

00585CCR



00585CCR

**RESTRICTIVE COVENANT**  
(for Auction Properties 142 & 143)

MC4102

The undersigned Covenantors, being the record owners of all of the real property described on the attached Exhibit A ("Property"), located in the county of VALLEY, Idaho, in consideration of the transfer of ownership of the Property to Covenantors, do hereby make the following restrictive covenants for the Property, specifying that the covenants shall constitute covenants to run with all and every portion of the Property and shall be binding on all persons claiming through the undersigned and/or under such Property and that these restrictions shall be for the benefit of and in favor of the adjacent and/or nearby lands retained by Boise Cascade Corporation upon sale of the Property to Covenantors of even date herewith. These restrictions shall be a limitation upon all future owners of the Property or any part thereof.

The following restrictive covenant(s) hereafter bind the Property:

The record owners, their heirs, legal representatives, assigns, and lessees hereby acknowledge and agree to accept by the placement of this covenant or the acceptance and recording of this instrument, that the Property may be subjected to conditions resulting from commercial forestry operations and/or other timberland uses on adjacent and/or nearby lands, and/or resulting from access to the commercial forestry operations and/or other timberland uses over existing easements across or near the Property, by Boise Cascade Corporation, its successors and assigns (which reference herein shall include without limitation their contractors and business invitees). Such operations and uses may include, without limitation, management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, hunting, grazing of livestock, recreation (fee and non-fee, public and private), movement of livestock by stock drive and/or vehicles, utility rights-of-way (including without limitation underground pipelines, underground and overhead wires, and/or radio towers), harvest of plants other than timber, and other accepted and/or customary resource management activities conducted in accordance with federal and state laws. These activities and uses, including the exercise of access rights over easements burdening or near the Property, ordinarily and at times necessarily produce noise, dust, smoke, and other conditions that may conflict or interfere with the value, use or enjoyment of the Property for residential or other purposes. Covenantors expressly grant Boise Cascade Corporation, its successors and assigns, as owners of the adjacent and/or nearby lands retained by Boise Cascade Corporation upon sale of the Property to Covenantors, the

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**Instrument # 279020**  
VALLEY COUNTY, CASCADE, IDAHO  
2003-12-26 03:30:45 No. of Pages: 5  
Recorded for : FIRST AMERICAN TITLE  
LELAND G. HEINRICH  
Ex-Officio Recorder Deputy *L. G. Nelson* Fee: 15.00  
Index to: RESTRICTIVE COVENANT

right to produce such conflicting impacts upon the Property from such adjacent and/or nearby lands and from exercise of such access rights.

Such practices shall not give rise to any private right of action or claim for relief based on any theory, whether alleged as nuisance, trespass, tort, breach of contract, negligence or otherwise, against Boise Cascade Corporation and its successors and assigns. The Covenantors declare and agree that they, collectively or individually, will not in any manner participate or cooperate in the institution, prosecution, or pursuit of any action, cause of action, complaint, or suit against Boise Cascade Corporation and its successors and assigns with respect to conditions resulting from the activities and uses described above. It is further agreed that in any action or claim brought or maintained in violation of these covenants, that Boise Cascade Corporation or its successors and assigns may plead these covenants and conditions as an affirmative defense barring said suit or action, and the prevailing party shall be entitled to judgment for reasonable attorneys' fees and costs incurred at trial and on appeal.

IN WITNESS WHEREOF, the Covenantors have executed these Covenants on December 18<sup>th</sup>, 2003.

JAF ENTERPRISES, LLC

  
Covenantor

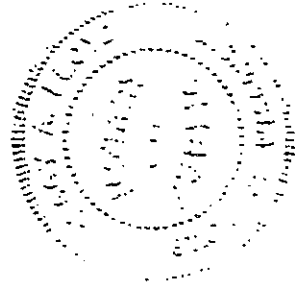
  
Covenantor

WISCONSIN  
STATE OF IDAHO )  
COUNTY OF Barron ) ss.

On this 18<sup>th</sup> day of December, 2003, before me, the undersigned, a notary public in and for said state, personally appeared Gary Johnson - Elizabeth known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that \_\_\_\_\_ 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.

Peggy A. Hoyle  
Notary Public for Idaho WISCONSIN  
Residing at: Barron County  
My Commission expires: 8-13-06



**EXHIBIT A**  
**Page 1 of 2**  
**To**  
**Restrictive Covenant**

**Auction Property #142**

**Legal Description**

TOWNSHIP 11 NORTH, RANGE 3 EAST, BOISE MERIDIAN, VALLEY COUNTY, IDAHO

The West Half of the Northwest Quarter of the Southeast Quarter;

And that portion of the North Half of the Northwest Quarter of Government Lot 8 lying North of Boise Cascade Road No. 12307;

And that portion of the North Half of Government Lot 7 lying North and East of Boise Cascade Road No. 12307; LESS AND EXCEPTING THEREFROM that property conveyed to Oregon Short Line Railroad Company by deed recorded January 26, 1914 as Instrument 19704;

And Government Lot 4, less and excepting therefrom that property conveyed to Oregon Short Line Railroad Company by deed recorded January 26, 1914 as Instrument 19704;

The South Half of the Southeast Quarter of the Northwest Quarter;

And that portion of the North Half of the Southeast Quarter of the Northwest Quarter lying South of Boise Cascade Road No. 2304 and Boise Cascade Road No. 12305, and East of the East boundary line of that property conveyed to Jack L. Kitchens and Jeralene J. Kitchens in a warranty deed recorded August 25, 1987 as Instrument No. 156839.

And that portion of the West half of the Southwest Quarter of the Northeast Quarter lying South of the Boise Cascade Road No. 8064.

All in Section 23, Township 11 North, Range 3 East, Boise Meridian, Valley County, Idaho.

**EXHIBIT A**  
**Page 2 of 2**  
**To**  
**Restrictive Covenant**

**Auction Property #143**

**Legal Description**

TOWNSHIP 11 NORTH, RANGE 3 EAST, BOISE MERIDIAN, VALLEY COUNTY, IDAHO

The Northeast Quarter of the Southeast Quarter;

And that portion of the North half of the Southeast Quarter of the Southeast Quarter lying North of the Boise Cascade Road No. 12308;

And that portion of the North half of the Northeast Quarter of Government Lot 8, lying North of Boise Cascade Road No. 12308;

And the East half of the Northwest Quarter of the Southeast Quarter;

And that portion of the Southeast Quarter of the Northeast Quarter lying South of Boise Cascade Road No. 14314;

And that portion of the East half of the Southwest Quarter of the Northeast Quarter lying South of Boise Cascade Road No. 14314, all in Section 23 of Township 11 North, Range 3 East, Boise Meridian, Valley County, Idaho.

**DECLARATION OF COVENANTS, CONDITIONS, and RESTRICTIONS  
For MURRAY CREEK**

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**Instrument # 314831**

VALLEY COUNTY, CASCADE, IDAHO

2006-10-26 10:16:34 No. of Pages: 26

Recorded for : RENNISON FODREA

LELAND G. HEINRICH

Fee: 78.00

Ex-Officio Recorder Deputy

DECLARATION OF COVENANTS

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## DECLARATION OF COVENANTS, CONDITIONS, and RESTRICTIONS For MURRAY CREEK

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by  
JAF ENTERPRISES, LLC (Declarant").

