



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

February 8, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

BIG SKY ESTATES HOME OWNERS ASSOC
PO BOX 2184
POST FALLS ID 83877-2184

RE: Water Right No. 95-2162
Change in Ownership

RECEIVED

MAR 27 2008

DEPARTMENT OF
WATER RESOURCES

Dear Mr. ~~Dionne~~: *Wrong Name*

The Department of Water Resources acknowledges receipt of your Notice of Change in Water Right Ownership received in October 2006.

Our review of your notice indicates that additional information is required before we can process the change. The information required is indicated below:

- XX** Evidence of Water Right Ownership: copy of Deed, Title Policy, Contract of Sale, or other legal document indicating your ownership of the property and/or water rights in question
- XX** Plat of Property or Survey Map usually on file with the county or a USDA Farm Service Agency (formerly ASCS) Aerial Photo with irrigated acres outlined and point(s) of diversion clearly marked

Because the Department cannot process the ownership change without proper documentation, we will hold any action on your notice pending receipt of the necessary information. If we do not receive the necessary information within 30 days we will return your notice and all attachments and your notice will not be processed.

Please feel free to contact this office if you have any questions.

Sincerely,

Emalee Rushing
Office Services Supervisor

Enclosure

1933496

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
Dennis and Barbara Kammeyer
7396 Nighthawk Dr.
Post Falls, ID 83854

STATE OF IDAHO
COUNTY OF KOOTENAI
AT THE REQUEST OF _____
~~First American Title Company~~
2005 MAR -7 A 10:25
DANIEL J. ENGLISH *bmw*
DEPUTY *6.1*
FEES _____

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 106991-C (rh)

Date: March 03, 2005

For Value Received, **Randy C. Carlson and Karen D. Carlson, husband and wife**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Dennis J. Kammeyer, Trustee or Successor Trustees of the Dennis J. Kammeyer Living Trust, dated June 17, 2004, as to an undivided 50% interest; and Barbara J. Kammeyer, Trustee or Successor Trustees of the Barbara J. Kammeyer Living Trust, dated June 17, 2004, as to an undivided 50% interest**, hereinafter called the Grantee, whose current address is **7396 Nighthawk Dr., Post Falls, ID 83854**, the following described premises, situated in **Kootenai County, Idaho**, to-wit:

Lot 4, Block 3, BIG SKY ESTATES FIRST ADDITION, according to the plat recorded in Book J of Plats, Page 40, records of Kootenai County, Idaho.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Date: 03/03/2005

Warranty Deed
- continued

File No.: 106991-C (rh)

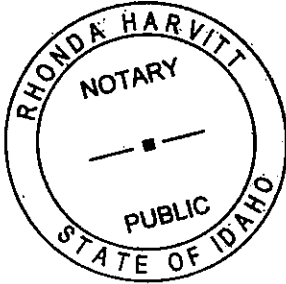
Randy C. Carlson
Randy C. Carlson

Karen D. Carlson
Karen D. Carlson

STATE OF Idaho)
SS.

COUNTY OF Kootenai)

On this 4th day of March, 2005, before me, a Notary Public in and for said State, personally appeared **Randy C. Carlson and Karen D. Carlson**, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



Rhonda Harvitt

Notary Public for the State of Idaho
Residing at: Hayden
My Commission Expires: 7/11/2006



KOOTENAI COUNTY PLANNING DEPARTMENT

ORDER OF DECISION TRANSMITTAL

February 20, 2002

TO: John and Ann Beutler
1836 Northwest Boulevard #100
Coeur d'Alene, ID 83814

FROM: KOOTENAI COUNTY PLANNING DEPARTMENT

RE: **Case No. S-605F-01 Big Sky Estates**

Enclosed is the following information related to the above referenced case:

⇒ A copy of the **Order of Decision for Case No. S-605F-01 Big Sky Estates**

The request for **Case No. S-605F-01 Big Sky Estates** was approved. Enclosed is a copy of the Order of Decision on the case. The approval is subject to all terms and conditions listed in the Order of Decision. The approval must comply with all applicable ordinances and regulations of Kootenai County and other public agencies.

If you have any further questions, please contact Sandy Meehan at (208) 666-8268. Thank you.

Sent by:

A handwritten signature in cursive script that reads "Sandi Gilbertson".

Sandi Gilbertson
Planning Secretary

Enclosure

cc: Frame and Smetana

(MASTERS/Order Transmittal Form)

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO

IN THE MATTER OF THE APPLICATION)
OF JOHN A. BEUTLER FOR FINAL)
SUBDIVISION APPROVAL OF)
BIG SKY ESTATES)
)

CASE NO. S-605F-01
FINDINGS OF FACT,
CONCLUSIONS OF
LAW, AND ORDER OF
DECISION

I COURSE OF PROCEEDINGS

- 1.01 The Kootenai County Board of Commissioners signed an Order of Decision granting the Applicant preliminary subdivision plat approval of this proposal, then known as Brickert Prairie Estates, on February 28, 1996.
- 1.02 The Board of County Commissioners has granted the Applicant three extensions of preliminary plat approval (May 28, 1997, April 21, 1999, May 16, 2001).
- 1.03 On December 28, 2001, a notice of final application and public comment period was published in the *Coeur d'Alene Press*. On December 26, 2001, notice was mailed to all property owners within 300 feet of the project site. Based on signed affidavits, the requirements for public notification have been met.
- 1.04 The public comment period began December 28, 2001, and ended January 28, 2002.
- 1.05 At their deliberations on February 13, 2002, the Board of County Commissioners received a recommendation from the Planning Director that Case No. S-605F-01 be approved. Upon review of all files, exhibits, and testimony of current record regarding said application, the Board makes the following Findings of Fact and Conclusions.
- 1.06 Files and exhibits relative to this application are available for review in the Kootenai County Planning Department.

II FINDINGS OF FACT

- 2.01 **Applicants/Owners.** The Applicants and Owners are John A. and Ann J. Beutler, 1836 Northwest Boulevard, Suite 100, Coeur d'Alene, Idaho 83814.
- 2.02 **Proposal.** The Applicant is requesting final subdivision plat approval of Big Sky Estates (formally known as Brickert Prairie Estates), a request to subdivide 160 acres of land into 32 lots, all approximately five acres in size. Access to the subdivision will be provided off Huetter Road to the east, and Meyer Road to the west.
- 2.03 **Legal Description.** The property is described as a portion of the North ½ of the South ½ of Section 29, Township 51 North, Range 4 West, B.M., Kootenai County, Idaho.
- 2.04 **Physical Characteristics.** The site is a flat, open 160 acre area vegetated with brush and grass, surrounded by agricultural uses and is rural in nature. The site had previously been used for grass production. Brickert Country Estates, a similar proposal, lies to the south of the site.
- 2.05 **Zoning.** The property is located in the Rural zone. The minimum lot size in this zone is 5 acres.

