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**Instrument # 305019**

VALLEY COUNTY, CASCADE, IDAHO

2006-01-19 10:33:54 No. of Pages: 27

Recorded for : JUGHANDLE ESTATES

LELAND G. HEINRICH

Ex-Officio Recorder Deputy

Index to: RESTRICTIVE COVENANT

Fee: \$1.00

2005

AMENDED AND RESTATED

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
JUGHANDLE ESTATES**

**THIS AMENDED AND RESTATED DECLARATION** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by THE JUGHANDLE CORPORATION, an Idaho nonprofit corporation, acting on behalf of its members.

**ARTICLE 1 - GENERAL**

**Section 1.1: Common Interest Community:** The name of the common interest community affected by this Declaration is "Jughandle Estates". All of the community is located in Valley County, Idaho.

**Section 1.2: Association / Property Affected:** The Jug Handle Corporation is the property owners association whose members are owners of real property within Jughandle Estates. A legal discription of the real property to which these protective covenants apply is described on the attached Exhibit "A". Such property shall be referred to in this Declaration as "the Property". The Jughandle Corporation is acting on behalf of the owners of the Property.

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

**Section 1.4: Declaration:** Jughandle Corporation hereby declares that each lot, parcel or portion of Jughandle Estates Subdivision, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein: (i) shall run with the land constituting the Property, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; (ii) shall inure to the benefit of every lot, parcel or portion of the Property and interest therein; (iii) shall inure to the benefit of and be binding upon each Owner or Owner's respective successors in interest; and, (iv) may be enforced by the Board of Directors of the Property Owners Association, by any Owner or such Owner's successors in interest, or by the Association as hereinafter described.

**Section 1.5: Replacement:** This Declaration replaces and supersedes the following Declarations or Protective Covenants for Jughandle Estates: "Jughandle Protective Covenants", filed as instrument number 76190 on May 22, 1972; and, "Amended Jughandle Protective Covenants", filed as instrument number 76496 on June 29, 1972; and, "Declaration of Protective Covenants", filed as instrument number 81164 on December 21, 1973; and, "Statement of Reservations, Restrictions, Taxes, and Assessments" filed as instrument number 80111 on August 23, 1973; all of which were filed with the Valley County, Idaho Recorder.

## ARTICLE 2 - DEFINITIONS

**Section 2.1: Articles:** "Articles" shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

**Section 2.2: Assessments:** "Assessments" shall mean those payments required of Association Members, including Regular, Special and Limited Assessments of the Association as further defined in Article 7.

**Section 2.3: Association:** "Association" or "Property Owners' Association" shall mean the Jughandle Corporation.

**Section 2.4: Association Documents:** "Association documents" shall mean the various operative documents of the Association, including: (a) the Articles of Incorporation of the Association; (b) the Bylaws of the Association; and, (c) this Declaration, and all Amendments to any of the aforementioned documents.

**Section 2.5: Board of Directors:** "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

**Section 2.6: Bylaws:** "Bylaws" shall mean the Bylaws of the Association.

**Section 2.7: Committee:** "Committee" shall mean the Design Review Committee.

**Section 2.8: Community:** "Community" as used herein shall refer to the Existing Properties considered as a whole.

**Section 2.9: Declaration:** "Declaration" shall mean this Declaration of Covenants.

**Section 2.10: Design Review Committee:** "Design Review Committee" shall mean the committee created pursuant to Article 6.

**Section 2.11: Dwelling unit:** "Dwelling unit" shall mean any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation for not more than one family.

**Section 2.12: Existing Property:** "Existing Property" shall mean the real property described on Exhibit "A". "The Property" or the "the Subdivision" shall mean the Existing Property. Either term shall include any improvements now or hereafter made on such real property and appurtenances and rights to such real property.

**Section 2.13: Governing Instruments:** "Governing Instruments" shall mean the Articles, Bylaws, this Declaration, any Plats, and any Rules adopted by the Board pursuant to Section 5.2 below, and any supplement or amendment thereto.

**Section 2.14: 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 2.15: Lot:** "Lot" shall mean a parcel of land subject to this Declaration which is identified as a Lot in any plat map recorded on the Property. A lot may also be referred to herein as a "parcel".

**Section 2.16: Member:** "Member" shall mean a member of the Association, who must be an Owner. Membership in the Association shall be appurtenant to and may not be severed from ownership of a Lot.