## ARTICLE 1 – GENERAL

**Section 1.1: Common Interest Community:** The name of the common interest community created by this declaration is "MURRAY CREEK". All of the community is located in Valley County, Idaho.

**Section 1.2: Property Affected:** Real property subject to this Declaration is in Valley County, Idaho, and is described in attached Exhibit "Murray Creek Subdivision". This property, together with any property which may be annexed thereto, pursuant to the terms of this Declaration, shall be referred to in this Declaration as "**the Subdivision**".

**Section 1.3: Purpose of Declaration:** This Declaration is executed and recorded (a) to provide for the Association to maintain non-public roads within the Subdivision and to perform certain functions for the benefit of Owners of land within the Subdivision; (b) to define the duties, powers and rights of the Association; and, (c) to define certain duties, powers and rights of Owners.

**Section 1.4: Declaration:** It is hereby declared that each lot, parcel or portion of **Murray Creek Subdivision**, is and shall be held, sold conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, Covenants and easements all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, improvement and sale of the properties. The terms, Covenants and easements set forth herein: (i) shall run with the land constituting the Subdivision, and shall be binding upon all persons having or acquiring any right, title or interest in the Subdivision or any lot, parcel or portion thereof; (ii) shall inure to the benefit of every lot, parcel or portion of the Subdivision and interest therein; (iii) shall inure to the benefit of and be binding upon Declarant, and each grantee or Owner; and, (iv) may be enforced by Declarant, by any Owner, or by the Association as hereinafter described.

## ARTICLE 2 – DEFINITIONS

**Section 2.1: Architectural Committee:** "Architectural Committee" shall mean the committee created pursuant to Article 6.

**Section 2.2: Articles:** "Articles" shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

**Section 2.3: Assessments:** "Assessments" shall mean those payments required of Association Members, including Regular, Special and Limited Assessments of the Association as further defined in this Declaration.

**Section 2.4: Association:** "Association" shall mean the Murray Creek Homeowners Association.

**Section 2.5: Association Documents:** "Association Documents" shall mean the various operative documents of the Association, including: (a) the Articles of the Incorporation of the Association; (b) the Bylaws of the Association; and, (c) this Declaration, and all Amendments to any of the aforementioned documents.

**Section 2.6: Board of Directors:** "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

**Section 2.7: Bylaws:** "Bylaws" shall mean the Bylaws of the Association.

**Section 2.8: Covenants:** "Covenants" shall mean the formal, binding agreement created by these Covenants, Conditions and Restrictions.

**Section 2.8: Declarant:** "Declarant" shall mean JAF Enterprises, LLC.

**Section 2.9: Declaration:** "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions.

**Section 2.10: Improvements:** "Improvements" shall include buildings, outbuildings, roads driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, and all other structures or landscaping improvements of every type and kind.

**Section 2.11: Lot:** "Lot" shall mean a parcel of land subject to this Declaration which is identified as a Lot in the Subdivision.

**Section 2.12: Member:** "Member" shall mean a member of the Association, who must be a lot Owner. Membership in the Association shall be appurtenant to and may not be severed from ownership of a Lot.

**Section 2.13: Owner:** The term "Owner" shall refer to that person or entity or those persons or entities who hold the ownership interest in any Lot and excluding those holding an interest merely as security for the performance of an obligation.

**Section 2.14 Person:** "Person" shall mean a natural person, a corporation, a partnership, or any other entity recognized as being capable of owning real property under Idaho law.

**Section 2.15: Plat:** "Plat" shall mean any relevant plat, filed of record with the Valley County Office Recorder.

**Section 2.16: Record, Recorded:** "Record" and "Recorded" shall mean, with respect to any documents, the recordation of said document in the Office of the County Recorder, Valley County, Idaho.

**Section 2.17: Rules and Regulations:** "Rules and Regulations" shall consist of this Declaration and any rules and regulations adopted by the Board of Directors concerning the operation of the Association.

**Section 2.18: Structure:** "Structure" shall include buildings, outbuildings, fences, walls, stairs, decks and poles.

**Section 2.19: Subdivision** "the Subdivision" shall mean the Murray Creek Subdivision, including any improvements now or hereafter made on such real property and appurtenances and rights to such real property.

### **ARTICLE 3 – LAND USES AND IMPROVEMENTS**

**Section 3.1: Land Use and Living Units:** All of the subject Lots in the Subdivision shall be used and occupied solely for single-family residential purposes

**A.** No buildings other than one residence and associated accessory buildings incidental and appurtenant to a private residence, shall be erected or maintained on any Lot. No more than a total of four (4) buildings shall be allowed on any Lot. No use whatsoever shall be made of any Lot herein other than as the site and grounds of a private residence. The term "private residence" as used herein is intended to exclude every form of multi-family dwelling, boarding or lodging house, and the like; and, any separate rental of any separate dwelling unit shall be specifically determined to be multi-family dwelling. All building exteriors must be of similar materials and colors as others located on the same Lot. An owner may rent or lease their residence; provided: the Owner shall assure that the renters/lessees are aware of these Covenants and shall incorporate these Covenants into any rental or lease agreement; the Owner shall be liable for any violations by renter/lessees of any of the provisions of these Covenants; and, the minimum rental period shall be thirty (30) days.

B. No modular or mobile homes, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently except during the period of construction as defined and limited by section 6.8; nor shall any residential structure be moved on to any Lot from any other location unless the prior written approval of the Architectural Committee is obtained, such approval to be written in the same manner as for new construction.

C. Visitors and guests may camp, or park and use a camper, motor home, or trailer on a Lot for a reasonable term, not to exceed fourteen (14) days consecutive duration nor more than a total of sixty (60) days each calendar year. Any fourteen consecutive day period must be followed by a minimum of three (3) days of the user vacating the Lot. An Owner shall have the same rights, prior to the commencement of construction.

D. A residence shall contain no less than 1,200 square feet if single storied, or 1600 feet if daylight basement with an upper floor, of heated floor area devoted to living purposes (i.e. exclusive of roof or unroofed porches, terraces, basements or garages); and all construction must be of good quality and done in a good workmanlike manner.

E. No Improvements which will be visible above ground or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered on or removed from a Lot unless and until the building plans, specification, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Architectural Committee, and the same have been approved in writing. The procedures to review are as more fully set forth in Article 6.

F. The planting of trees shall not require prior approval by the Architectural Committee. Existing trees shall be managed according to best management silviculture practices and according to the following principles:

1. Trees may be cleared for preparation of building sites, driveway construction, view enhancement, removal of dead or diseased trees, and prevention of overcrowding.
2. Otherwise, removal of trees shall require prior approval of the Architectural Committee; and,
3. Timber management goals within the subdivision shall be to preserve healthy timber stands; to thin and remove diseased, dead or dying trees, except where essential to wildlife habitat, to maintain appropriate crown spacing for fire prevention purposes, and to maintain the visual aesthetic forest appearances.

In the event that overcrowding or excessive fuel load on a Lot create a clear and present danger to the safety of other Lot Owners and/or their structures, then the Board shall have authority to remove such trees as follows:

1. The Board shall secure a written opinion from an independent forester confirming the clear and present danger as aforesaid;
2. The opinion, together with a written demand from the Board, must be served on the Owner, personally or by certified mail;
3. The Owner must be allowed a reasonable period of time to remove the trees which shall, in no case, be less than thirty (30) days during the snow-free season; and,
4. The Owner shall be entitled to the net proceeds from the timber which is removed, after deduction by the Board of all actual costs incurred by the Board associated with the removal of the trees.