- 2.06 **Comprehensive Plan.** The 1994 Kootenai County Comprehensive Plan and Future Land Use Map designates this area as Rural Residential. Residential designations are given to areas where the primary use is residential. These residential areas are outside of a city's boundary, but may have some of the services and amenities of a city. Rural Residential areas commonly border Rural areas and may actually be rural in appearance.
- 2.07 **Area of City Impact.** The site is located within the Area of Impact for the City of Post Falls. The City had no new comments regarding final subdivision approval. Collin Coles, Senior Planner, resubmitted their original letter of comment dated March 11, 1996. In that letter, he states that the Post Falls City Council has waived any infrastructure requirements provided the Applicants record subdivision covenants that preclude any further subdividing of any of the lots in the subdivision, and that additional right of way will be dedicated to the Post Falls Highway District on the final plat. This right of way resulted in an additional 20 feet along Huetter and Poleline Roads and an additional 10 feet along Meyer Road.
- The Applicant and the City have entered into an agreement that prohibits any further subdividing of the lots. (Exhibit A-13)
- 2.08 **Roads/Stormwater.** The main entrance to the subdivision accesses Huetter Road. A second approach exists along Meyer Road to the west. The interior subdivision roads have been constructed and paved to Highway District standards.
- On January 11, 2002, the Applicant submitted to the District construction plans and an engineer's statement of completion addressing those conditions. In a letter dated February 11, 2002, Ruen-Yeager and Associates, on behalf of the Highway District, granted as-built approval for the roads and stormwater system.
- 2.09 **Sewage Disposal/Water Supply.** Sewage disposal will be by individual septic and drainfield. In a letter dated December 14, 2001, Panhandle Health District states that their approval will be given when the conditions outlined in their letter are met. The sanitary restriction on the parcel will be lifted at the time of final plat sign-off. (Exhibit PA-5)
- Water will be supplied by the Ross Point Water District. They have provided a will serve letter for the file. (Exhibit PA-1)
- The Department of Environmental Quality has submitted a letter dated February 11, 2002 granting as-built approval of the water lines. They also state they have no objection to the plat being finalized and the sanitary restriction being released.
- 2.10 **Fire Protection.** The project site is located within the jurisdiction of the Kootenai County Fire and Rescue District. In a letter dated November 28, 2001, Chief Dan Ryan states that the District has no further requirements beyond those stated at the time of preliminary approval. (Exhibit PA-2, PA-10)
- 2.11 **CC&Rs.** The Applicant has provided a draft set of CC&Rs for the file. A final copy will be recorded at the time the plat is recorded. (Exhibit A-5)
- 2.12 **Public Comment.** No public comment was received during the 30 day comment period.

2.13 **Conditions of Preliminary Approval.** These conditions have been taken from the preliminary Order of Decision. Planner's comments have been added in bold where applicable.

1. No lot shall be offered for sale or sold until the final plat of the Phase on which the lot is included has been recorded.
2. A title report verifying ownership of the plat shall be submitted prior to the hearing on the final plat. **The County Surveyor will require a copy of the title report prior to recordation.**
3. Revisions required by the County Surveyor shall be made prior to obtaining any signatures on the final plat.
4. No construction or site disturbing activity of any type shall be undertaken until the Applicant has obtained a site inspection for noxious weed contamination from the Kootenai County Natural Resources Protection office. No weed contaminated soil shall be removed from the project site without prior written consent of the Natural Resources Protection office. A letter from the Natural Resources Protection Office, verifying that a site inspection was conducted, shall be submitted to the Planning Department as a part of the application for final plat approval. If weed contamination is found to be present, the face of the plat shall include the wording recommended by the Natural Resources Protection office for abatement. **In a letter dated January 30, 2002, the County's Noxious Weed Department has stated they have visited the site on several occasions and have found that the noxious weeds on site have been controlled. No leafy spurge has been found within the boundaries of the plat and they have no requirements regarding final plat approval.**
5. Preliminary plat approval shall be effective for 12 months from the date of approval by the Board of County Commissioners. Extensions beyond the 12-month period may be requested by the sponsor by submitting a request in writing to the Planning Commission prior to the scheduled hearing deadline. **The Board of County Commissioners has granted the Applicant three preliminary plat extensions (May 1997, April 1999, May 2001).**
6. The Applicant shall comply with all requirements set forth by the City of Post Falls. As a part of the final plat application submittal, the Applicant shall submit written verification to the Planning Department that the City has granted approval of the final plat. In the event at any time the City of Post Falls agrees to and does remove the property from its impact area, this condition shall automatically terminate. **The City of Post Falls has made two conditions a part of their final approval: (1) CC&Rs which state that no lot be further subdivided and (2) that additional right of way be dedicated to the Post Falls Highway District. The Applicant has provided CC&Rs that include the prohibition of further subdividing and the road right of way requirement is shown on the final plat. (Exhibit A-14)**
7. The Applicant shall comply with all requirements set forth by the Ross Point Water District. As a part of the final plat application submittal, the Applicant shall submit written

verification to the Planning Department that the District has granted approval of the final plat. **Ross Point Water Association has provided a will serve letter (Exhibit PA-1)**

8. The Applicant shall comply with all requirements set forth by the Department of Environmental Quality. As a part of the final plat application submittal, the Applicant shall submit written verification to the Planning Department that the Division has granted approval of the final plat. **DEQ has granted final approval of the water system as-built.**
9. The Applicant shall comply with all requirements set forth by Panhandle Health District. As a part of the final plat application submittal, the Applicant shall submit written verification to the Planning Department that the District has granted approval of the final plat. **The Applicant has met all Health District requirements necessary for final approval. The Health District's final approval will be indicated with a signature on the mylar.**
10. The Applicant shall comply with all requirements set forth by the Kootenai County Fire Protection District. As a part of the final plat application submittal, the Applicant shall submit written verification to the Planning Department that the District has granted final approval. **The Fire District has stated in their letter that they have no further comments (other than those given at the time of preliminary approval) on this proposal. (Exhibit PA-2)**
11. The Applicant shall comply with all conditions set forth by the Post Falls Highway District. As a part of the final plat application submittal, the Applicant shall submit written verification to the Planning Department that the District has granted final approval. **The Post Falls Highway District has granted as-built approval.**
12. The Applicant shall comply with all requirements of Kootenai County Stormwater Ordinance 185. As a part of the final plat application submittal, the Applicant shall submit written verification to the Planning Department that the Stormwater Project Coordinator has granted final approval. **Post Falls Highway District has given as-built approval of the Applicant's stormwater system.**