**Section 2.17: Modular Building:** "Modular Building" means any building or building component which is a manufactured or mobile home, or some portion thereof, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site. This term shall specifically not include such products as log, timber or cedar home packages, or such other home construction product which is pre-designed and possibly fabricated offsite, but is reconstructed on site. The intent of the section is to provide a definition of the type of structure which is not allowed pursuant to Section 3.1(B) below.

**Section 2.18: Owner:** The term "Owner" shall refer to that person or entity or those persons or entities who hold the ownership interest in any Lot as shown on the records of the County Recorder, Valley County, Idaho; such term shall also include any person, persons, entity or entities who succeed to such recorded interest by any means, including buyers under executory contracts of sale and excluding those holding an interest merely as security for the performance of an obligation.

**Section 2.19: 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 2.20: Plat:** "Plat" shall mean the final plat, filed of record with the Valley County Office of Recorder.

**Section 2.21: 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 2.22: Rules and Regulations:** "Rules and regulations" shall mean the rules and regulations adopted by the Board of Directors concerning the operation of the Association.

**Section 2.23: Structure:** "Structure" shall include buildings, outbuildings, fences, walls, stairs, decks and poles.

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

**Section 3.1: Land Use and Living Units:** All of the subject lots in the Property shall be used and occupied solely for single-family residential purposes. None of the subject lots or parcels shall be split, divided or subdivided into smaller lots or parcels than indicated on the Final Plat of the subdivision, as filed with the office of the County Recorder of Valley County, Idaho. All single family residences shall be subject to the following conditions and limitations:

A. No buildings other than one residence, shall be erected or maintained on any lot, provided, (1) a garage sufficient in size for Owner's vehicles may be constructed either as part of the primary residence or detached; and, (2) no more than a total of four (4) buildings, (5) buildings if the garage is detached, shall be allowed on any lot. No use whatsoever shall be made of any parcel herein other than as the site and grounds of a single family 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 building shall be specifically determined to be

multi-family dwelling. This is not, however, intended to exclude attached or detached guest sleeping facilities allowed by applicable Valley County Ordinances, and Central District Health, and which have sanitation facilities but that do not contain eating and cooking facilities. 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 responsible for any violations by renters/lessees of any of the provisions of these Covenants; and, the minimum rental period shall be thirty (30) days.

**B.** No Modular Building, basement, shack, 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 Design Review Committee is obtained, such approval to be obtained in the same manner as for new construction.

**C.** Visitors and guests may park a camper, motor home or travel 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.

**D.** A residence shall contain no less than 1,200 square feet, if single storied, or 1,600 square feet, if two storied, 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. Residences that existed prior to July 2005 are exempt from this restriction.

**E.** No Improvements 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 the Property unless and until the building plans, specification, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Design Review Committee, and the same have been approved in writing. The procedures for review are as more fully set forth in Article 6.

**F.** The planting of trees shall not require prior approval by the Design Review 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 Design Review 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 visual aesthetic forest appearance.

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 but not the obligation 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.** Detached garages, guest quarters with no cooking facilities, barns, outbuildings and storage sheds shall be allowed if in conformity with the provisions of this Declaration and the applicable ordinances of Valley County. Garages, 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 Design Review Committee.

**H.** All access driveways shall have an all weather wearing surface approved by the Design Review Committee and shall be constructed to assure proper drainage. The foregoing is not a requirement that driveways be paved.

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

**J.** The maximum height of any building shall be in compliance with the applicable Valley County land use or zoning ordinances, but shall not exceed thirty-five (35) verticle feet in height, measured from the grade that pre-existed construction to the highest point of any roofline. Height shall be measured as provided in the 2003 Uniform Building Code or any subsequent re-codification or replacement thereof.

**K.** Roofs shall be required to be of pitched design and shall be covered with nonflammable materials (e.g. non-reflective metal, tile, fiberglass shingles, fire retardant wood shingles or shakes). No galvanized metal roofs shall be allowed. Owners desiring to use non-metal roofs must demonstrate to the Design Review 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 Design Review Committee. Exteriors must be of natural materials

(i.e. wood or stone); provided, the Design Review 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. TV Satellite dishes shall be allowed.

**Section 3.2: In Home Businesses:** "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 not be allowed, except by permission of the Board granted following the process for variances specified in Section 6.10 below. The Board shall not grant the request from an Owner to conduct an in home business that involves the coming and going of customers or clients or the parking or storage on the Lot of vehicles, machinery, equipment or materials unless the Board determines that the impacts on other lot owners will be negligible.

**Section 3.3: 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 3.4: 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. 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.

