho)

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration"), is made by NELSON MAST and DONNA MAST, husband and wife ("Declarant"), as follows:

A. Declarant is the developer and present owner of that certain subdivision project consisting of twenty-five (25) lots located in the NW1/4 SW1/4 of Section 16, Township 62 North, Range 2 East, Boise Meridian, Boundary County, Idaho, and known as "Whispering Pines Subdivision."

B. In addition to ownership of each individual Lots, each Owner shall be a member of the Management Body of an unincorporated owners association consisting of each owner of a Lot in the Project, as more particularly set forth herein.

C. Declarant intends by this document to impose upon the Property described herein, mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Lots and Owners thereof.

D. Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, all in accordance with the plan for the subdivision and sale of the Property. All of the limitations, covenants, conditions, restrictions, and easements shall

constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property.

ARTICLE 1
Definition of Terms

1.1 "Assessment" shall mean that portion of the cost of maintaining constructing, improving, repairing, operating, insuring and managing the Common Access Roads ("Pine Way, East Pine Way and West Pine Way") and otherwise administering the Project, which is to be paid by the Lot Owners as determined by the Management Body under this Declaration.

1.2 "Declarant" shall mean NELSON MAST and DONNA MAST, husband and wife, and their successors-in-interest and assigns with respect to the Property, but excluding members of the public purchasing completed Lots.

1.3 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as entered and as it may be amended from time to time.

1.4 "Lot" shall mean any of the twenty-five (25) separate residential Lots as designated on the Plat.

1.5 "Management Body" shall mean the Owner of each of the twenty-five (25) Lots acting pursuant to this Declaration. Until such time as the Declarant shall have sold more than fifty percent (50%) of the Lots, the Declarant shall be the Management Body for all purposes set forth herein.

1.6 "Owner" or "Owners" shall mean the record holder or holders of title to a Lot within the Property. This shall include any person having a fee simple title to any Lot, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Lot is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "Owner."

1.7 "Person" shall mean any natural person, corporation, partnership, association, trustee, or other legal entity.

1.8 "Plat" shall refer to the recorded plat of WHISPERING PINES SUBDIVISION, described in Recital "A" above, as

entered, and as amended from time to time.

1.9 "Project Documents" shall mean this Declaration, the Plat, and any rules and regulations of the Management Body, as entered and as amended from time to time.

1.10 "Property" or "Project" shall mean the entire real property covered by this Declaration.

ARTICLE 2 Management Body

2.1 Form of Management Body. Until such time as the Declarant shall have sold more than fifty percent (50%) of the Lots, the Declarant shall be the Management Body for all purposes set forth herein. Thereafter, the Management Body shall be comprised of the Owner of each Lot. The Management Body of the association is unincorporated. For Lots with multiple Persons as Owners, only one Person shall be designated by the Owners of that Lot to vote for that Lot.

2.2 Duties and Powers. The duties and powers of the Management Body are those set forth in this Declaration, together with its general and implied powers, generally to do any and all lawful activities that an unincorporated association under the laws of the State of Idaho may lawfully do and which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration.

2.3 Membership. The Owner of a Lot shall automatically, be a member of the Management Body, and shall remain a member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the Management Body shall automatically cease. Membership is appurtenant to ownership of each Lot.

2.4 Meetings. Regular and special meetings of Management Body shall be held with the frequency, at the time and place, as set forth herein.

2.5 Membership Transfer. Membership in the Management Body shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void.

2.6 Voting. Each member of the Management Body shall have one (1) vote on each matter before the Management Body. Approval of any matter by the Management Body shall require at least sixty percent approval and affirmative vote, except as specifically set forth herein. Any member of the Management Body not expressly voting negatively, shall be presumed to have assented and voted affirmatively.

ARTICLE 3
Maintenance Funds and Assessments

3.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Management Body the Assessment, which shall be established and collected as provided herein.

All Assessments, together with interest, costs, penalties and actual attorney fees, shall be a charge and a continuing lien, upon the Lot against which each Assessment is made, the lien to become effective upon recordation of a Notice of Assessment Lien. Each such Assessment, together with interest, costs, penalties and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot shall be exempt from liability for his or her contribution toward the Common Expenses by waiver or by the abandonment of his or her Lot.

3.2 Purpose of Assessment. The Assessment levied by the Association shall be used exclusively for the improvement and maintenance of the Common Access Road and shall be enforced and collected as provided in this Declaration. The Assessment shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the Common Access Road, which must be repaired or replaced on a periodic basis.

3.3 Establishing the Assessment. The initial Assessment for each Lot within the Project shall be \$200.00 annually for Lots 1 through 20 and 22 through 25. There shall be no Assessment for Lot 21, which is not served by the Common Access Road. Thereafter, the Management Body shall determine and fix the amount of the annual Assessment at least thirty (30) days in advance of the start of each fiscal year; provided, however, that the annual Regular Assessment may not be increased by more than ten percent (10%) above the annual Assessment for the

immediately preceding fiscal year, without unanimous approval of the Management Body (excluding Lot 21).