III APPLICABLE LEGAL STANDARDS

3.01 Kootenai County Subdivision Ordinance No. 306.

This ordinance outlines the application requirements and procedures, design standards, the factors to be considered in deciding approval or denial, notice requirements, financial guarantee requirements and requirements for establishing non-profit associations to maintain infrastructure and/or common areas. Most of these items are considered during the preliminary approval process. Article 3, and Appendix B cover the procedures and requirements for final approval of subdivision plats. Requirements include letters of approval from agencies, items that must be shown on the plat, completion of or bonding for infrastructure improvements, and completion of the original conditions of approval. The established procedures include holding a 30-day public comment period, with notice to adjacent property owners and the local newspaper.

3.02 1994 Kootenai County Comprehensive Plan, as amended.

The *Comprehensive Plan* establishes long range plans for growth, development, land use and environmental protection in Kootenai County. The plan outlines goals, objectives and policies that provide fundamental decision making guidance for other County ordinances and for future development. The *Comprehensive Plan* includes a Future Land Use Map that provides a general outline of areas of suitable projected land uses, with approximately ¼ mile wide transition areas between designations.

3.03 Kootenai County Zoning Ordinance No. 159, as amended.

With regard to subdivisions, the *Zoning Ordinance* specifies minimum lot sizes, open space, setback and parking requirements, and the types of land uses that are permitted in the various land use zones. The *Zoning Ordinance* also includes minimum construction standards for driveways and common driveways.

3.04 Kootenai County Road Naming and Addressing Ordinance No. 301.

With regard to subdivisions, this ordinance specifies how roads are to be named and requires that new road names be approved by the Planning Director. Approved road names must be specified on the final plat map.

3.05 Kootenai County Site Disturbance Ordinance No. 251 and Site Disturbance Plan Requirements for High Risk Sites (adopted by resolution 97-10)

Management of runoff and control of erosion during construction must be in compliance with this ordinance and the associated plan requirements. Plans must be prepared by a "design professional" and must use calculations that include runoff from the future developed portions of each lot. A site disturbance permit must be obtained prior to the start of any excavation and a 150% financial guarantee is required.

3.06 *Idaho Code* §50-1301 - 1333, Plats; 67-6521, Actions by Affected Persons; 67-6535, Approval/ Denial Requirements; 67-2343, Notice of Meetings.

Idaho Code §50-1301 - 1333 govern platting and the vacation of plats. These sections include requirements for monumenting, for the size, form and required elements of a plat, for the naming of the plat, for the owner's certification, and for dedications, recording, and the placing and lifting of sanitary restrictions. The County Surveyor is required to check the plat and to certify on the plat that it is in compliance with these sections of *Idaho Code*.

Idaho Code §67-6521 defines an "affected person", states that an affected person may request a hearing on any permit authorized under Chapter 65, outlines the actions the Board may take, and provides for judicial review if requested within 28 days after all remedies have been exhausted under local ordinances.

Idaho Code §67-6535 requires that the approval or denial be in writing and be accompanied by a reasoned statement that explains the criteria and standards considered relevant, the relevant contested facts, and the rationale for the decision based on the factual information contained in the record, applicable provisions of the *Comprehensive Plan*, relevant ordinances and laws.

Idaho Code §67-2343 provides general requirements for meeting notices such as the Commissioner's weekly deliberations.

IV CONCLUSIONS OF LAW

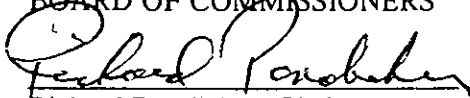
- 4.01 The requirements of Kootenai County Subdivision Ordinance No. 306 for final plat approval have been met.
- Written approval has been obtained from the applicable agencies.
 - The plat meets the standards of this ordinance and State law, and bears the dedication certificates required by this ordinance.
 - Prior to signing the plat, the County Surveyor will review a current title report and ensure the land is listed in the name of the owners shown on the plat.
 - The required facilities and improvements have been completed and approved in accordance with the County's subdivision ordinance.
 - All conditions imposed by the Board have been met.
 - A properly noticed, 30-day public comment period was held.
- 4.02 Compliance with the Comprehensive Plan and Zoning Ordinance was affirmed in the Order of Decision approving the preliminary plat.
- 4.03 The plat has been road stamped, signifying compliance with the County Road Naming and Addressing Ordinance.
- 4.04 As previously stated, the project is in compliance with the County Site Disturbance Ordinance.
- 4.05 The County Surveyor will sign the plat certifying compliance with *Idaho Code* requirements.

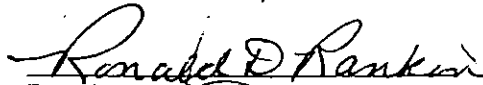
V ORDER OF DECISION

Based upon the Findings of Fact and Conclusions of Law set forth in this document, the Kootenai County Board of Commissioners recommends that Case No. S-605F-01, a request for final approval of Big Sky Estates, a 32 lot subdivision in the Rural Zone be **APPROVED**.

