

AFTER RECORDING, RETURN TO:

MERRILL & RING FOREST PRODUCTS, L.P.
Attn: John Breithaupt,
1511 Third Avenue, Suite 609
Seattle, WA 98101

**NOBLE CREEK HOMEOWNER ASSOCIATION
DRAFT VERSION ONLY**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND
CREATION OF COMMON AREA, ROADWAY AND UTILITY EASEMENT**

For:

**Noble Creek Homeowner's Association ("the Association"), Lots 1 through 8
Section, 11 Township 21 North, range 12 East, W.M.
Kittitas County, Washington**

Lots 1 through 8

THIS DECLARATION is made by the undersigned party(s) and is to take effect upon signature of all lot owners as of the date of and upon recording.

RECITALS

WHEREAS MERRILL & RING FOREST PRODUCTS, LP. is the owner of real property located in Kittitas County, Washington, which property is more particularly described in that survey recorded under Kittitas County Auditor's No., Book of Survey at page and attached hereto as "**Exhibit A**" (the "Property");

AND WHEREAS MERRILL & RING FOREST PRODUCTS, L.P. ("Declarant") desires to subject the Property to the provisions of this Declaration to promote the general plan of development of the Property as Forest Estate Residential and recreational lots, and related uses.

NOW, THEREFORE, Declarant declares that the Property including the improvements constructed or to be constructed thereon, is hereby subject to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with the title to the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the Property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

Section 1 Property Description

The Property subject to this Declaration is the real property described in “**Exhibit A**”, attached hereto and incorporated by reference herein, and included in that survey recorded with the Office of the Kittitas County Auditor under File No. _____, Book 2_____ of Survey at page _____.

Section 2 Conditions, Covenants, and Restrictions

There are hereby created the following conditions, covenants and restrictions on the use of any Lot subject to this Declaration:

- A. No mobile home, trailer, nor any vehicle shall be used on any lot as defined and set forth in Exhibit A (a “Lot”) at any time as a residence. Recreational vehicles such as motor homes and campers and trailers, when used for overnight accommodations, are permitted on a temporary basis only. The temporary on-site use of such vehicle or trailer shall not exceed one hundred eighty (180) days in any one-year period. It is the intention and purpose of this declaration to assure that recreational vehicles do not become permanent fixtures or residences on the individual lots.
- B. No activities which may become a nuisance to purchasers of Lots (“Lot Owners”) or the public, including but not limited to excessive noise, operation of improperly muffled vehicles, storage or deposit of garbage (other than in temporary sanitary containers), waste or scrap materials, including construction debris, blocking of common thoroughfares, etc., shall be carried out on or appurtenant to any Lot. Land clearing and construction noise of a temporary nature are exempt and shall take place during daylight hours only and in a manner not to reasonably interfere with the quiet enjoyment of the Lot Owners.
- C. Each Lot Owner shall maintain the exterior of his or her residence and all other improvements in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Each Lot Owner shall, to the best of his or her ability, maintain his or her property in good repair and appearance at all times.
- D. No unused, stripped down, partially wrecked, inoperative or unlicensed motor vehicle or part thereof shall be permitted to be parked on any street or on any lot in such a manner as to be visible at ground level from any neighboring property or street. If a Lot Owner refuses or fails to remove a vehicle in violation of this provision within seven (7) days after a written request by the Association (as described in Section 3 below) for removal, the Association may remove the vehicle at the Lot Owner’s expense. Any costs or expenses advanced by the Association for removal of the vehicle shall become a lien against the Lot Owner’s Lot enforceable as other liens herein.