**Section 3.5: Animals/Fowl:** No animal other than a dog, cat, cow or horse shall be maintained on any Lot. No more than three animals in total over one year old shall be kept on any lot at any one time. No animal shall be kept on any lot for pay. No animal shall be permitted within 50 feet of any well site.

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 Property is bordered by private and public grazing land and that dogs leaving the Property and Harassing livestock may be killed, as allowed by law. Dog runs shall be allowed with the prior approval of the Design Review Committee.

C. **Large Animals:** Horses, cattle and comparable sized animals shall be allowed to be kept on any Lot; provided such animals are kept in an enclosure that has been approved by the Design Review Committee. Fencing shall be constructed in accordance with Section 3.7 below.

D. **Fowl:** All fowl must be kept on owners lot in a enclosed structure or fenced area and shall not exceed 12 in number.

**Section 3.6: Fences:** No fence, wall or hedge higher than four (4) feet, six (6) inches shall be erected or maintained on any Lot, save and except, however, with the previous written consent of all adjoining Lot Owners and the Design Review Committee. The Design Review Committee shall have complete control over the allowance of a fence over the four foot six inch height limit. All fencing, shall first be approved by the Design Review Committee. Fencing on the perimeter (i.e. external boundaries of the subdivision) of the Property may be barbed wire. Wood fencing or manufactured fencing that resembles wood shall be preferred within the subdivision, and barbed wire shall not be allowed.

**Section 3.7: Rebuilding or Restoration:** Any dwelling unit or other improvement that may be destroyed in whole or in part must be rebuilt, or all debris must be removed and the Lot restored to a sightly condition. Such rebuilding, restoration or removal shall be completed within reasonable promptness and in any event within one (1) year from the time the damage occurred.

**Section 3.8: Drainage:** There shall be no interference with the established drainage pattern over any portion of the Property. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which existed at the time that road construction and installation of utilities was completed.

**Section 3.9: Utilities:**

**A. Telephone, Electrical:** 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 parcel line to the point of use on each parcel. 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 a community water system. Individual Lot owners are responsible for the cost of all water hook up fees and underground installation on individual Lots. Installation, maintenance and management of the community water system, wells and storage facilities shall be the sole and exclusive responsibility of the Association. The Board shall have the authority to adopt Rules, pursuant to Section 5.2(d) below, to further these responsibilities. Individual Lot owners may drill their own well for irrigation purposes, upon approval by the Board and appropriate government authorities, and so long as such well does not negatively affect the community water system in the reasonable judgment of the Association Board.

Following are the easements and lots which make up the Jughandle Water system:

- (i) Lot 16 in Block 2 of Jughandle Highlands Nos. 1 and 2 as recorded in Drawer 1 of plats Instrument # 76496 in the office of the County Recorder of Valley County, Idaho, together with a 30' Access Road, Public Utilities, Water Line Easement along the West boundary of Lot 5, Block 2, granted pursuant to the final plat for Jughandle Highlands No. 2. and pursuant to that certain Warranty Deed recorded as Instrument # 93302 on September 27, 1977 (The Well Lot); and,



(ii) An easement for the water system located east of Jughandle Highlands, pursuant to that certain Amended Jughandle Easement recorded as Instrument No. 207677, on October 25, 1994 with the Valley County, Idaho Recorder; and,

(iii) All Easements and equipment for the water system, pursuant to that certain Deed recorded as Instrument # 84729 on May 9, 1975 with the Valley County, Idaho recorder.

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

D. **Solar Panels:** With the prior approval of the Design Review 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 3.10: Obstructions:** 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 Property.

**Section 3.11: Snow Machines and Motorcycles:** Snow machines, motorcycles and dirt bikes may not be operated within the subdivision on any owners property unless prior permission of the lot owner has been obtained. If permission has not been obtained snow machines, motorcycles and dirt bikes may not be operated within the Subdivision, except for direct ingress/egress to the Owner/Operator's Lot.

**Section 3.12: Prohibited Lot Uses:**

A. There shall be no mining, smelting or milling of ores or similar mineral operations within the Community.

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 is not covered by a structure shall be properly filled within thirty (30) days of the completion of the underground work.

E. No hunting or discharging of firearms shall be allowed within the Property.

**Section 3.13: 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 3.14: Landscaping:** Of critical concern with regard to landscaping in the Subdivision is the preservation of the stability of hill sides and the prevention/control of wild fires. Native, drought-resistant plant species shall be preferred; however, lawns and other landscaping shall be allowed.