DATED this 20th day of February 2002

BY ORDER OF THE KOOTENAI COUNTY
BOARD OF COMMISSIONERS


Richard Panabaker, Chairman


Ronald Rankin, Commissioner


S.J. "Gus" Johnson, Commissioner

ATTEST:
DANIEL J. ENGLISH, CLERK


BY: DEPUTY CLERK



1785890

WARRANTY DEED

FOR VALUE RECEIVED:

JOSEPH H. MORRIS and LYNN M. MORRIS, husband and wife, the grantor(s) do(es) hereby grant, bargain sell and convey unto LOWELL E. RENZ, TRUSTEE and VIRGINIA R. RENZ, TRUSTEE of the LOWELL E. RENZ AND VIRGINIA R. RENZ FAMILY 1995 REVOCABLE TRUST the grantee(s), whose current address is: 3810 CLINTON WAY, FAIR OAK, CA 95628

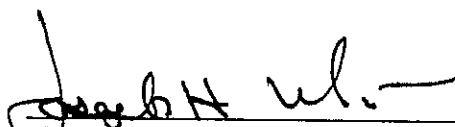
the following described premises, in the Unincorporated Area, County of Kootenai, State of Idaho to wit:

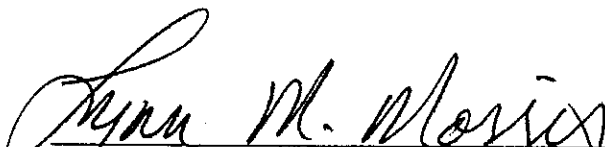
LOT 10, BLOCK 3, BIG SKY ESTATES, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGE 336, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), their heirs and assigns forever, and the said Grantor(s) do(es) hereby covenant to and with the said Grantee(s), that he/she/they is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances EXCEPT CURRENT TAXES AND EASEMENTS OF RECORD OR IN VIEW.

and that he/she/they will warrant and defend the same from all lawful claims whatsoever.

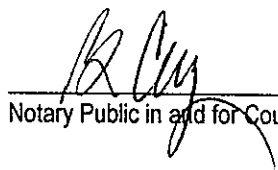
Dated: March 4, 2003

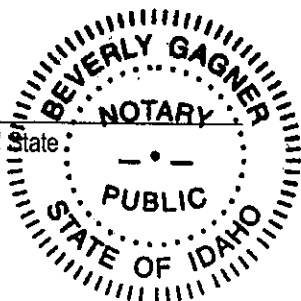

JOSEPH H. MORRIS


LYNN M. MORRIS

STATE OF IDAHO
COUNTY OF Kootenai)

On this 1st day of March, 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared JOSEPH H. MORRIS AND LYNN M. MORRIS known or identified to me to be the person(s) whose names is/are subscribed to the within instrument and acknowledged to me that they executed the same.


Notary Public in and for County and State



Residing at: PF
Commission Exp: 10/14/04

RECORDING DATA: STATE OF IDAHO
COUNTY OF KOOTENAI
AT THE REQUEST OF _____
NORTH IDAHO TITLE INS.
2003 MAR -7 P 3: 50
DANIEL J. ENGLISH 10
DEPUTY
FEES 3.00

NORTH IDAHO TITLE COMPANY

Date: 03/13/2003

LOWELL E. RENZ AND VIRGINIA R. RENZ
FAMILY 1995 REVOCABLE TRUS
3810 CLINTON WAY
FAIR OAKS, CA 95628-0000

Please direct correspondence to:

700 Northwest Blvd.
Coeur d'Alene, ID 83814-0000

Telephone: (208) 765-3333 FAX: (208) 765-1761
Escrow Number: 601518-BG
Your Number:
Property: LT 10/BK 3, BIG SKY EST
POST FALLS, ID 83854-0000

We enclosed herewith:

(X) RECORDED WARRANTY DEED

Should you have any questions regarding any of the above, please feel free to contact the undersigned.

Sincerely,

BEVERLY GAGNER

Idaho Department of Water Resources Receipt

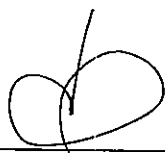
Receipt ID N017952

Payment Amount	\$290.00	Date Received	10/20/2006 4:16:58 PM	Region	Northern	Status
Payment Type	Check	Check Number	1243			

Payer BIG SKY ESTATES OWNERS ASSNComment WR PERMIT APP FEE

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$290.00	PERMITS	0229	21	65103	1155

_____
Signature Line (Dept. Representative)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Big Sky ^{Estate} Homeowners Association - FIAS Addition Phone 208-661-7699
Mailing address P.O. Box 2184, Post Falls, ID 83877-2184
2. Source of water supply Ground water which is a tributary of _____
3. Location of point of diversion is Township 51N Range 04W Sec. 29, in the NW $\frac{1}{4}$,
SE $\frac{1}{4}$, _____ $\frac{1}{4}$, Govt. Lot _____, B.M., _____ County;

additional points of diversion if any:

4. Water will be used for the following purposes:

Amount 1.67CFS for Irrigation purposes from 4/15 to 10/15 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 1.67 and/or (b) 250
cubic feet per second acre feet per annum

6. Proposed diverting works: Existing well

- a. Describe type and size of devices used to divert water from the source _____
150HP Turbine Pump
- b. Height of storage dam _____ feet; active reservoir capacity 0.12 acre-feet; total
reservoir capacity 0.12 acre-feet
- c. Proposed well diameter is 26 inches; proposed depth of well is 268 feet
- d. Is ground water with a temperature of greater than 85°F being sought? _____
- e. If well is already drilled, when? 2 Apr 1965; Drilling firm _____
Well was drilled for (well owner) Thomas Brickent; Drilling Permit No. 32079

7. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year)

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
51N	04W	29							91										

Total number of acres to be irrigated 83.3

10. Describe any other water rights used for the same purposes as described above. _____

11. a. Who owns the property at the point of diversion? Big Sky Estates Home Owners Association

b. Who owns the land to be irrigated or place of use? Big Sky Estates Home Owners Association

If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: _____

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

 President
Signature of Applicant (and title, if applicable)

Received by _____ Date _____ Time _____ Preliminary check by _____
Fee \$ _____ Receipted by _____ # _____ Date _____
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

1721543

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
AT THE REQUEST OF

Sandy Meehan

MAR 4 3 24 PM '02

DANIEL J. ENGLISH

DEPUTY

FEES

84.00

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

BIG SKY ESTATES

KOOTENAI COUNTY, IDAHO

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**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

BIG SKY ESTATES

KOOTENAI COUNTY, IDAHO

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration"), is made on the date hereinafter set forth, by **JOHN A. BEUTLER AND ANN J. BEUTLER, TRUSTEES OF THE JOHN A. BEUTLER AND ANN J. BEUTLER LIVING TRUST DATED JUNE 8, 1999** ("Declarant"), with reference to the following facts:

A. Declarant is the owner of that certain subdivision project consisting of approximately 160 acres, approved for thirty-two (32) residential Lots of approximately five (5) acres each, located between Huetter Road and Meyer Road, in Kootenai County, Idaho, commonly known as "BIG SKY ESTATES." The land encumbered by this Declaration (referred to herein as the "Property" or the "Project, and sometimes as Phase One") is more particularly described as follows:

All land located within the Plat of "BIG SKY ESTATES," according to the Plat filed March 4, 2002, in Book "I" of Plats, Pages 336-343, et seq., as Instrument No. 1721542, records of Kootenai County, Idaho;

B. In addition to ownership of individual Lots, the purchasers will hold a membership in an incorporated nonprofit Association of all Owners, known or to be known as Big Sky Estates Owners Association, Inc., which Association will operate and maintain certain properties and facilities within the Plat, consisting of a Private Entry Area, various Greenbelt Areas, and an Irrigation System, referred to herein as the Common Area. The Common Area shall be operated and maintained for the benefit of the Owners of all Lots within the Property.