G. Outbuildings and storage sheds shall be allowed if in conformity with the

provisions of this Declaration and applicable law. Storage sheds, patio covers, and all other structures shall be constructed of, and roofed with, the same or compatible materials, and with similar colors and design, as the residential structure on the applicable Lot, or as otherwise approved by the Architectural Committee.

H. All access driveways shall be constructed with an all weather wearing surface approved by the Architectural Committee and shall be constructed to assure proper drainage. The foregoing is not a requirement that driveways be paved. Surface material shall not be required until construction of a structure so long as it does not appear to materially affect the development.

I. Exterior lighting shall be part of the architectural concept of the improvements on a Lot. Fixtures, standards and all exposed accessories shall be harmonious with building design, and shall be as approved by the Architectural Committee. Lighting shall be restrained in design, and excessive brightness shall be avoided. For instance, flood light and other similar bright lights shall not be allowed; and all lighting shall be shielded and directed downward in compliance with Valley County ordinances.

J. The maximum height of any building shall be in compliance with the applicable Valley County land use or zoning ordinances

K. Roofs shall be required to be of pitched design and shall be covered with nonflammable materials. No galvanized metal roofs or wood shingle or shake roofs shall be allowed. Metal roofs shall be of earth tone colors which are compatible with the Subdivision. Owners desiring to use non-metal roofs must demonstrate to the Architectural Committee that the desired material is fire resistant.

L. The color and type of the exterior surfaces of any structure shall be subject to approval by the Architectural Committee. Exteriors must be of natural materials (i.e. wood or stone); provided, the Architectural Committee may, upon petition from an Owner, allow a non-natural material if, after reviewing samples, the Committee is convinced that the appearance of the material is indistinguishable from natural materials (as viewed from the nearest Lot line) and is consistent with these Covenants. Earth tone colors shall be preferred, except for trim.

M. No exterior radio antenna, television antenna, or satellite dishes or other antenna of any type shall be erected on a Lot unless it is located or screened in a manner acceptable to the Architectural Committee.

**Section 3.2: Landscaping:** Of critical concern with regard to landscaping in the Subdivision is the preservation of the stability of hillsides and the prevention/control of wild fires. Native, drought resistant plant species shall be preferred; however, lawns and other landscaping shall be allowed.

**Section 3.3: Fire Hazards Mitigation:** The Lot owners will participate and support the creation of a fire district in the area.

**Section 3.4: Noxious Weeds:** Any Lot disturbed as a result of grading or construction shall be regenerated to at least its original state no later than one construction season after being disturbed. Additionally, each Owner shall follow the guidelines provided in the Valley County Comprehensive Noxious Weed Management Plan.

**Section 3.5: Wood Heat limitation:** Each Lot shall be limited to one wood burning stove or fireplace.

**Section 3.6: Fences:** All fencing shall first be approved by the Architectural Committee. No fence, wall or hedge higher than four (4) feet, six (6) inches shall be erected or maintained on the perimeter of any Lot, save and except, however, with the previous written consent of all adjoining Lot Owners and the Architectural Committee. The Architectural Committee shall have complete control over the allowance of a fence over the four foot six inch height limit. Perimeter fencing on any Lot shall not restrict travel by native animals. Such fencing shall be "wildlife friendly." Small fenced areas within a Lot, such as a dog run or garden fencing may be constructed so as to limit access by native animals and may be constructed of metal. Fencing on a Lot perimeter shall be wood poles or rails. Screening fence, which must be substantially internal to the Lot, may be solid wood or other solid material and must be of similar materials and colors as other improvements located on the same Lot.

**Section 3.7: Building and Grounds Conditions:** Each Owner shall maintain the exterior of his or her dwelling unit and all other improvements in good condition and shall cause them to be repaired as the affects of damage or deterioration become apparent. Each Owner shall maintain his or her Lot in good appearance at all times

**Section 3.8: Wild Game:** Nothing shall be done or kept on any Lot which will inhibit, interfere with, or endanger the wild game which enter onto any Lot, or anywhere in the Subdivision. Limitations are detailed in Section 3.6, Fences. All Lot Owners must understand and accept the fact that the wild game will eat landscaping, plants and trees. Lot Owners may use only game-friendly means of protecting their landscaping. Wild game shall not be fed within the Subdivision. No hunting as defined by The Idaho Department of Fish and Game allowed within the Subdivision.

**Section 3.9: Animals & Pets:** No animals, of any kind, except for household pets, (it is specifically noted that livestock, poultry and wild animals are not to be considered household pets) shall be raised, bred, or kept on any portion of the Subdivision.

A. **Pets:** Household pets may be kept for personal or non-commercial recreational purposes only if the presence of such pets does not constitute a nuisance. Pets must be kept within the boundaries of the Lot unless accompanied by and under the control of the Owner.

B. **Dogs:** Consistent and/or chronic barking by dogs shall be considered a nuisance. Owners understand and acknowledge that the Subdivision is bordered by private and public possible grazing land and that dogs leaving the Subdivision and harassing livestock may be killed, as allowed by law.

C. **Large Animals:** Horses, llamas and mules shall be allowed to be kept on any Lot for use by an Owner; provided, such animals may be allowed on a Lot for up to, but not exceeding, fourteen (14) days within any calendar year, as long as such animals are kept in an enclosure which has been approved by the Architectural Committee. The enclosure cannot be constructed of barbed wire or chain link. Fencing shall be constructed in accordance with Section 3.6. No other large animal, to include cattle, sheep, pigs, goats and comparable sized animals, shall be allowed to be kept on any Lot. Owners are expected to employ proper range management skills (rotating pastures, supplemental feeding and stock containment) so as to avoid over grazing of the land and to ensure the good health of their livestock.

However, the Board shall have the authority to grant variances to this provision, both as to the type of allowable animal and as to the 14 day limitation, if, in their sole discretion, such variance will not negatively impact adjoining or neighboring properties. Any such variance shall be limited to one (1) year increments, and shall evidence no commitment to renew the

variance again in future years. For each year in which an Owner wishes to obtain a variance, said Owner shall submit to the Board in writing an application which specifies the following: Lot size; the materials and dimensions for the enclosure; the number of animals and the type of animals; the number of days for which the animal(s) are requested to be maintained on the Lot; and, such application must demonstrate that such use will have no or minimal impact on adjoining and neighboring properties. At least fifteen (15) days prior to the Board's review of the variance request, at the Applicant's expense, written notice of the request and the time and place at which the Board will consider the request shall be mailed, via first class mail, to all record Owners with Lots adjoining that of the applicant, including Owners of Lots that would adjoin the applicant's Lot but for a road in between. The decision of the Board with regard to a variance granted under this Section can be overruled or modified only as provided at Section 6.10.F.

**Section 3.10: Drainage:** There shall be no interference with the established drainage pattern over any portion of the Subdivision. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time that road construction and installation of utility lines is completed by Declarant.