3.4 Allocation of Assessments. Each Lot, including Lots owned by Declarant, upon which any residential improvements exist, said Lot shall pay the full amount of the Assessment, except as specifically set forth above regarding Lot 21. For each Lot, including Lots owned by Declarant, upon which no residential improvements exist, said Lot shall pay the fifty percent (50%) of the full amount of the Assessment, except as specifically set forth above regarding Lot 21.

3.5 Assessment Due Dates. Due dates of Assessments shall be the first day of every calendar year, commencing in the year 2006, or such other day as may be designated by the Management Body in writing. No notice of such Assessment shall be required other than an annual notice setting forth the amount of the Assessment of the following year (and the date assessments are due, if other than the first day of each calendar year).

3.6 Transfer of Lot by Sale or Foreclosure. The sale or transfer of any Lot shall not affect any Assessment lien, or relieve the Lot from liability therefor, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments.

In a voluntary conveyance of a Lot, the grantee of the same shall be deemed to have assumed, on a joint and several basis, liability with the grantor for all unpaid Assessments by the Association against the latter (including his or her obligation for individual Special Assessments) up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

3.7 Enforcement of Assessment Obligation; Priorities; Discipline. If any part of any Assessment is not paid within thirty (30) days after the due date, an automatic late charge equal to five percent (5%) of the Assessment (but not less than \$10) shall be added to and collected with the Assessment and shall thereafter bear interest at the rate of eighteen percent (18%) per annum until paid. Each unpaid Assessment, whether Regular, Extraordinary or Special, shall constitute a lien on each respective Lot prior and superior to all other liens

recorded subsequent to the recordation of the Notice of Assessment Lien, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; or (2) labor or materialman's liens arising under Idaho law (timely and duly filed) if the legal effective date is prior to the recording of the Notice of Assessment Lien. Such lien, when delinquent, may be enforced by sale by the Association, its attorney, or other person authorized by this Declaration or by law to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Idaho law applicable to the exercise of powers of sale in deeds of trust (with the Management Body having the right and authority to appoint an independent trustee), or by judicial foreclosure as a mortgage, or in any other manner permitted by law. During any such foreclosure proceeding, the foreclosing party shall be entitled to the appointment of a receiver to collect rent becoming due with respect to the subject Lot. The Management Body, shall have the power to bid for the Lot at the foreclosure sale, and to acquire and hold, lease, encumber and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment of unpaid Assessments, rent, interest, costs, penalties, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Management Body may impose reasonable monetary penalties including actual attorney's fees and costs and may temporarily suspend the voting rights of a Lot Owner who is in default in payment of any Assessment.

ARTICLE 4 Construction

4.1 Construction Schedules. All new construction shall be completed within sixteen (16) months from the commencement thereof, and all yards shall be landscaped.

4.2 General Construction Requirements. No building shall be erected except one single-family dwelling on each lot with a minimum first floor square footage of 1500 square feet, together with a private attached or detached garage for not less than two (2) cars. The minimum first floor square footage requirement is not applicable to Lots 19 through 21. No buildings will be allowed to be moved onto the site. Only new construction will be allowed. No trailers, mobile homes, manufactured homes, or the like will be allowed.

4.3 Set-Back Requirements. All improvements shall comply with applicable federal, state and local setback

requirements, or not less than twenty feet from any lot line, whichever is most restrictive.

4.4 Materials and Colors. The use of natural types of materials such as wood and stone are encouraged; However, other types of materials with colors that generally blend with the colors of the natural landscape are permitted if reviewed and approved by the Management Body. Any exposed metal shall be painted or coated to blend in with the structure. All exterior materials, finishes, and colors must be approved prior to construction by a seventy five percent affirmative vote of the Management Body.

ARTICLE 5 Use Restrictions

5.1 Use of Lots. All Lots shall be used only for single-family residential purposed by the Owner and his or her family, or by a single-family tenant.

5.2 Animals. No animals, livestock, or poultry of any kind, shall be raised, bred, or kept on any Lot except for not more than three (3) small household pets, provided they are not kept, bred or maintained for commercial purposes and are kept inside a building or are contained within a sight obscuring fence, and are constrained on a leash while in common or public areas.

5.3 Parking. No parking of vehicles shall be permitted on or adjacent to Pine Way, East Pine Way or West Pine Way.

5.4 Commercial Use. No Owner, tenant or other person shall at any time conduct, or permit to be conducted on any Lot, any trade or business of any kind, either commercial or religious, nor shall said premises be used for any other purpose whatsoever except for the purpose of a private dwelling or residence for one family. Home occupations of family members, which have no exterior visibility, are not prohibited provided they are conducted totally within the residence, are not open to the public, have no employees and do not generate extra vehicular traffic or street parking.