C. Declarant is also the owner and developer of additional land adjacent to Phase One, which additional property is described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Potential Annexation Property"). While the Declarant currently intends to develop the Property described above (Phase One) and the Potential Annexation Property (Exhibit "A") as a fully integrated residential development project, this Declaration shall only encumber the Property described above (Phase One), unless and until additional property is annexed to and made a part of the Project by the recordation of one or more Declarations of Annexation, according to the annexation procedures set forth herein.

D. Declarant intends by this document to impose upon the Property (Phase One and any additional lands annexed thereto) mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Lots and the Owners thereof.

E. Declarant hereby declares that the Property (including any additional land annexed thereto) shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants,

conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the subdivision and sale of the Property as a residential community. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property.

ARTICLE 1. DEFINITIONS

1.1 "Architectural Committee" shall mean the Architectural Committee created pursuant to Article 4 of this Declaration.

1.2 "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.

1.3 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating, insuring and managing the Common Area, which is to be paid by the Lot Owners as determined by the Association under this Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in Article 6 of this Declaration.

1.4 "Association" shall mean Big Sky Estates Owners Association, Inc., an Idaho nonprofit corporation, formed by Declarant in conjunction with the recordation of this Declaration, the Members of which shall be Owners of Lots within the Property as provided herein.

1.5 "Board" or "Board of Directors" shall mean the Board of Directors of the Association, as it shall be constituted from time to time.

1.6 "Bylaws" shall mean the Bylaws of the Association as restated or amended from time to time.

1.7 "Common Area" shall mean the easements, areas, and facilities owned, operated, and/or maintained by the Association for the benefit of all Lots and their Owners. The Common Area within the first Phase of the Project shall include the Private Entry Area, the Greenbelt Areas, and the Irrigation System, rights to which are described in the easements reserved in this Declaration, together with any additional property or property rights obtained by the Association, all of which areas shall be operated and maintained for the benefit of the Owners of all Lots.

1.8 "Common Expenses" shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, and management of the Common Area, and of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents.

1.9 "Declarant" shall mean John A. Beutler and Ann J. Beutler, Trustees of the John A. Beutler and Ann J. Beutler Living Trust Dated June 8, 1999, and their successors-in-interest

and assigns with respect to the Property, but excluding members of the public purchasing completed Lots.

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

1.11 "Greenbelt Areas" shall refer to the areas identified as such on the Plat, being landscaped areas along the public rights of way (Huetter Road and Meyer Road), with respect to which easement rights are reserved in this Declaration for the benefit of the Association. The Greenbelt Areas are part of the Common Area.

1.12 "Irrigation System" shall mean the private community water system, consisting of a water well on Lot 8, Block 1, together with all pumping, storage, and delivery systems, up to, but excluding, the stub connection for each Lot in the Project. The Irrigation System is part of the Common Area.

1.13 "Lot" shall mean any of the numbered thirty-two (32) separate residential parcels as designated on the Plat.

1.14 "Member" shall mean a member of the Association, as defined in the Articles of Incorporation and Bylaws of the Association.

1.15 "Mortgage" includes a recorded mortgage, deed of trust, real estate contract, or other instrument creating a security interest in any Lot.

1.16 "Mortgagee" includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a security interest in any Lot.

1.17 "Mortgagor" includes a mortgagor, the grantor of a deed of trust, real estate contract vendee, or other person granting a security interest in any Lot.

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

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

1.20 "Phase" shall mean any parcel of land that is subjected to the terms of this Declaration. The Property described in Recital A above constitutes Phase One of the Project. Subsequent Phases may be brought within the coverage of this Declaration by the recordation of one or more Declarations of Annexation pursuant to this Declaration. However, except for Phase One, no property shall be encumbered by this Declaration unless and until it is formally annexed to the Project by recordation of such a Declaration of Annexation.

1.21 "Plat" shall refer to the recorded plat for "Big Sky Estates", as amended or supplemented from time to time by the annexation of additional Phases.

1.22 "Private Entry Area" shall refer to the area identified as such on the Plat, providing access to the Project from the public right of way (Prairie Avenue), with respect to which easement rights are reserved in this Declaration for the benefit of the Association. The Private Entry Area is part of the Common Area.

1.23 "Project Documents" shall mean this Declaration, the Plat, and the Articles, Bylaws, and rules and regulations of the Association, as each shall be amended from time to time.

1.24 "Property" or "Project" shall mean the land described in Recital A in this Declaration, together with all buildings, improvements, or structures thereon, and every easement or right appurtenant thereto, and all personal property intended for use in connection therewith or for the use, benefit, or enjoyment of the Owners. The Property may be expanded in the future by the annexation of additional Phases pursuant to this Declaration.

ARTICLE 2.

ASSOCIATION ADMINISTRATION MEMBERSHIP, AND VOTING RIGHTS

2.1 Organization of Association. The Association is or shall be incorporated under the name of Big Sky Estates Owners Association, Inc., as a nonprofit corporation under the Idaho Nonprofit Corporation Act.

2.2 Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, and in the Articles and Bylaws, together with its general and implied powers as a nonprofit corporation, generally to do any and all things that a nonprofit corporation organized under the laws of the State of Idaho may lawfully do and which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws.

2.3 Membership. The Owner of a Lot shall automatically, upon becoming the Owner of that Lot, be a Member of the Association, and shall remain a Member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and the Bylaws of the Association.

2.4 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

2.5 One Class of Membership: Voting Requirements. The Association shall have one (1) class of voting membership established according to the Articles, with one vote being allocated to each Lot.

2.6 Membership Meetings. Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place, and in accordance with the provisions of the Bylaws of the Association.

2.7 Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association.