- E. No Lot Owner shall operate a commercial timber harvest on their lot until June 1, 2012, except that each Lot Owner may clear an area up to two acres in size, to accommodate the construction of a home, cabin, drain-field, outbuilding or other structure as permitted with this document, and any applicable regulatory agencies. Additionally, each Lot Owner may clear miscellaneous trees as require to maintain an adequate view-shed.
- F. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least three (3) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and rules and regulations of the Association.
- G. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations which govern the conduct of Lot Owners and which provide for sanctions against Lot Owners shall also apply to all agents, guests, lessees, or invitees of Lot Owners (“Guests”). Fines may be levied against Lot Owners or Guests. If a fine is first levied against an Guest and is not paid timely, the fine may then be levied against the Lot Owner.

Section 3 Conveyance of Common Areas by Declarant to Association

Declarant may transfer or convey the Common Areas to the Association, including any personal property and any improved or unimproved real property, leasehold, easement, or other property interest. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Areas to be maintained by the Association. The Common Areas shall be subject to an easement of common use and enjoyment in favor of the Association and every Lot Owner, their heirs, successors and assigns in accordance with the terms and conditions of the Governing Documents. Such rights to use the Common Areas shall be appurtenant to and shall not be separated from ownership of any Lot and shall not be assigned or conveyed by any Lot Owner in any way except upon the transfer of title to such Lot, and then only to the transferee of such title and shall be deemed so conveyed whether or not it shall be so expressed in the deed or other instrument conveying title. Certain rights of use, ingress, egress, occupation, and management authority in the Common Areas set forth elsewhere in this Declaration shall be reserved to Declarant until all of the Lots are sold. Declarant may, but shall not be required to, make improvements to property to be conveyed and accepted pursuant to this Section.

Section 4 Conveyance of Easements to Lot Owners and Association

Declarant, through its deeds of conveyance and through this Declaration shall transfer and convey to each Lot Owner and the Association a non-exclusive right it presently has or may hereafter acquire in and to those easements identified in Exhibit A, attached hereto and by this reference incorporated herein. It is Declarant’s intent that such right, title and interest shall be as complete as those granted in the initial easement agreements between the U.S. Forest Service and Boise Cascade Corporation, Declarant’s predecessor in interest herein.

Section 5 Maintenance of Roads and Common Areas by the Association

There is hereby created a private road, common area, and utility reciprocal easement maintenance agreement (hereinafter referred to as the "Agreement") over the property described in Section 1 as follows:

- A. This Agreement is applicable to all easement areas identified in Exhibit 1. This private road, common area and utility easement is created for the purpose of ingress, egress, and utilities for the use and benefit of all of the Lot Owners and their Guests.
- B. Each Lot Owner shall have the full use, benefit, and access throughout the entire Property within the roads as shown on the attached exhibit. The use shall be for recreational purposes for the Lot Owners and their Guests. At no time shall this access grant the right for individuals to leave the road and trespass on respective lots. Furthermore, Lot Owners agree that this use is strictly at their own risk and that there will be no liability incurred by the underlying Lot Owner.
- C. The Association will be responsible for determining the Lot Owner's wishes pertaining to all maintenance of the easement areas and roads therein, including possible maintenance for possible winter use. The Association will have sole responsibility for acquiring any Forest Service or other agency permits required for any road maintenance activities. Any costs associated with acquiring said permits or carrying out the maintenance will be paid thru the dues collected under paragraph 5.6 below. To the extent possible, winter roadway maintenance shall be conducted in a manner that also leaves the roadway suitable for winter recreational opportunities, including, but not limited to snowmobiling, cross-country skiing, snowshoeing and hiking for Lot Owners and Guests. However, the Association shall not be liable for any failure to maintain the roadway in a safe or useable condition. Any and all such use shall be at the sole risk of the Lot Owner and Guests who, as a condition of use, accept such risks and waive any and all rights of action or claims against the Association for damages caused by use of the roadway.

Section 6 Noble Creek Homeowners' Association

6.1 Description of Association. The Association may, at the election of the Declarant or the Association, be incorporated as a non-profit corporation organized and existing under the laws of the State of Washington. The Association shall be charged with the duties and vested with the powers prescribed by law and set forth herein.