**Section 3.15: Refuse:** No unsightly objects or materials, including but not limited to abandoned vehicles, trash, rubbish, garbage, construction debris, scrap material or other refuse, or receptacles or containers therefor, 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 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 of this Declaration. 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 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.

**Section 3.16: 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 required permits from the local Fire Department and any other agency or authority with jurisdiction. The policies, practices and instructions of such entity shall be strictly followed.

**Section 3.17: Nuisances:** No noxious or offensive activity shall be carried on upon any Lot or anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any dwelling unit.

**Section 3.18: 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 Property.

**Section 3.19: 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. Standard Real Estate signs advertising a lot for sale, not to exceed 9 square feet in surface size;
- C. Signs as may be necessary to advise of rules and regulations or to caution or warn of danger;
- D. Such signs as may be required by law; and,
- E. Neighborhood Watch Signs.

**Section 3.20: No Further Subdivision:** No Lot may be further subdivided. Lot line adjustments between lots is permissible and must be documented and recorded.

**Section 3.21: Roads:** All roads within the Subdivision shall be public. Maintenance, repair, replacement and/or plowing thereof shall be the responsibility of Valley County.

**Section 3.22: Noxious Weeds:** Any Lot disturbed as a result of grading or construction shall be revegetated 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 3.23: Fire Hazard Mitigation:** All lots shall be maintained in accordance with the Wildland-Urban Interface Fire Code, as it now exists or may be subsequently modified. Should the Owner fail to do so then, after thirty (30) days' prior written notice to the Owner, the Board shall have the authority to perform the necessary work and collect all expenses or fees related thereto as a limited assessment. The Board may, in addition, use its enforcement powers provided in Section 6.11 below.

#### ARTICLE 4 - ASSOCIATION OPERATION

**Section 4.1: Organization:** The Association (Association) shall be organized 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 of Incorporation, By-Laws, and this Declaration. Neither the Articles nor By-Laws 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 By-Laws, 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. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that the Owner may assign some or all of the Owner's rights as an Owner and as a member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for full fulfillment of the obligations of the Owner under the Association Documents.

**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, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary or contract purchaser of the Lot concerned, for the term of the lease, mortgage, deed of trust or contract.

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, subject to any assignment of the right to vote to a lessee, mortgage, or beneficiary as provided herein.

**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 By-Laws, 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 By-Laws.

## 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 By-Laws, 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 By-Laws, 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 Property 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 enjoin any breach or threatened breach of this Declaration or the Articles or the By-Laws, 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 By-Laws. 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 By-Laws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the By-Laws 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. Such entry shall be made with as little inconvenience to the Owner as practicable.

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 By-Laws 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. **Design Review Committee:** Appoint and remove members of the Design Review Committee, subject to the provisions of this Declaration. The Board shall also have discretion to itself serve as the Design Review Committee, in lieu of appointing an independent Committee.

D. **Community Water System:** Install, maintain and manage the community water system for Jughandle Estates. The Board shall have the authority to promulgate Rules in this regard. Additionally, the Board shall have the authority to contract with homeowners outside Jughandle Estates, and charge such fees as it reasonably determines, so long as such use does not negatively affect the use of the community water system by the Members of the Association.

E. **Common Areas:** Maintain and manage all Common Areas in Jughandle Estates, as described at Exhibit "A". The Board shall have the authority to promulgate Rules in this regard.

## ARTICLE 6 - DESIGN REVIEW

**Section 6.1: Purpose and Theme of Controls:** A Design Review Committee (hereinafter referred to as the "Committee") has been established pursuant to Section 6.2 of this Article 6 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 Design Review 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: Design Review 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 Design Review 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 appoint his or her successor. Pending such appointment, the remaining members shall discharge the functions of the Committee. The Committee shall be comprised of no less than three (3) nor more than five (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 Design Review Approval:** No structure or improvement shall be considered or approved by the Committee until the parcel 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 which also identifies the location, size and type of all trees proposed to be removed;
- C. Drawings showing all exterior building elevations;
- D. A schedule 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 requirements of Section 6.3 hereof;
- B. The Committee finds that the plans and specifications conform to the requirements of Article 3 of this Declaration, 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 this Development 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 or a minor addition to an existing structure does not appear to materially affect the Development.