2.8 Use of Agent. The Board of Directors, on behalf of the Association, may contract with an employee or independent contractor, for the performance of maintenance and repair of the Common Area, and for conducting other activities on behalf of the Association, as may be determined by the Board, subject to such limitations as may be set forth in the Bylaws.

ARTICLE 3. RIGHTS IN COMMON AREA

3.1 Common Area. As described in the Definitions above, the Common Area for the first Phase of the Project shall consist of: (a) the Private Entry Area to the Project; (b) the Greenbelt Areas; and (c) the Irrigation System (to be used solely for irrigation, and not for domestic purposes), the operation, repair, maintenance, and replacement easements for which are hereby reserved to the Association and all Owners of Lots in the Project, and all of which shall be operated and maintained for the benefit of the Owners of all Lots. Common Area for any future Phase shall be identified as such in the Declaration of Annexation. The Common Area shall also include any other property or property rights conveyed to or held by the Association for the benefit of all Lots within the Project.

The membership of the Association shall have the exclusive right to the use and benefit of all parts of the Common Area in accordance with the purposes for which it is intended, subject to such restrictions as may be imposed by the Board from time to time.

3.2 Damage by Member. Each Member shall be liable to the Association for any damage to the Common Area, if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any improvement by the Member, or by any tenant, guest, or other invitee of the Member. The Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Lot and may be enforced as provided hereby for the enforcement of other Assessments.

ARTICLE 4. ARCHITECTURAL CONTROL

4.1 Prohibition of Alteration and Improvement. Subject to the exemption of Declarant hereunder, no building, sign, fence, wall, obstruction, awning, improvement, or structure of any kind, shall be commenced, erected, painted, altered, or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto unless and until

the plans and specifications therefor shall have been approved in writing by the Board or by an Architectural Committee (the "Committee") appointed by the Board as provided in this Article.

4.2 Development Plans and Approval. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations, together with detailed landscaping plans, shall be submitted to the Board or Committee for approval as to: (a) quality of workmanship, materials, and design; (b) harmony of the external design and appearance with existing structures; and (c) the location with respect to topography and finish grade elevations. No such application shall be deemed received until actually received by the Board or Committee (evidenced by a signed receipt). However, no permission or approval shall be required to rebuild in accordance with plans and specifications previously approved by the Board or Committee.

The Board or Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Article and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with approved plans. Any application submitted pursuant to this Article shall be deemed approved, unless written disapproval or a request for additional information or materials shall have been transmitted to the applicant within twenty (20) days after the date of receipt by the Board or Committee of all required materials.

4.3 Architectural Committee. If a Committee is to be appointed, all members thereof shall be appointed by the Board. There shall be not less than three (3) nor more than five (5) members of the Committee, as determined by the Board. Unless and until a Committee is appointed, the functions of the Committee shall be undertaken by the Board.

The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder. Neither the Committee nor any member of the Committee shall be liable in damages or otherwise for decisions made in good faith pursuant to the authority granted in this Article.

4.4 Architectural Guidelines. The Board or Committee shall have the authority to adopt Architectural Guidelines to address construction scheduling and design and building of improvements, and to augment, amend, or otherwise modify such Guidelines from time to time; provided that they shall at all times be consistent with the remaining Project Documents and building restrictions imposed by law. The Guidelines shall, at a minimum, include the following provisions:

a. The work of construction, altering or repairing any structure shall be diligently performed from its commencement until completion and, in any event, the exterior appearance thereof (exclusive of landscaping) shall be completed within one (1) year after the commencement of construction. Landscaping shall be completed within six (6) months following the earlier of completion or occupancy of the primary residence. All construction shall conform to requirements established by any municipality or governmental agency having jurisdiction over the Property.

b. Only one (1) single-family residence shall be allowed on each Lot. However, accessory structures and outbuildings (e.g., barns, storage sheds, shops, and

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garages) shall be allowed, subject to the approval of the Board or Committee, and provided that they are architecturally consistent with the primary residence on the Lot (e.g., matching siding and roofing colors), as determined by the Board or Committee. Further, outbuildings shall not exceed 2000 square feet, shall have a maximum height of 14 feet at the eaves, shall have eaves that overhang on all sides and are enclosed, and shall have a roof pitch of at least 4/12.

c. All residential structures (including garages) shall be constructed at least one hundred (100) feet from any Lot line bordering a street, and at least forty (40) feet from any side or rear Lot line. Permitted accessory structures and outbuildings (including detached garages) shall be positioned in the rear yard, and shall be located at least fifty (50) feet behind the main dwelling. Notwithstanding these requirements, all improvements shall comply with the setback requirements of Kootenai County and any other municipality or agency having jurisdiction.

d. Homes shall contain a minimum of 1800 square feet for a single-story structure, 2000 square feet for a two-story structure, and 2200 square feet for other multi-level structures (e.g., a "tri-level"). Compliance with such minimums shall be determined by reference only to usable living space, exclusive of basements, garages, shops, patios, decks, and other areas not intended as part of the living quarters;

e. All homes shall include an enclosed garage (attached or separate) designed to accommodate at least two (2) cars. The Board or Committee shall encourage garages to accommodate at least three (3) cars;

f. Fences must be approved by the Board or Committee. All fences shall be white vinyl or painted white.

g. The general landscaping plans for any Lot shall be approved by the Board or Committee according to this paragraph. Landscaping plans shall include the planting of approved trees along the street fronting on each Lot, with the trees being not more than fifty (50) feet apart, and with all trees having at least a 1½ inch caliper diameter when planted. Landscaping requirements shall also include planting, irrigation, and maintenance of drainage swales along the public right of way.

In appropriate cases, the Board or Committee shall have the authority to grant reasonable variances to these or other Guidelines; provided that such variances may be granted only with the unanimous approval of the Board or Committee.

ARTICLE 5. REPAIR AND MAINTENANCE

5.1 Repair and Maintenance Rights and Duties of Association. The Association shall operate, maintain, repair and replace the Common Area and all facilities thereon, or shall contract for such operation, maintenance, repair and replacement to assure maintenance of the Common Area and facilities thereon in good condition, reasonable wear and tear excepted. The Association shall have no obligation to maintain any Lot or improvements on any Lot (other than portions of the Common Area that may be located on individual Lots). However, in the event an Owner fails to maintain his or her Lot or improvements thereon as provided herein in a manner

which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify the Owner of the work required and demand it be done within sixty (60) days from the giving of such notice (or within such shorter time as may be appropriate in the case of an emergency). In the event the Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, lien his or her Lot for the amount thereof.