6.2 Board of Directors. Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until all of the Lots are sold. Each Lot Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant the authority to appoint and remove directors and officers of the Association during the Development Period. Until all of the Lots are sold, Declarant shall select all directors, who need not be a Lot Owner. Following the sale of all of the Lots, the Board of Directors shall be elected by the Lot Owners in accordance with the Bylaws and the number of Directors shall be at least three in number.

6.3 Membership. Every Lot Owner shall be deemed to have a membership in the Association and membership in the Association shall consist exclusively of such Lot Owners. No Lot Owner, whether one or more Persons, shall have more than one (1) membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

6.4 Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Lot Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

6.5 Bylaws, Rules and Regulations. The Board on behalf of the Association shall have the power to adopt, modify, and amend bylaws, rules and regulations governing the Community, provided that such bylaws, rules and regulations shall not be inconsistent with this Declaration and shall apply uniformly to all Lot Owners, except as specifically provided herein. The Board shall have the power to enforce the rules and regulations on behalf of the Association and may prescribe penalties or fines for their violation. Any such bylaws, rules and regulations shall become effective thirty (30) days after promulgation and shall be mailed to all Lot Owners prior to their effective date. A copy of the bylaws, rules and regulations then in force shall be retained by the secretary of the Association. The Declarant on behalf of the Board may adopt the initial bylaws, rules and regulations.

6.6 Duties, Expenses and Assessments. Every Lot Owner is further deemed to covenant, and agree (whether or not expressed in any deed or conveyance) to pay when due any and all annual or special dues, expenses, assessments, or other charges that be may levied from time to time by the Homeowner's Association in accordance with these provisions and/or the Articles of Incorporation and/or Bylaws of such association, if incorporated. Areas dedicated to and accepted by a local public authority are exempt from the payment of dues and assessments. ***Yearly dues shall be determined by the Homeowners' Association.***

These assessments shall be collected and maintained in a separate bank account. The President, on behalf of the Homeowner's Association, may contract for and/or perform routine maintenance work, build, maintain and manage all private roads and other common areas described in Exhibit 1, not in excess of the collected funds, without advance notice to the Lot Owners.

6.7 Enforcement. In the event any party fails to pay, within thirty (30) days of receiving a bill for their portion of any expense approved by majority vote of the Association, the general powers of the President notwithstanding, the Association may file a lien on behalf of all paid up participants herein. The lien shall be a lien against the property of the non-paying party and foreclosable in the manner provided by law. The unpaid balance shall bear interest at the statutory legal rate until paid and the non-paying party shall be liable for actual costs and reasonable attorney's fees expended in any collection action including, but not limited to, the foreclosure of the lien. The lien of the assessments provided for herein shall be subordinate to any lien that may currently exist. Sale or transfer of any lot shall not affect the assessments as to liability for any assessment thereafter becoming due or from the lien thereof. The word "mortgage" shall include a "deed of trust." Should any Lot Owner fail to pay his or her pro rated share of any obligation under this Agreement, such share may be advanced by any or all of the remaining affected parties and such amount shall be recorded as a lien on the non-paying party's Lot.

6.8 Special Assessment. In the event a Lot Owner shall desire to have maintenance work done on the roadway or other common area at common expense, the President shall circulate a written notice by certified mail explaining the nature of the work desired and the expected cost thereof among the Lot Owners. If, after the expiration of ten (10) days from the date of receipt of said notice by all Lot Owners affected, no objection to such work has been received in writing by the initiator of the notice, such work may be ordered and payment shall be made in accordance with Section 5.6 above.

6.9 Repair due to Unreasonable Use. Should the Lot Owner or agent of any of the property subject to the easement described herein use, or be responsible of the use of others of the roadway so as to cause unreasonable wear and tear thereto, such Lot Owner shall be fully responsible for the cost of the repair of the same and shall affect such repair as soon as reasonably practical after the cause of the damage has ceased.