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

A. All approvals given under Section 6.4 shall be in writing; provided, however, that as to any request for approval that 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 parcel 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: DISPUTE RESOLUTION:** In the case of any challenge to a decision of the Design Review Committee, the decision shall be reviewed by the Board of Directors. In the case of any challenge to a decision of the Board, the decision shall be upheld unless it is found by clear and convincing evidence that the Boards' decision is: (i) in express violation of this Declaration or any other Governing Instruments, rules or regulations; (ii) in express violation of an applicable federal, state, county or district statute, ordinance or regulation; or, (iii) arbitrary, capricious, unreasonable and oppressive. If an Owner does dispute the Board's decision, the provisions of Article 8 shall control.

**Section 6.7: Proceeding with Work:** Upon receipt of approval from the Committee pursuant to Section 6.5 above, 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 pursuant to Section 6.5 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) 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, acts of God, 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 Design Review 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. For the purposes of this Section 6.8, "Commencement of Construction" for new improvements is defined as the obtaining of the necessary building permits and the excavation of earth for a foundation, and for all other improvements is defined as the undertaking of any visible exterior work. Under no circumstances shall the aforesaid one (1) year completion deadline be extended for 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 good and workmanlike manner, or 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 property 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: Variances:** Upon written request from an Owner, the Board may grant a variance from any of the provisions of Article 3, except those limiting land use in the Subdivision to single-family residential uses, as follows:

- A. The request shall be submitted to each Board member and must explain the precise nature of and reasons for the requested variance;
- B. 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 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 a variance;
- E. If a Committee review of building/improvement plans involves a variance request, then the thirty (30) day time frame contained in Section 6.5 A. above shall be extended to sixty (60) days; and,
- F. The decision of the Board can be overruled or modified only by a vote of fifty-one (51%) 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 the Board, or by any Lot Owner. The prevailing party in such enforcement action shall be entitled to recover his/her fees under Section 9.6. 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 therefor 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 Section 7.8 A and B below. Non-payment of assessments shall not subject an Owner to fines; rather, the remedy therefore shall be as provided in Article 7, below.

**Section 6.12: Liability:** Neither the Association nor the Design Review Committee nor any of their respective officers, directors, employees or agents shall be responsible or liable to any person for any defects in any plans or specifications submitted, revised or approved under this Article VII nor for any defects in construction performed pursuant to such plans and specifications. Approval of plans and specifications under this Article VII shall not relieve the Owner of strict compliance with applicable governmental laws or regulations.

#### ARTICLE 7 - ASSESSMENTS

**Section 7.1: Covenant to Pay Assessments:** By acceptance of a deed to any lot in the Property each Owner of such lot hereby covenants and 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. Assessment Constitutes Lien:** Such Assessments and charges together with interest at 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 attorney's 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 Owner's personal obligation regardless of whether he remains an Owner.

**Section 7.2: Regular Assessments:** The regular assessments may include, and shall be limited to, the following regular expenses:

**A.** Repairs, improvements and maintenance for the Association's water system within the Property;

**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 Areas and improvements located thereon;
- H. Any deficit remaining from any previous assessment year; and,
- I. The creation of reasonable contingency reserves for the maintenance and improvement of the community water system, administration expenses, or legal expenses.

Regular assessments shall be paid annually as provided in Section 7.3.

**Section 7.3: 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 June 15th of each year.

B. The dollar amount of each Lot owners regular annual assessment will be determined by the Board based on the Valley County Assessed value of each Lot within the subdivision. This amount does not include the assessed value of any improvements on the Lot. As an example, the total assessed value of all the lots in the subdivision would be divided into the assessed value of each Lot, this number would then be multiplied times the total annual budget amount which would result in that particular Lot owners share of the annual budget. The board will obtain the assessed value of each Lot annually from the Valley County Assessor's Office for use in this computation.

C. 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 on the due dates declared by the Board.

**Section 7.4: Special Assessments:** In the event that the Board shall determine that there is a need for a special assessment of the owners to accomplish a specific task, such as drilling a new well or paving streets, that is not normally provided for in the annual budget the Board shall proceed as follows: (a) Determine the amount necessary to defray such expense, (b) present the proposal at a duly called and noticed meeting, annual or special, of the members. Twenty Members represented in person or by proxy shall constitute a quorum. If a quorum is present, the affirmative vote of the majority of the Members entitled to vote on the subject matter shall be the act of all of the members. 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 in an equal dollar amount for each Lot in the Subdivision. No special assessment shall be levied without the affirmative vote of the Members.

**Section 7.5: Limited Assessments:** Notwithstanding the above provisions with respect to regular and special assessments, the Board may levy a limited assessment against a member as a remedy to reimburse the Association for costs incurred in bringing the member and/or such member's Lot into compliance with the provisions of the Association Documents.