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

ARTICLE 6. ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

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

- a. Regular Assessments;
- b. Extraordinary Assessments; and
- c. Special Assessments.

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

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all the Owners of Lots in the entire Project for the improvement and maintenance of the Common Area for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the Common Area which must be replaced on a periodic basis.

6.3 Regular Assessments. Until the end of the Association's fiscal year immediately following the closing of the sale of the first Lot in the Project, the maximum annual Regular Assessment for the entire Project shall be such amount as may be set forth in the Project budget prepared by Declarant. Thereafter, the Board shall determine and fix the amount of the maximum annual Regular Assessment for the entire Project at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20%) above the maximum annual Regular

Assessment for the immediately preceding fiscal year, without the vote or written assent of a majority of the total voting power of the Association.

6.4 Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated Regular Assessment; provided, however, that the aggregate Extraordinary Assessments for any fiscal year shall not exceed five percent (5%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of a majority of the total voting power of the Association.

6.5 Special Assessments. In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessments (without limitation as to amount or frequency) against a Lot and its Owner to reimburse the Association for costs incurred in bringing that Owner and his or her Lot into compliance with the Project Documents, including interest, penalties, actual attorneys' fees and costs.

6.6 Allocation of Assessments. Each Lot, including Lots owned by Declarant, shall bear an equal share of each aggregate Regular and Extraordinary Assessment (subject to the right of the Declarant to defer the commencement of Assessments against Lots owned by the Declarant as provided in Paragraph 6.7 below). Notwithstanding the foregoing, any Lot on which no home has been constructed and which has not been physically hooked to the Irrigation System, shall be exempt from that portion of any Regular Assessment which covers the power expense necessary to operate the pumping and water delivery equipment for the Irrigation System. This exemption shall not extend to expenses of maintaining, repairing, and replacing elements of the Irrigation System, but only to power costs. Once such physical hookup shall have been made, or once a home shall have been constructed on such Lot (regardless of hook up to the System), such exemption shall terminate.

6.7 Date of Commencement of Assessment; Due Dates. The Regular Assessments provided for herein shall commence on the first day of the month following closing of the sale of the first Lot in the Project. Due dates of Assessments shall be established by the Board, on written notice to all Owners.

Notwithstanding the foregoing, Declarant shall have the right to defer, for up to seven (7) years from the date of recordation of this Declaration, the commencement of Declarant's Regular Assessment obligation. This deferral shall be available only for so long as the Declarant, at its expense, performs or subsidizes all actual Common Area maintenance and repair to the extent such maintenance and repair is not covered by Assessments against Lots not owned by the Declarant. Upon expiration of the deferral period, Lots owned by the Declarant shall be assessed in the same manner as all other Lots (subject to the special Irrigation System exemption described in Paragraph 6.6, above).

6.8 Transfer of Lot by Sale or Foreclosure. The sale or transfer of any Lot shall not affect any Assessment lien, or relieve the Lot from any liability therefor, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Lot pursuant to foreclosure or by deed in lieu of

foreclosure of a recorded first mortgage given in good faith and value shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer. Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Paragraph shall be deemed to be Common Expenses collectible from all of the Lots, including the Lot for which the lien was extinguished.

In a voluntary conveyance of a Lot, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter for his or her share of the Common Expenses (and for his or her obligation for individual Special Assessments) up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any such statement.

6.9 Enforcement of Assessment Obligation; Priorities; Discipline. If any part of any Assessment is not paid within ten (10) days after the due date, an automatic late charge equal to five percent (5%) of the Assessment (but not less than \$10) shall be added to and collected with the Assessment. Additionally, if any part of any Assessment is not paid and received by the Association or its designated agent within thirty (30) days after the due date, the total unpaid Assessment (including the late charge) shall thereafter bear interest at the rate of eighteen percent (18%) per annum until paid. Each unpaid Assessment, whether Regular, Extraordinary or Special, shall constitute a lien on each respective Lot prior and superior to all other liens recorded subsequent to the recordation of the Notice of Assessment Lien, except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; or (b) labor or materialmen's liens arising under Idaho law (timely and duly filed) if the legal effective date is prior to the recording of the Notice of Assessment Lien. Such lien, when delinquent, may be enforced by sale by the Association (acting through the Board), its attorney or other person authorized by this Declaration or by law to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Idaho law applicable to the exercise of powers of sale in deeds of trust (with the Board having the right and authority to appoint an independent trustee), or by judicial foreclosure as a mortgage, or in any other manner permitted by law. During any such foreclosure proceeding, the foreclosing party shall be entitled to the appointment of a receiver to collect rent becoming due with respect to the subject Lot. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at the foreclosure sale, and to acquire and hold, lease, encumber, and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent, interest, costs, penalties, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorneys' fees and costs and may temporarily suspend the voting rights of a Lot Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.

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6.10 Payment of Taxes Assessed Against Common Area or Personal Property of Association. If any taxes are assessed against the Common Area or the personal property of the Association, rather than against the Lots, said taxes shall be included in the Assessments made under this Article, and, if necessary, an Extraordinary Assessment may be levied against the Lots in an amount equal to said taxes (regardless of the limitation on Extraordinary Assessments set forth in Paragraph 6.4 above).

ARTICLE 7.

EASEMENTS AND UTILITIES

7.1 Common Area Easements. Declarant expressly reserves, for the benefit of the Owners and the Association, perpetual exclusive easements for the operation, maintenance, repair and replacement of those portions of the Common Area which are not owned in fee by the Association and all facilities thereon, consistent with its intended purposes.

7.2 Encroachment and Utility Easements. Each Lot is hereby declared to have an easement over each other Lot for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any improvement, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that no valid easement for encroachment shall be created in favor of an Owner or Owners if said encroachment occurred due to the gross negligence or willful misconduct of said Owner or Owners.

Declarant also expressly reserves for the benefit of itself and its successors-in-interest and assigns, including the Association, easements over and under the entire Property (together with the right to grant, transfer and relocate the same) for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, telephone, television and other utility lines and services, as may be deemed appropriate to service the Property.

7.3 Utility Services. Each Owner shall make all arrangements for and pay directly for all utilities and services furnished to or used by such owner, including without limitation, gas, electricity, garbage collection, telephone service, water service, sewer service, and television receiving. Irrigation water shall be provided through the Irrigation System. However, domestic water service for the Project is to be provided by Ross Point Water Association.

ARTICLE 8.