**Section 3.11: Utilities:**

A. Telephone, Electrical: Declarant shall provide underground electrical power and telephone service to the Subdivision. The purchaser and owner of each Lot agrees to use the service so provided. Private electrical generating systems shall not be permitted for domestic electrical service, except as a backup system in case of primary electrical service failure. All electrical power lines, telephone lines and other utility service lines shall be underground from each individual Lot line to the point of use on each Lot. Overhead lines and utility poles shall not be permitted, except during the construction phase.

B. Water: Water for each Lot shall be supplied by means of individual wells, installation and maintenance of which shall be the sole and exclusive responsibility of Lot Owners.

C. Septic: Sewage disposal for each Lot shall be supplied by means of individual septic/drainage systems. Permits therefore shall be required from the Central District Health Department.

D. Solar Panels: With the prior approval of the Architectural Committee, solar panels shall be allowed, provided that they are unobtrusive and do not detract from the architectural appearance and features of the residence.

**Section 3.12: In Home Business:** "In home business," which involve the coming and going of clients or customers or the parking or storage on a Lot of vehicles, machinery, equipment or materials shall be allowed, but are not to be in conflict with the designs of the subdivision, cause traffic congestion or negatively impact other lot owners. No heavy equipment storage. The parking or storage on the Lot of vehicles, machinery, equipment or materials are required to comply with section 3.20 of the CC & Rs An "in home business" may require a Conditional Use Permit from Valley County.

**Section 3.13: Obstructions on Common Easements:** No gates or obstructions shall be placed upon or block any access road unless the access road terminates on the Lot Owner's property, and the gate or obstruction is placed within the Lot Owner's property. Under no circumstances shall any acts be taken by any Lot Owner which unreasonably degrade or

impair the rights possessed by any third-parties to traverse any roads or easements on or across the Lot. Any gates placed on a shared drive will be done so only with the consent of all Lot Owners who use said drive for ingress and egress to their lot.

The home owners and the home owners association will follow the conditions and requirements stated within the easement, Instrument #279019. The home owners and home owners association will cooperate with the logging interests using Packer John Road and Upper Murray Creek Road. Tripod View Road is private for the use of Subdivision lot owners and the public excepting logging interests.

**Section 3.14: Prohibited Lot Uses:**

- A. There shall be no mining, smelting, or milling of any ores or similar mineral operations within the Subdivision.
- B. No outdoor privy or any common cesspool shall be installed on any Lot at any time.
- C. Nothing shall be done or kept on any Lot by any person which will increase the rate of insurance on any other Lot or which will result in the cancellation of any insurance or which constitutes a violation of any law.
- D. No excavation shall be made on any Lot except as is necessary for the erection of approved structures, and the construction of a driveway. Excavation which is not covered by a structure shall be properly filled within thirty (30) days of the completion of the underground work.
- E. No hunting shall be allowed within the Subdivision.

**Section 3.15: Snow Machines, Motorcycles, and All Terrain Vehicles:** All terrain vehicles, snow machines, motorcycles and other similar motorized vehicles may not be operated within the Subdivision, except by Owners and their guests on their own Lots or for direct ingress/egress to the Owner/Operator's Lot, or for property maintenance, upkeep and repair.

**Section 3.16: Refuse:** No unsightly objects or materials, including but not limited to abandoned or inoperative vehicles, trash, rubbish, garbage, grass or shrub clippings, construction debris, scrap material or other refuse, or receptacles or containers therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street except during refuse collections.

In the event that any owner shall permit the accumulation of such materials, aforesaid, so as to create a dangerous, unsafe, unsightly, unsanitary or unattractive condition, or damage to property or facilities on or adjoining their Lot, the Board, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition, by removing such materials, and to enter upon such Owner's Lot for the purpose of doing so. Such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be an Assessment and shall create a lien enforceable in the same manner as other Assessments set forth in Article 7. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after the receipt of written demand therefore, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.



Trash shall at all times be stored in bear resistant garbage can enclosures. A secured enclosure must be made of metal or equivalent with a secured door(s) which are sturdy, weather resistant and which make the contents of the enclosure inaccessible to bears.

**Section 3.17: Burning:** No burning of any household garbage, trash or other noxious refuse shall be permitted within the Subdivision. Burning of natural materials such as grass/tree trimmings shall take place only with the required permits from the Southern Idaho Protection Association and any other agency of authority with jurisdiction. The policies, practices and instructions of such entity shall be strictly followed.

**Section 3.17a: Fire-Wise Protection:** All lots shall be maintained in such a way as to prevent or retard the spread of fire. Trees and the vegetation surrounding them shall be trimmed to discourage a ladder fuel environment. All home sites shall have a 30 foot wide fire perimeter where vegetation is kept cleared or landscaped in order to reduce or retard the spread of fire to the structure.

**Section 3.18: Storage of Building Materials:** No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, or unless completely screened from view from any other Lot or road within the Subdivision.

**Section 3.19: Storage of Owner Vehicles and Equipment:** No on-street parking shall be permitted except commercial and construction vehicles, in the ordinary course of their business. All Owner automobiles, trucks, snowmobiles, boats, boat trailers, travel trailers, camper trailer, motor homes, automotive campers, or other vehicles or equipment shall be parked / stored in a garage or other enclosed building, or in an area which is completely screened from view from other Lots or roads. Parking said vehicles for a period of less than eight (8) continuous days shall not violate this Covenant.

**Section 3:20: Inoperative Vehicles:** No unused, stripped down, partially wrecked or otherwise inoperative motor vehicles or parts thereof shall be permitted to be parked on any common easement or road within the Subdivision, nor shall such vehicles be allowed to be parked outside on any Lot.

**Section 3:21: Signs:** The only signs permitted on any Lot or improvement shall be:

- A. One sign of customary size for identification of the occupant and the address of any dwelling;
- B. Signs for sale and administration purposes installed by Declarant during development;
- C. Standard Real Estate signs advertising a Lot for sale, not to exceed 9 square feet in surface size;
- D. Signs as may be necessary to advise of rules and regulations or to caution or warn of danger as determined by the association; and,
- E. Such signs as may be required by law.

**Section 3.22: Rebuilding of Improvements:** Any dwelling unit or other improvement which may be destroyed in whole or in part must be rebuilt, or all debris must be removed and the Lot restored to an attractive condition. Such rebuilding, restoration or removal shall be commenced

within one hundred 180 days and shall be completed with reasonable promptness and in any event within one (1) year from the time the damage occurred.

**Section 3.23: Roads:** Upper Murray Creek and Tripod View Roads are private. Packer John Road is a public road. Upper Murray Creek Road is subject to logging transportation activities of the land owners east of Murray Creek Subdivision as put forth in Instrument #279019 as recorded Valley County Recorders Office. Maintenance, repair, replacement and/or plowing of Upper Murray Creek Road shall be allocated on the basis of respective use of said roads by the land owners east of the subdivision and the Association. All Lots shall share pro-rata in the cost of maintaining the roads. It shall be the responsibility of commercial agriculture or timber users to promptly repair any damage to the road caused by their use. Declarant, prior to the transfer of the said roads to the Association, or, thereafter, the Association, shall be entitled to dedicate all or any portion of the roads to the public as public roads. Valley County shall not be responsible for the repair or maintenance of the private roads. If the private roads are paved at the Subdivision's expense, all Lot owners shall pay an equal share of the paving expense.