**Section 7.6: Assessment Period:** Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on July 1st of each year and terminate on June 30th of the following year.

**Section 7.7: 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 additionally 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 7.8: Enforcement of Assessments:** Each Owner is and shall be deemed to covenant 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 or 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 attorney's 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 attorney's 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 7.8 above. The amount of the assessment, plus any costs of collection, expenses attorney's 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 record 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 attorney's 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 conduction such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners and 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 was 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.

## **ARTICLE 8 – DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

### **Section 8.1: Agreement To Encourage Resolution Of Disputes Without Litigation:**

(a) The Association and its officers, directors, all Members, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Jughandle Estates without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to

file suit in any court with respect to a Claim described in subsection (b) unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 8.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, tort claim, grievance or dispute arising out of or relating to discretionary decisions of the Design Review Committee, the interpretation, application or enforcement of the Governing Instruments, and the rights, obligations and duties of any Bound Party under the Governing Instruments. The term "Claim" shall specifically not apply to any of the following: any suit by the Association to collect Assessments or other amounts due from any Owner; any suit by the Association to obtain a temporary restraining order and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of the Governing Instruments; and, any suit by the Association to enjoin a continuing violation of the provisions of the Governing Instruments.

**Section 8.2: Dispute Resolution Procedure:**

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely: the nature of the Claim, including the person involved and the Respondent's role in the Claim; the legal basis of the Claim (i.e. the specific authority out of which the claim arises); the Claimant's proposed resolution or remedy; and, the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days after the date of the Notice (or within such other time period as the parties may mutually agree upon), the Claimant shall have 45 additional days to submit the Claim to mediation with a mutually acceptable individual providing dispute resolution services in Idaho. If the Claimant does not submit the claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the claim, and the Respondent shall be relieved of any and all liability to the Claimant on account of such Claim.

If the Parties do not settle the Claim in mediation, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit.

Each party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all fees charged by the mediator, unless it is determined that one party is the prevailing party, in which case the non-prevailing party shall bear the cost of all attorney's fees and mediation fees of the prevailing party.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, the other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set for this in this Section. In such event the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover for the non-complying party (or if more than one non-complying party, from all such parties) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

## ARTICLE 9 - GENERAL PROVISIONS

**Section 9.1: Binding Effect:** The various restrictive measures and provisions of these covenants and restrictions are declared to constitute mutual equitable servitudes for the protection and benefit of each parcel in the Community and of the owners thereof and for the benefit of the Community 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, conditions and restrictions set forth in this Declaration and specifically agrees to be bound by each and all of them.

**Section 9.2: Term of Declaration:** Unless amended as herein provided, all provisions covenants, conditions and restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) 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 below.

**Section 9.3: Amendment of Declaration by Members:** Except as otherwise provided in this Declaration any provision, covenant, condition, restriction, 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 fifty percent (50%) of those members present or represented by proxy at a meeting of the membership, scheduled for the purpose of considering such amendments, at which a 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,
- 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 9.4: Priority of First Mortgage Over Assessments:** Each lender who recorded its mortgage or deed of trust before assessments have become delinquent and who obtains title to the Lot encumbered by the first mortgage whether pursuant to remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the lot free and clear of any claims for unpaid assessment or charges against such Lot which accrued prior to the time such first mortgage acquires title.

**Section 9.5: Remedies Cumulative:** Each remedy provided under the Association documents is cumulative and not exclusive.

**Section 9.6: 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 9.7: Limitation of Liability:** The Association, Board of Directors, the Design Review Committee, 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 9.8: Governing Law:** The Association documents shall be construed and governed under the laws of the State of Idaho.

**Section 9.9: Severability:** Invalidation of any one or more of the covenants, conditions and restrictions 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 9.10: 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 9.11: 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 9.12: Mergers or Consolidations:** The Association may merge with another incorporated association 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, conditions and restrictions established by this Declaration governing the Property together with the covenants and conditions established upon any other property, as one plan.