USE RESTRICTIONS

8.1 Use of Individual Lots. Lots shall be used only for single family residential purposes by the Owner and his or her family, or by a single-family tenant.

8.2 Limited Commercial Use. To the extent allowed by applicable ordinances of Kootenai County, Lots may be used for commercial or other non-residential purposes, subject to the following terms and conditions:

- a. The allowable home occupation shall be conducted by family members, and shall involve not more than one non-family member;

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b. Any commercial or other non-residential use must comply with all requirements of any governmental or quasi-governmental agency having jurisdiction over the Project;

c. The proposed use shall not be apparent from other Lots, the Common Area, or the public right of way (e.g., by signage or advertising, increased traffic flow through the Project, or increased parking on the street). All conduct of the business shall be within the residence;

8.3 Animals. Domesticated animals, such as cats, dogs, horses, and cows may be maintained on Lots, so long as they are maintained in reasonable quantities and primarily for personal use and enjoyment of the Lot Owner and his/her family and friends. Animals may not be kept, bred, or maintained for commercial purposes.

8.4 Lot Maintenance. Each Lot and the exterior appearance of improvements thereon shall be maintained in a clean, neat and orderly condition and in good repair at all times. All rubbish, trash and garbage shall be regularly removed from all Lots, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept, except in sanitary containers which shall be kept screened and concealed from the view of other Lots and all public ways. During any period prior to the commencement of construction, Lots shall nevertheless be maintained in good condition (according to the judgment of the Board), and weeds and debris shall not be allowed to accumulate.

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

8.6 Mobile and Modular Homes/Trailers. No mobile or modular home or residential trailer shall be permitted on any Lot.

8.7 Vehicle and Equipment Restrictions. Exposed, unlicensed, and commercial vehicles shall not be permitted upon any Lot, unless maintained out of the view of other Lots and the public right of way. Permanent or seasonal storage of recreational vehicles, including boats, snowmobiles, jet skis, campers, trailers, and the like, shall be not permitted except in rear yards, enclosed side yards, or within garages or outbuildings.

8.8 Temporary and Ancillary Structures. No tents, mobile homes, camper trailers, recreational vehicles, or other movable or temporary structures or facilities shall be used on any Lot for either temporary or permanent habitation.

8.9 Signs. No signs shall be displayed to the public view on any Lot, except such signs as may be approved in writing by the Board. This restriction shall not apply to "For Sale" or "For Rent" signs, which shall be allowed provided they do not exceed three (3) square feet in size.

8.10 Subdivision and Partition Prohibited. Lots shall not be further subdivided. No Owner shall bring any action for partition or division of any part of any Lot (it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the

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operation and management of the Project); provided, however, that a Lot Owner may bring an action for partition by sale of a Lot and division of the proceeds thereof.

8.11 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot agrees to hold Declarant harmless therefrom.

ARTICLE 9. **INSURANCE**

9.1 Duty to Obtain Insurance: Tales. The following policies of insurance shall be obtained and maintained:

a. Hazard Insurance: Each Owner shall maintain, with respect to its Lot, and the Association shall maintain, with respect to the Common Area, hazard insurance covering loss or damage to all parts of such ownership (and contents) in the amount of the full replacement value thereof, providing protection against all direct causes of loss. The insurance shall name the Association as an additional insured and shall contain the standard mortgage clause, naming the holders of first mortgages as the mortgagees.

b. Liability Insurance: Each Owner, with respect to its Lot and improvements thereon, and the Association, with respect to the Common Area, shall maintain, at their respective cost, a comprehensive general liability insurance policy, with policy limits and endorsements deemed appropriate by the Board (but having a combined single limit of liability of not less than \$1,000,000.00), covering all occurrences within such Lot and the Common Area.

c. Fidelity Bonds: If required by any first mortgagee, the Board shall also carry blanket fidelity bonds for anyone who either handles or is responsible for funds which are held or administered by the Association, whether or not they receive compensation for such services.

9.2 Lenders' Requirements. Notwithstanding the foregoing, the Association and each Lot Owner shall maintain insurance and fidelity bonds meeting the requirements for similar projects established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Mortgage Association ("TMC"), Veterans Administration ("VA") and/or the Federal Housing Administration ("FHA"), so long as any of them shall be a holder, insurer, or guarantor of a mortgage on a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA, TMC, VA and/or FHA, as applicable.

9.3 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors and Declarant, to the

extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

ARTICLE 10. **DESTRUCTION OF IMPROVEMENTS**

10.1 Restoration of Common Area. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article 9 hereof for reconstruction or repair of the Common Area shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Area shall be reconstructed or rebuilt substantially in accordance with the original construction plans, unless changes are adopted by the Board or the Architectural Committee. If the amount available from the proceeds of such insurance policies for such restoration and repair is not sufficient to cover the entire cost of restoration and repair, the Association shall be authorized to levy an Extraordinary Assessment to collect the deficiency from all owners and to proceed with the restoration.

10.2 Restoration of Residential Improvements. In the event of any destruction of any portion of any residential improvements, it shall be the duty of the Owner, subject to the rights of any first mortgagee, to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article 9 hereof for reconstruction and repair of the improvements shall be used for such purpose, unless otherwise provided herein. The improvements shall be reconstructed or rebuilt substantially in accordance with the original construction plans, unless changes are approved by the Board or the Architectural Committee. If the amount available from the proceeds of such insurance for such restoration and repair is insufficient, the cash required shall be provided by the owner.

ARTICLE 11. **EMINENT DOMAIN**

11.1 Awards Repair Restoration and Replacement. In the event of any taking of any Lot or portion of the Common Area in the Project by eminent domain (including actual condemnation or sale under threat of condemnation), the Owner of such Lot (or the Association, in the case of the Common Area) shall be entitled to receive the award for such taking (subject to the rights of any mortgagee thereof), and after acceptance thereof, he or she and his or her mortgagee(s) shall be divested of all interest in the Project if such Owner shall vacate his or her Lot as a result of such taking. The remaining portion of the Project shall be resurveyed, if necessary, and this Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of more than one Lot at the same time, the Board may participate in the negotiations, and may propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemning authority or by the court. In the event any Lot Owner or first mortgagee disagrees with the proposed allocation, he or she may have the matter submitted to arbitration under the rules of the American Arbitration Association.

11.2 Awards for Owners' Personal Property and Relocation Allowances. Where all or part of the Project is taken by eminent domain, each owner shall have the exclusive right to claim

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