**Section 3.24: No Further Subdivision:** No Lot may be further subdivided.

**Section 3.25: Declarant Improvements:** Declarant shall construct the roads depicted on the plat of the Subdivision and deliver power and telephone main lines to the Subdivision. Upon completions, Declarant shall convey the non-exclusive road rights-of-way, as platted, to the public. The home Owner's Association shall thereafter be responsible for the maintenance, repair, and upkeep of such private roads. The aforesaid responsibilities and process of completion and conveyance shall apply to all private roads platted within the Subdivision. Nothing contained herein shall limit the right of Declarant to complete excavation, grading and construction of improvements to and on any portion of the Subdivision owned by Declarant or to construct such additional improvements as Declarant deems advisable in the course of development of the Subdivision, so long as any Lot in the Subdivision remains unsold. Such right shall include, but shall not be limited to, erecting, constructing, and maintaining on the Subdivision, such structures and displays as may be reasonably necessary for the conduct of Declarant's business of completing the work and disposing of the same by sale, lease or otherwise. Declarant shall have the right at any time prior to acquisition of title to a Lot by a purchaser from Declarant to grant, establish and/or reserve on that Lot additional licenses, reservations and rights-of-way to Declarant, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Subdivision. Declarant need not seek or obtain Architectural Committee approval of any such improvements constructed or placed by Declarant on any portion of the Subdivision owned by Declarant or an affiliate of Declarant.

#### **ARTICLE 4 – MURRAY CREEK HOMEOWNERS ASSOCIATION**

**Section 4.1: Organization:** The Association shall be initially organized by Declarant as an Idaho, non-profit corporation. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any

provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so that such provision shall be interpreted so as to be consistent with the provisions of this Declaration.

**Section 4.2: Membership:** Each Owner shall be a Member of the Association. An Owner shall automatically be a holder of the Membership appurtenant to such Owner's Lot, and the Membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot.

**Section 4.3: Classes of Membership/Voting Rights:** The Association shall have one (1) class of Membership, which shall be a voting Membership.

**Section 4.4: No Fractional Votes, No Severance of Voting Rights:** Fractional votes shall not be allowed. In the event that joint Lot Owners are unable to agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint Owners of the Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Owner may give a revocable proxy. Any sale, transfer or conveyance of such Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the new Owner.

**Section 4.5: Board of Directors and Officers:** The affairs of the Association shall be conducted and managed by the Board of Directors ("Board") and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board of Directors shall be elected in accordance with the provisions set forth in the Association Bylaws. Members of the Board shall be confined to Lot Owners only. Each term shall not exceed 4 years in duration.

**Section 4.6: Declarant Transfer of Control of Association:** Declarant's right to control the Association and the selection of its Board shall terminate upon "the Transfer of Control Date" which shall be at the occurrence of the first of the following events:

A. By written notice from Declarant to the President or Secretary of the Association of Declarant's intention to terminate its right to appoint the majority of the Members of the Board of Directors; or

B. Upon that date which is three hundred sixty-five (365) days after ninety percent (90%) of all lots within the Subdivision (including any property which may be annexed into the Subdivision pursuant to the terms of this Declaration) have been sold to persons other than Declarant.

## **ARTICLE 5 – DUTIES AND POWERS OF THE ASSOCIATION**

**Section 5.1: General Duties and Powers of Association:** The Association has been formed to further the common interest of the Members. The Association shall have the duties and powers to take such action as is necessary to perform its obligations under the Association documents.

**Section 5.2: Powers of the Association:** The Association shall have all the powers of a corporation organized under the non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, and the Articles and Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Association's affairs and the performance of the other responsibilities herein assigned, including, without limitation:

**A. Assessments:** The power to levy Assessments on any Owner or any portion of the Subdivision and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

**B. Right of Enforcement:** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and adjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.

**C. Delegation of Powers:** The authority to delegate its powers and duties to committees, officers, employees, or to any person, firm or corporation. Neither the Association nor the Members of its board shall be liable for any omission or improper exercise by any person or entity of any such duty or power so delegated.

**D. Association Rules:** The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. Provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the association Rules as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Association Rules and any provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

**E. Emergency Powers:** The power, exercised by the Association or by any person authorized by it, to enter upon any property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance of construction for which the Association is responsible.

**F. Power to Engage Employees, Agents and Consultants:** The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain in paper such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association documents.

**Section 5.3: Duties of the Association:** In addition to duties necessary and proper to carry out the powers delegated to the Association by this Declaration, and the Articles and Bylaws without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

A. **Insurance:** Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, including, without limitation, directors and officers liability insurance.

B. **Rule Making:** Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable.

C. **Architectural Committee:** Appoint and remove Members of the Architectural Committee, subject to the provisions of this Declaration. The Board shall also have discretion to itself serve as the Architectural Committee, in lieu of appointing an independent Committee.

D. **Accept Property and Facilities:** The Association shall accept title to any property, including without limitation, any improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of the Declaration.

E. **Manage and Care for Roads:** The Association shall manage, operate, care for, and maintain and repair all roads within the Subdivision which are identified on the recorded plat of the Subdivision and which are necessary to provide access to the Lots within the Subdivision. The Association shall have the discretion to not plow snow on subdivision roads, or portions thereof, which service unimproved Lots. Packer John Road shall not be snow plowed south of the lot line common to Lots 3 and 4 of Block 2. The cost of maintenance of roads will be assessed to all Lot Owners as an annual regular assessment, excepting roads maintained by Valley County.

## ARTICLE 6 – ARCHITECTURAL COMMITTEE

**Section 6.1: Purpose and Theme of Controls:** Design controls shall be implemented for all building improvements to insure that the overall excellence of Murray Creek shall be maintained throughout its development. To this end, an Architectural Committee (hereafter referred to as the "Committee") will be established pursuant to this Article to guide the site development and design of all structures and to aid the residential home builders to discover the opportunities and limitations of their building sites. All of the residential improvements will be encouraged to offer a diversity of types, sizes and styles of architecture and yet will be required to conform to a total visual homogeneity. The discretion hereinafter invested in the Architectural Committee will be exercised towards the end that high standards of workmanship and quality of materials will be maintained throughout the Development and that all improvements will be in harmony with and complement the natural landscape, topography and flora.

**Section 6.2: Architectural Committee:** No building, fence, wall, structure, or other improvement shall be commenced, erected, altered, placed or maintained upon any Lot nor shall any exterior addition to or change or alteration therein be made, until plans and specifications showing the nature, kind, shape, height, materials, and location of the same have been submitted to and approved in writing by the Architectural Committee, which shall be composed initially of the Board of Directors. If any Member of the Committee resigns or is unable to act, the remaining Members shall discharge the functions of the Committee. The Committee shall be comprised of no less than three (3) nor more than (5) Members, who shall be appointed annually by the Board. A majority of the Members shall constitute a quorum.

Meetings may be held by telephone or other electronic conference. The Committee shall designate a chairperson. The Board may elect to act as the Committee.

**Section 6.3: Documentation Required for Architectural Approval:** No Structure or improvement shall be considered or approved by the Committee until the Lot owner has submitted the following information to the Committee:

- A. Two (2) sets of plans and specifications for the proposed improvements;
- B. A site plan of the Lot showing the location of all existing and proposed improvements and setbacks.
- C. Drawings showing all exterior building elevations;
- D. A material list of exterior materials and colors to be used on the proposed improvement; and,
- E. The owner's proposed construction schedule.