**Section 9.13: 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, the undersigned (i) certify and attest that, pursuant to Section E of the Amended Jughandle Protective Covenants recorded on June 29, 1972 as Instrument No. 76496, Declaration, the foregoing 2005 AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR JUGHANDLE ESTATES has been approved by over one half of the Owners of Lots in the Property pursuant to a vote of the membership, and (ii) execute this Declaration effective the 4th day of January, 2005 ~~2006~~

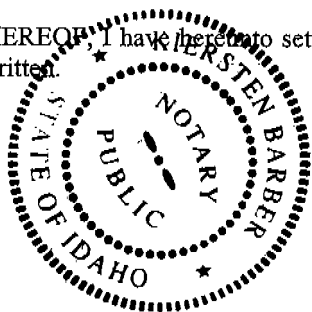
The Jughandle Corporation

By: Warren Drake  
Warren Drake, President

STATE OF IDAHO       )  
                                  )ss  
County of Valley.     )

On this 4th day of January, 2005, before me, Kirsten Barber, a Notary Public in and for said State, personally appeared **Warren Drake**, known or identified to me to be the President of the Jughandle Corporation Property Owners Association executed the instrument or the person who executed the instrument on behalf of said Corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Kirsten Barber  
NOTARY PUBLIC FOR IDAHO  
My Commission Expires: 11/26/08



IN WITNESS WHEREOF, the undersigned (i) certify and attest that, pursuant to Section E of the Amended Jughandle Protective Covenants recorded on June 29, 1972 as Instrument No. 76496, Declaration, the foregoing 2005 AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR JUGHANDLE ESTATES has been approved by over one half of the Owners of Lots in the Property pursuant to a vote of the membership, and (ii) execute this Declaration effective the 5th day of January, 2006.

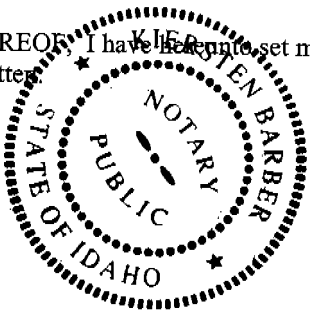
**The Jughandle Corporation**

By: Don E. W. Chapman  
**Don Chapman, Vice President**

STATE OF IDAHO )  
 )ss  
County of Valley. )

On this 5th day of January, 2006, before me, Kristen Barber, a Notary Public in and for said State, personally appeared **Don Chapman**, known or identified to me to be the Vice President of the Jughandle Corporation Property Owners Association executed the instrument or the person who executed the instrument on behalf of said Corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

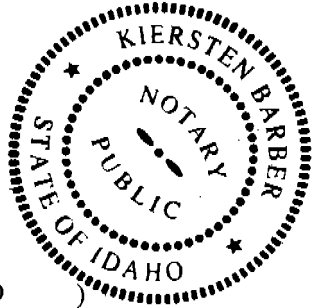


Kristen Barber  
NOTARY PUBLIC FOR IDAHO  
My Commission Expires: 11/24/08

IN WITNESS WHEREOF, the undersigned (i) certify and attest that, pursuant to Section E of the Amended Jughandle Protective Covenants recorded on June 29, 1972 as Instrument No. 76496, Declaration, the foregoing 2005 AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR JUGHANDLE ESTATES has been approved by over one half of the Owners of Lots in the Property pursuant to a vote of the membership, and (ii) execute this Declaration effective the 10th day of January, 2006.

The Jughandle Corporation

By: [Signature]  
Mike Murphy, Secretary/Treasurer



STATE OF IDAHO

County of Valley.

)  
)ss  
)

On this 10th day of January, 2006, before me, Kiersten Barber, a Notary Public in and for said State, personally appeared **Mike Murphy**, known or identified to me to be the Secretary/Treasurer of the Jughandle Corporation Property Owners Association executed the instrument or the person who executed the instrument on behalf of said Corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Signature]  
NOTARY PUBLIC FOR IDAHO  
My Commission Expires: 11/24/08

## EXHIBIT "A"

### The Property

The following is a legal description of the Lots for which this Declaration applies:

Lots 1 through 9 in Block 1, Lots 1 through 14 in Block 2, Lots 1 through 11 in Block 3, and Lots 1 and 2 in Block 4, as said lots and blocks are shown on the plat of Jughandle Estates No.1 as recorded in Drawer 1 of plats Instrument #76191 in the office of the County Recorder of Valley County, Idaho.

Lots 3 through 10 in Block 4, Lots 1 through 7 in Block 5, and Lots 1 through 5 in Block 6, as said lots and blocks are shown on the plat of Jughandle Estates No. 2 as recorded in Drawer 1 of plats Instrument # 76192 in the office of the County Recorder of Valley County, Idaho.

Lots 1 through 10 in Block 1, Lots 1 through 15 and 17 through 24 in Block 2, Lots 1 through 15 in Block 3, all in Jughandle Highlands Nos. 1 and 2 as recorded in Drawer 1 of plats Instrument # 76496 in the office of the County Recorder of Valley County, Idaho.