5.5 Lot Maintenance. Each Lot and the exterior appearance of improvements thereon shall be maintained in a clean, neat and orderly condition and in good repair at all times. No tree exceeding a six-inch breast height diameter shall be removed without approval and affirmative vote of the Management Body. Lot fencing shall only be upon the approval

and affirmative vote of the Management Body.

5.6 Nuisances. No noxious, illegal, or offensive activities shall be carried on within any Lot; nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the other Owners of their respective Lots (i.e. continually barking dogs).

5.7 Natural Drainage. No Owner shall change or interfere with the natural and/or designated drainage of any part of any Lot, except with unanimous approval of the Management Body.

5.8 Leasing of Lots. No Lot may be leased or rented for a period of less than thirty (30) days, nor shall less than the whole of any Lot be leased or rented. Any lease or rental agreement shall be in writing and shall by its terms provide that it is subject in all respects to the Project Documents. Any failure by a lessee to comply with the terms of the Project Documents shall be a default under the lease, whether or not it is expressed therein, and the Owner shall be liable for any fines or other costs incurred which result from the lessee's actions.

5.9 Subdivision and Partition Prohibited. No Lot shall be further subdivided; provided, however, that a Lot may be enlarged by: (1) consolidation with an adjacent Lot; or (2) subdivision of an adjacent Lot and consolidation of the resulting portions with the Lots on both sides (in either case, the enlargement shall be evidenced by a recorded instrument, and the resulting larger parcel shall thereafter be deemed to constitute a single Lot for all voting, assessment and other purposes referenced in the Project Documents). Except in connection with a permitted Lot enlargement, no Owner shall bring any action for partition or division of any part of any Lot (it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project); provided, however, that a Lot Owner may bring an action for partition by sale of a Lot and division of the proceeds thereof.

5.10 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant.

Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot agrees to hold Declarant harmless therefrom.

ARTICLE 6

Repair and Maintenance

6.1 Repair and Maintenance Rights and Duties of Owners. Each Lot Owner shall, at his or her sole cost and expense, maintain and repair his or her Lot and all improvements thereon, in good, clean, neat and orderly condition and in good repair, so as to be consistent with the balance of the Project, in the judgment of the Management Body.

ARTICLE 7

Road Maintenance

7.1 Road Easement. The roads are depicted on the face of the Plat. These common access roads (Pine Way, East Pine Way and West Pine Way) serve Lots 1 through 20 and Lots 22 through 25 from County Road 62.

7.2 Common Access Road. The access roads shall be maintained and repaired by the Management Body.

7.3 Driveways. Each Owner shall maintain and repair their own driveways, specifically including Lot 21.

ARTICLE 8

Water

8.1 Water System. Each Lot shall only be served by the Three Mile Water System, or its successor in interest, and there shall be no private well upon any Lot.

8.2 Individual Components. Each Owner shall maintain and repair their own individual components hooked to the Three Mile Water System.

ARTICLE 9

Septic

9.1 Drainfields. Each Lot shall only be served by approved septic drainfields.

9.2 Individual Components. Each Owner shall maintain and repair their own individual septic system.

ARTICLE 10
Duration and Amendment

10.1 Duration. This Declaration shall continue in full force for a term of the fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded which meets the requirements of an amendment to this Declaration as set forth below.

10.2 Amendment. This Declaration may only be amended by a unanimous vote of the Management Body, and effective upon the recording in the real estate records of Boundary County, Idaho a instrument setting forth such amendments, executed by each Owner.

ARTICLE 11
General Provisions

11.1 Enforcement. The Management Body, and any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. Failure, delay, or omission by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. No action shall be brought or maintained by any Owner or with respect to any Lot, against the Declarant, the Management Body, or any of their agents or representatives for or on account of their failure to bring any action for any breach of any of the Project Documents or for imposing restrictions which may be unenforceable.

11.2 Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

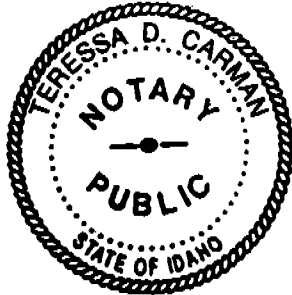
11.3 Conflict of Project Documents. If there is any conflict among or between the Project Documents, priority shall be given to Project Documents in the following order: the Plat, this Declaration, and the rules and regulations of the Management Body.

The undersigned, being the Declarant herein, has executed this Declaration on the 4 day of April 2005.

DECLARANT: [Signature]
NELSON MAST
[Signature]
DONNA MAST

STATE OF IDAHO)
County of Boundary) : ss.

On this 4 day of April 2005, before me, the undersigned Notary Public, personally appeared, NELSON MAST and DONNA MAST proved to me on the basis of satisfactory evidence, to be the persons who executed this instrument and acknowledged to me that they executed the same.



[Signature]
Notary Public-State of Idaho
Residing at Boundary County
My Commission Expires: march 21, 2011