**Section 6.4: Basis for Approval or Disapproval:** The Committee shall give its approval for the requested improvement only if:

- A. The owner or applicant shall have strictly complied with the documentation requirements; and,
- B. The Committee finds that the plans and specifications conform to the requirements of Article 3, and furthermore that the owner or applicant is in compliance with all of the provisions and requirements of this Declaration in its entirety; and,
- C. The Committee, in its sole and reasonable discretion, finds that the proposed improvement is compatible with the theme of the Subdivision and with the purposes and intent of this Declaration as a whole as to quality of workmanship and materials, as to harmony of external design with existing structures, and as to location with respect to topography and finished grade elevations. The Committee may waive submission of plans and specifications for approval where minor construction of a minor addition to an existing structure is involved which does not appear to materially affect the Development.

**Section 6.5: Form of Approval or Disapproval:**

- A. All approvals given by the Committee shall be in writing; provided, however, that as to any request for approval which has not been rejected within thirty (30) days from the date of submission thereof to the Committee, such approval will not be required and the provisions of this Section will be deemed to have been fully complied with.
- B. In disapproving any plans and specifications or other documents the Committee shall specify, in writing, the deficiencies it has relied upon in rendering such disapproval and shall give the applicant the right and opportunity to resubmit his plans and specifications or other documents in amended form. The Committee shall thereafter reconsider such documents as if they were being submitted for the first time.
- C. One set of plans and specifications as finally approved or disapproved shall be retained by the Committee as a permanent record.
- D. Nothing contained in this Section shall be deemed to relieve the owner of any Lot from complying with all of the provisions of this Declaration or with the provisions of all applicable building codes, zoning regulations, or other governmental regulations or laws governing the lands within this development.

**Section 6.6: Arbitration:** In the event an owner or applicant disputes the decision of the Committee, said dispute shall be decided by arbitration in accordance with the Construction

Industry Arbitration Rules of the American Arbitration Association then in effect unless the Committee and the owner or applicant mutually agree otherwise. The Arbitrator shall be governed and guided in their decision by this Declaration. If so, the award rendered by the Arbitrator shall be final, non-appealable and binding upon the parties, to the same extent as if it had been finally rendered by a court of proper jurisdiction. The owner or applicant shall file demand for arbitration with the Committee and with the American Arbitration Association. Such demand shall be made within a reasonable time after the dispute in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings on such dispute would be barred by the applicable statute of limitations. The cost of arbitration shall be divided equally between the parties, unless the Arbitrator finds that one party has prevailed in arbitration. In such case, the non-prevailing party shall pay the cost of arbitration, which shall be limited to the Arbitrator's fee.

**Section 6.7: Proceeding with Work:** Upon receipt of approval from the Committee, the owner shall, as soon as practicable, satisfy all the conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations authorized by such approval, said commencement to be in all cases within one (1) year from the date of such approval. If the Owner shall fail to comply with this Section, the approval given shall be deemed revoked, unless the Committee upon written request of the Owner made prior to the expiration of said one (1) year period extends the time for such commencement. No such extensions shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted.

**Section 6.8: Completion of Construction:** The Owner shall complete all exterior elements of the construction within one (1) one year after the commencement of construction thereof; except and only for so long, as such completion is rendered impossible or would result in great hardship to the owner due to strikes, fires, unusual wintertime conditions, actual inability of the owner to procure deliveries of necessary material, or by other forces or persons beyond the control of the Owner; and, except as otherwise permitted by the Architectural Committee in writing. Financial inability of the Owner or his contractor to secure labor or materials or to discharge liens or attachments shall not be deemed a cause beyond his control. "Commencement of Construction" for new improvements is defined as the obtaining of the necessary building permits and the excavation of earth for a foundation. Extension may be granted for no more than one (1) additional year, except upon a vote of a majority of the members who are present or represented by proxy at a duly noticed membership meeting at which a quorum is present.

**Section 6.9: Failure to Complete Work:** Any construction which is not completed in a manner exhibiting quality workmanship, or not in substantial conformity to the plans and specifications approved for it by the Committee, within the time limits provided by this Article, and where such failure is not excused by the provisions hereof, shall be deemed a nuisance, and the Board shall have the right, at its sole option, to enter upon the premises and to have such incomplete construction removed or to carry such construction forward to completion. In such case, the costs and expenses incurred in such removal or completion shall constitute a lien upon the Lot under the Mechanic's Lien Law of the State of Idaho, such lien to attach as of the time of the commencement of the work involved in removing or completing the incomplete

construction. Such lien may be enforced in the same manner as provided for the enforcement of mechanic's liens.

**Section 6.10: Variations:** Variations with regard to large animals are provided for in Article 3. The Board may grant a variation from any of the other provisions of Article 3, except those limiting land use in the Subdivision to single-family residential uses, upon written request from an Owner, as follows:

A. The request shall be submitted to each Board member and must explain the precise nature of and reason for the requested variation.

B. At least fifteen (15) days prior to the Board's review of the variation request, at the Applicant's expense, written notice of the request and the time and place at which the Board will consider the request shall be mailed, via certified mail, to all record Owners of Lots in the Subdivision.

C. The Board's review of the request shall be open to all Owners, who shall be entitled to comment;

D. The request shall be denied unless the Applicant establishes compelling reasons for the request. Neither the cost of compliance with these Covenants, nor the convenience of the Applicant shall in and of themselves be grounds for variation;

E. If a Committee review of building/improvement plans involves a variation request, then the thirty (30) day time frame contained in Section 6.5 A. shall be extended to sixty (60) days; and,

F. The decision of the Board can be overruled or modified only by a vote of sixty-seven percent (67%) of those Owners who are present or represented by proxy at a meeting of the membership, scheduled for the purpose of considering such decision, at which a quorum is present.

**Section 6.11: Enforcement:** The provisions of this Declaration may be enforced by Declarant, by Successor Declarant, by the Board, or by any Lot Owner. The prevailing party in such enforcement action shall be entitled to recover his/her fees under Section 8.12. In addition, to specific enforcement judicially, the Board shall be entitled to impose a fine for violations of this Declaration of not to exceed \$500.00 per incident or \$50.00 per day, in the case of a continuing violation. The fine may be assessed only against the Owner, and only if the violator is the Owner or a member of the Owner's family or a guest, invitee, lessee, contractor, subcontractor, employee or agent of the Owner. In the case of a continuing violation, the fine may not be assessed unless the Owner has failed to abate the violation within the time allowed therefore by the Board in written notice to the Owner. In the case of a single incident, the fine may not be assessed unless the Owner has received at least one prior written notice from the Board that the violation may subject the Owner to fine(s). Fines imposed pursuant to this Section may be collected as provided in Article 7.10. Non-payment of assessments shall not subject an Owner to fines; rather, the remedy therefore shall be as provided in Article 7.

## ARTICLE 7 – ASSESSMENTS

**Section 7.1: Covenant to Pay Assessments:** By acceptance of a deed to any Lot in the Subdivision each Owner of such Lot hereby agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and limited Assessments and



charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.

**A. Assessments Constitutes Lien:** Such Assessments and charges together with interest as a rate established by the Board, costs and reasonable attorneys fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made.