The following is a legal description of the real property which shall be considered Common Area:

- (a) All roads in Jughandle Estates No. 1 and No. 2 and Jughandle Highlands No. 1 and 2; and,
- (b) Lot 12 in Block 3 of Jughandle Estates No.1, pursuant to that certain Deed recorded as Instrument # 81811 on April 23, 1974 with the Valley County Idaho Recorder (The Pond); and,
- (c) A common area lot at the entrance to Jughandle Estates, approximately 8.44 acres in size, pursuant to that certain Deed recorded as Instrument # 81811 on April 23, 1974 with the Valley County Idaho Recorder, and more particularly described at the attached Exhibit "B" (Entrance Common Area Lot);
- (d) Lot 16 in Block 2 of Jughandle Highlands Nos. 1 and 2 as recorded in Drawer 1 of plats Instrument # 76496 in the office of the County Recorder of Valley County, Idaho, together with a 30' Access Road, Public Utilities, Water Line Easement along the West boundary of Lot 5, Block 2, granted pursuant to the final plat for Jughandle Highlands No. 2. and pursuant to that certain Warranty Deed recorded as Instrument # 93302 on September 27, 1977 (The Well Lot); and,
- (e) An easement for the water system located east of Jughandle Highlands, pursuant to that certain Amended Jughandle Easement recorded as Instrument No. 207677, on October 25, 1994 with the Valley County, Idaho Recorder; and,
- (f) All Easements and equipment for the water system, pursuant to that certain Deed recorded as Instrument # 84729 on May 9, 1975 with the Valley County, Idaho recorder.

EXHIBIT "B"

Legal description of the common area lot at the entrance to Jughandle Estates, in Valley County, Idaho:

A tract of land lying in Lot 1 of Section 7, T.17-N, R-4-EBM, Valley County, Idaho and more particularly described as follows:

Beginning at the brass cap marking the Northwest corner of the said Section 7;

thence South  $0^{\circ}11'44''$  West 1,288.29 feet along the Westerly boundary of the said Section 7, which is also the Westerly boundary of Jughandle Estates No. 1, as filed for record in the office of the Valley County Recorder, Cascade, Idaho, in Book 4 of Plats at page 2, to an iron pin;

thence South  $89^{\circ}48'16''$  East 70.00 feet to an iron pin on the Southerly boundary of the said Jughandle Estates No. 1, also said point being the REAL POINT OF BEGINNING;

thence North  $87^{\circ}43'34''$  East 557.61 feet to an iron pin marking the Northwest corner of Lot 1 of Block 4 of the said Jughandle Estates No. 1;

thence along the Northerly, Westerly, Southerly and Easterly boundaries of the said Jughandle Estates No. 1 the following courses and distances to iron pins:

North  $63^{\circ}31'44''$  East 225.60 feet;

thence South  $64^{\circ}48'16''$  East 301.32 feet;

thence North  $25^{\circ}11'44''$  East 195.00 feet to a point of curve;

thence Northwesterly along a curve to the left 72.43 feet, said curve having a central angle of  $83^{\circ}00'00''$ , a radius of 50.00 feet, tangents of 44.24 feet and a long chord of 66.26 feet bearing North  $16^{\circ}18'16''$  West to a point of tangent;

thence North  $57^{\circ}48'16''$  West 463.36 feet to a point of curve;

thence Southwesterly along a curve to the left 28.13 feet, said curve having a central angle of  $80^{\circ}34'47''$ , a radius of 20 feet, tangents of 16.96 feet and a long chord of 25.87 feet bearing South  $81^{\circ}54'20''$  West to a point of reverse curve;

thence continuing Southwesterly along a curve to the right 202.81 feet, said curve having a central angle of  $43^{\circ}34'47''$ , a radius of 266.64 feet, tangents of 106.59 feet and a long chord of 197.95 feet bearing South  $63^{\circ}24'20''$  West to a point of tangent;

thence South  $85^{\circ}11'44''$  West 360.00 feet;

thence Southwesterly along a curve to the left 229.95 feet, said curve having a central angle of  $85^{\circ}00'00''$ , a radius of 155.00 feet, tangents of 142.03 feet and a long chord of 209.43 feet bearing South  $42^{\circ}41'44''$  West to a point of tangent;

thence South  $0^{\circ}11'44''$  West 205.00 feet to the point of beginning, comprising 8.44 acres, more or less.