6.10 After all Lots have been sold, these Covenants, Conditions and Restrictions may be amended by a sixty percent vote of the Lot Owners. Until all Lots are sold, these Covenants, Conditions and Restrictions may be amended only with the unanimous consent of all Lot Owners.

Section 7 Miscellaneous Provisions

7.1 Indemnification. To the fullest extent allowed by applicable Washington law, the Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, at the discretion of the Board, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

7.2 Books and Records. This Declaration, the Articles of Incorporation, the Bylaws, copies of rules and regulations, use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available pursuant to reasonable procedures established by the Board for inspection and copying by any Lot Owner or by the duly appointed representative of any Lot Owner and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

7.3 Financial Review. At least annually, the Board of Directors shall prepare, or cause to be prepared, a financial statement of the Association. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of such financial statement within ninety (90) days of the date of the request.

7.4 Notice of Sale, Lease or Acquisition. In the event an Lot Owner sells or leases such Owner's Lot, the Lot Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Lot Owner shall give the Association, in writing, the name and mailing address of the Lot Owner and such other information as the Board may reasonably require.

Section 8 Dispute Resolution

All disputes arising out of or relating to this Agreement shall be resolved pursuant to the process contained in this Section 7. In the case of any such dispute, either party may implement the following process by providing written notice which shall be effective upon receipt by the other party. The date of such notice shall be referred to as the “trigger date.” The parties must first meet and attempt to resolve the dispute through face to face negotiations. Such meeting shall occur within 10 days of the trigger date. If the dispute or breach cannot be settled through such negotiations, the parties must then attempt in good faith to settle the dispute by mediation administered by the American Arbitration Association (“AAA”). Such mediation shall occur within 45 days of the trigger date.

If a resolution cannot be obtained through this mediation, the parties agree that the dispute or breach shall be resolved through binding arbitration administered by AAA in accordance with its rules of practice and procedures. The parties further agree that all arbitrations hereunder must be assigned to a single arbitrator, who shall be an attorney with at least twenty years of experience practicing law in Seattle and also a member of the AAA’s Roster of Neutrals for commercial cases in its Pacific Northwest region. Such arbitration shall commence within 90 days of the trigger date or on such later date as agreed by the parties.

The parties shall be entitled to invoke only limited discovery as determined by the arbitrator in his or her sole discretion. The arbitration proceedings shall be final and there shall be no right of appeal there from. The party receiving an award rendered in any such arbitration proceeding shall be entitled to have judgment entered thereon. The arbitrator shall determine the “prevailing party” and such party shall be entitled to its reasonable attorneys’ fees and costs which shall be part of the award. Mediation and/or arbitration shall take place in Seattle, Washington. Failure by a party to participate in the face to face negotiations and/or the mediation shall be considered a breach of this Agreement and shall be a bar to that party’s ability to assert claims in the arbitration, which nevertheless may proceed to an award in that party’s absence. In no event, however, shall mediation or arbitration be available pursuant to this section after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

Section 9

The easements and obligations created herein shall be perpetual, run with the land, and shall inure to the benefit of each of the Lot Owners of the lots subject to this Declaration, their heirs, successors, transferees and assigns.

Section 10

This Declaration may be amended and/or modified at any time by an affirmative vote of sixty percent (60%) of the Lot Owners bound by this Declaration; PROVIDED, such amendment and/or modification shall only become effective upon recording with the Kittitas County Auditor's Office.

[SIGNATURES ON FOLLOWING PAGE]

MERRILL & RING FOREST PRODUCTS, L.P.

By:



John W. Breithaupt
Land Acquisition Manager

STATE OF WASHINGTON)
) ss.
County of KING)

I certify that I know or have satisfactory evidence that John W. Breithaupt is the person who appeared before me, and that said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as an authorized member of Merrill & Ring LP., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this ___ day of _____, 2006.

Name _____

Notary Public in and for the State of Washington, residing at _____.

My appointment expires: _____.