**B. Assessment is Personal Obligation:** Each such Assessment, together with interest at a rate established by the Board, costs and reasonable attorneys fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall remain such Owners personal obligation regardless of whether he remains an Owner.

**Section 7.2: Uniform Rate of Assessment:** Unless otherwise specifically provided herein, regular and special assessments, including expenses of road maintenance and repair shall be fixed at a uniform rate per Lot.

**Section 7.3: Regular Assessments:** Regular assessments shall be paid annually as provided in Sections 7.5. The regular assessments may include, and shall be limited to, the following regular expenses:

- A. Repairs and maintenance for roads within the Subdivision;
- B. Expenses of the management of the Association and its activities;
- C. Taxes and special assessments upon the Association's real and personal property;
- D. Premiums for all insurance which the Association is required or permitted to maintain;
- E. Common services to Owners as approved by the Board;
- F. Legal and accounting fees for the Association;
- G. Expenses related to the maintenance and operation of common area facilities;
- H. Any deficit remaining from any previous assessment year; and,
- I. The creation of reasonable contingency reserves for the future road maintenance or improvement, administration expenses, or legal expenses.

**Section 7.4: Maximum Regular Assessments:**

A. The Board shall prorate the assessment for any Lot Owner in the year of purchase of such Lot on the basis of the actual months of ownership of such Lot by the Lot Owner during such year.

B. Effective 2006, and for each subsequent year thereafter until the transfer of the control date has occurred, assessments shall be set by Declarant, as necessary to meet the Association's financial needs and pursuant to the terms and restriction of this Article.

C. Effective with the transfer of control from Declarant to the Association, then the annual regular assessment may be increased by the Board by a sum not to exceed twenty percent (20%) of the prior year's regular assessment. Any increase in the regular assessment which exceeds twenty percent (20%) of the prior year's regular assessment shall require the approval of sixty-seven percent (67%) of those members present at or represented by proper proxy at a meeting of the membership conducted pursuant to notice and at which a quorum is present. Notice of such meeting shall set forth the purpose therefore and shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting.

**Section 7.5: Regular Assessment Procedure:**

A. The Association's Board of Directors shall set the total annual regular assessment based upon an advanced budget of the Association's requirements for the following assessment year. A summary of that budget shall be mailed by ordinary first class mail or otherwise delivered to all Owners by no later than December 1 of the current budget year (i.e. to take effect on January 1 of the next assessment year). Subject to the voting requirements for any increase in the annual regular assessment which exceeds twenty percent (20%) of the prior year's regular assessment, the budget shall take effect on January 1 of the assessment year to which it applies.

B. The Board shall cause to be prepared, delivered, or mailed to each Owner, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth the annual regular assessment. All payments of regular assessments shall be due and payable without any notice or demand, on the due dates declared by the Board. Regular assessments shall be applicable to all Lots, provided that Declarant shall have no liability for regular assessments until the transfer of control. Each owner other than Declarant shall become responsible for the regular assessment on a Lot as of the date the Lot is transferred to such owner.

**Section 7.6: Special Assessments:** In the event that the Board shall determine that its Regular Assessments for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including but not limited to attorneys fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the amount necessary to defray such Expenses and levy a Special Assessment which shall be computed in the same manner as Regular Assessments. After the transfer of control, no Special Assessment shall be levied without the vote or written consent of a majority of the votes of the Members of the Association, which are present at a properly scheduled meeting of the Members or represented by proxy. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for the Association.

**Section 7.7: Limited Assessments:** Notwithstanding the provisions regarding regular and special assessments, the Board may levy a limited assessment against a Member as a remedy to reimburse the Association:

A. For costs incurred in bringing the Member and/or such Member's Lot into compliance with the provisions of the Association Documents, or;

B. For other Association expenditures which uniquely benefit one or more individual Lots, as opposed to the Subdivision as a whole; provided, that, prior to the expenditure, two-thirds of the Owners of the Lots which will be subject to the Limited Assessment have consented to the expenditure.

**Section 7.8: Assessment Period:** Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on January 1 of each year and terminate December 31 of the year.

**Section 7.9: Notice of Default and Acceleration of Assessments:** If any assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the

Owner. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than ten (10) days from the date of the mailing of the notice by which the default must be cured; and, (d) that the failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for assessment against the Lot of the Owner and the exercise by the Board of any other remedies either provided herein or allowed by law. In such case, and as a condition of the cure of the delinquent assessment, the Owner may be obligated by the Board, at the Board's sole discretion, to actionably pay all costs of enforcement, including without limitation reasonable attorneys fees, costs and related expenses and to pay a reasonable late charge to be determined by the Board.

**Section 7.10: Enforcement of Assessments:** Each Owner is and shall be deemed to consent and agree to pay to the Association each and every assessment provided for in this Declaration; and agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys fees and costs thereby incurred in addition to any other amounts due to any other relief or remedy obtained against said Owner. In addition to any other remedies herein or by law provided, the Board or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law in equity, or without any limitation of the foregoing, by either or both of the following procedures:

**A. Enforcement by Suit:** By commencement of a suit at law against any Owner or Owners personally obligated to pay assessments, for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon as provided for herein, costs of collection, court costs and reasonable attorneys fees in such amount as the Court may adjudge against the delinquent Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

**B. Enforcement by Lien:** There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners, together with interest thereon as provided for in this Declaration, fines imposed for violation of these Covenants, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys fees. The Board or its duly authorized representative may file and record a Notice of Delinquent Assessment on behalf of the Association against the Lot of the defaulting Owner who has not cured the default, as provided in Section 7.9. The amount of the assessment, plus any costs of collection, expenses, attorneys fees and interest assessed in accordance with this Declaration shall be a lien on the owner's Lot from and, after the time the Association records the Notice of Delinquent Assessment. Such Notice shall be executed and acknowledged by any officer of the Association and shall contain substantially the following:

1. The claim of lien made pursuant to this Declaration;
2. The name of the recorded Owner,

3. The legal description of the Lot against which claim of lien is made;
4. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorneys fees (with any proper offset allowed); and,
5. The name and address of the trustee authorized by the Association to enforce the lien by public sale.

Upon recordation, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the Notice. Any such lien may be foreclosed by appropriate action in court or in the manner provided by the Idaho Code for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any Title Company authorized to do business in Idaho as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for shall secure payment of all sums set forth in the Notice, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said Notice. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of assessment liens in this manner. Upon the timely curing of any default for which a Notice is filed by the Board, the Board shall cause an officer of the Association to file and record an appropriate release of such Notice in the Office of the County Recorder of Valley County, Idaho. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or abandonment of his Lot.

**Section 7.11: Priority of First Mortgage Over Assessments:** A lien for Assessments shall only be subordinate to the lien of a first deed of trust or first mortgage given for value that is of record as an encumbrance against a Lot prior to the recordation of a claim of lien for the Assessments. The sale or transfer of a Lot shall not affect the Assessment lien except that on the date of a sale or transfer, the lien shall be due. A sale or transfer shall not defeat the personal obligation of any Owner for delinquent Assessments.

**Section 7.12: Declarant Assessment Obligations:** Prior to the transfer of control date, Declarant shall have the following options regarding assessments on Lots owned by Declarant: Declarant may pay such assessments; or, Declarant shall be deemed to have met its obligation regarding assessments by the contribution of such funds and/or services to the Association as are necessary to permit the Association to perform its responsibilities and meet its financial needs. After the transfer of control, Declarant shall be subject to the Association's assessment on any Lots owned by Declarant and located within the Subdivision.

## **ARTICLE 8 – GENERAL PROVISIONS**

**Section 8.1: Binding Effect:** The various restrictive measures and provisions of these Covenants are declared to constitute mutual equitable servitudes for the protection and benefit of each Lot in the Subdivision and of the owners thereof and for the benefit of the Subdivision as a whole. Each grantee of a conveyance or purchaser under a contract of sale, by accepting

a deed or contract of sale, accepts such subject to all of the Covenants set forth in this Declaration and specifically agree to be bound by each and all of them.

**Section 8.2: Term of Declaration:** Unless amended as herein provided, all provisions, Covenants and equitable servitudes contained in this Declaration shall be effective for ten (10) years after the date upon which this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners as provided for herein.

**Section 8.3: Amendment of the Declaration:** Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, Covenants and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

**Section 8.4: Amendment of Declaration by Members:** Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, Covenant or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time, upon approval of the amendment or repeal by at least sixty-seven percent (67%) of those Members present or represented by proxy at a meeting of the Membership, scheduled for the purpose of considering such amendments, at which quorum is present; provided:

A. This Declaration may not be terminated except upon approval by at least ninety percent (90%) of the Membership of the Association; and, in case of termination, all rights, reservations, and easements granted to or reserved by Declarant herein shall survive any such termination; and,

B. The provisions of this Declaration which limit the allowable land uses in the Subdivision to single-family residential use may be amended only with the approval of ninety percent (90%) of the Membership and the approval, as required, by Valley County, in the same manner as would be required for an approval of a material change to the Conditional Use Permit/Preliminary Plat for the Subdivision.

**Section 8.5: Required Consent of Declarant to the Amendment:** Until the last lot in the Subdivision is sold, any proposed amendment or repeal of any provision of this Declaration may only be modified or amended with written consent of Declarant which consent may be withheld by Declarant for any reason whatsoever. Consent by Declarant to any one such amendment shall not be construed as consent to any other amendment.

**Section 8.6: Easements - General:** The following easements are reserved:

1. A twenty foot (20') easement on the interior boundary of the lots lines adjacent to roads, for purposes of snow removal and storage and for utilities;
2. A snow removal easement along all Roads for purposes of reasonable removal of snow from adjacent Roads, within which each Owner shall be responsible for any necessary repair to fencing or other improvements which may be damaged as the result of such snow removal.

**Section 8.7: Easements - Declarant Reservations:** Declarant hereby reserves to itself, until Declarant has sold the last lot in the Subdivision:

A. An unrestricted easement in and right of use of all roads and easements shown on the Plat.

B. Alienable, divisible and releasable easements and the right from time-to-time to grant such easements to others over, under, and in and across all roads conveyed or to be conveyed pursuant to Section 8.9, or otherwise by deed or plat map, for use of all or part of such areas for utility lines (ex: telephone, electricity, cable television, gas), for water and waste water lines, for drainage and for other similar or dis-similar facilities and purposes, and for any one or more such purposes.

C. The right and authority to grant an easement if any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document. The easement(s) provided for in this Declaration shall in no way affect, avoid, extinguish or modify any other recorded easement on the Subdivision.

D. Declarant reserves a unrestricted easement to meet the terms of Fire Hazard Management Agreement No. 57597-F with the Southern Idaho Timber Protective Association, Inc.

**Section 8.8: Declarant's Rights and Reservations:** Until Declarant has sold the last Lot in the Subdivision, in addition to those easements and rights reserved in Section 8.7, Declarant shall have, retain and reserve certain rights as herein set forth with respect to the Association and the Subdivision. The rights and reservations reserved herein shall be deemed accepted and reserved in each conveyance of the Subdivision by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Subdivision is conveyed by Declarant.

**Section 8.9: Successor Declarant:** The rights of Declarant may be assigned by Declarant to any successor in interest in connection with Declarant's interest in any portion of the Subdivision by an express written assignment recorded in the Office of the Valley County Recorder. For purposes of the rights, reservations and easements reserved and created in favor of Declarant, Declarant shall have the option of notifying the Association in writing of an assignee or successor who will hold and exercise Declarant's aforesaid rights and whom the Association shall notify as required by this Declaration. In the event that JAF Enterprises, LLC is dissolved and fails to notify the Association of a successor for these purposes, then the person(s) holding a majority of shares in the JAF Enterprises, LLC at the time of its dissolution shall be deemed the successor to Declarant for these purposes.

**Section 8.10: Remedies Cumulative:** Each remedy provided under the Association documents is cumulative and not exclusive.

**Section 8.11: Costs and Attorneys Fees:** In any action or proceeding under the Association documents, the party which seeks to enforce the Association documents and prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys fees and expert witness fees. "Action or proceeding" as herein stated shall include, without limitation, any arbitration, mediation, or alternative dispute resolution proceeding.

**Section 8.12: Limitation of Liability:** The Association, Board of Directors, the Architectural Committee, Declarant and any Member, agent or employee of any of the same shall not be liable to any person for any action or for any failure to act if the action or failure to act was in

good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by the laws of Idaho, including without limitation, circumstances in which indemnification is otherwise discretionary under Idaho law, in accordance with and subject to the terms and limitations contained in the Bylaws.

**Section 8.13: Governing Law:** The Association documents shall be construed and governed under the laws of the State of Idaho.

**Section 8.14: Severability:** Invalidation of any one or more of the Covenants contained herein by judgment or otherwise shall in no way affect the validity of any of the other provisions, which shall remain full force and effect.

**Section 8.15: Number and Gender:** Unless the context requires a contrary construction, as used in the Association documents, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

**Section 8.16: Captions for Content:** The titles, headings and captions used in the Association documents are intended solely for convenience of reference and are not intended to affect the meaning of any provisions of this Declaration.

**Section 8.17: Mergers or Consolidations:** The Association may merge with another incorporated association with the approval of 67% of the members, to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the Covenants established by this Declaration governing the Subdivision together with the Covenants established upon any other property, as one plan.

**Section 8.18: Conflicts in Documents:** In case of any conflict between this document and the Articles of Incorporation, or the Bylaws of the Association, this Declaration shall control.

**IN WITNESS WHEREOF,** Declarant has executed this Declaration the day and year first above written.

JAF ENTERPRISES, LLC  
OWNER OF MURRAY CREEK SUBDIVISION

By Robert W. Fodrea Date: 10/13/06  
Robert Fodrea, Managing Member

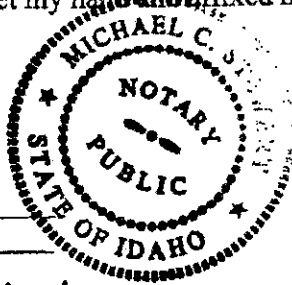
STATE OF IDAHO )  
                                ) ss.  
County of Valley )

On this 13<sup>th</sup> day of Oct, 2006, before me, MICHAEL STEWART a Notary Public in and for said State,  
personally appeared ROBERT FODREA and acknowledged to me that they executed the same.

In witness whereof, I have unto set my hand and affixed my official seal the day and year first above  
written.

Michael Stewart  
Notary Public for Idaho

Residing at: Cascade  
Idaho



My Commission Expires: 10/30/2010