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Index to: COVENANTS & RESTRICTIONS

ORIGINAL

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
RHYTHM RANCH SUBDIVISION**

RECORDED: _____
INSTRUMENT NO.: _____

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prior to the recordation of such amendment, provided that after the foreclosure of any such Deed of Trust such Lot shall remain subject to this Declaration as amended.

ARTICLE 9

WATER RIGHTS

9.1 Domestic Water for Each Lot. Each Owner shall be responsible for providing the domestic water system, including one (1) or more wells and pumps, necessary to provide the single family residence and related structures constructed on the Lot with water for "domestic purposes", as defined in Idaho Code § 42-111(a). This may include the irrigation of up to one-half (½) acre of land. Each Owner shall also be responsible for obtaining from the Idaho Department of Water Resources ("IDWR") the drilling permit required to drill the well or wells for domestic water.

9.2 Irrigation Water System. The Subdivision shall have a central water system to provide non-potable water to all of the lots for irrigation and fire protection purposes only (the "Water System"). The Water System shall be constructed initially by Declarant, and then conveyed to, owned, operated, maintained and managed by the Association. Declarant shall transfer and convey to the Association title to the irrigation water rights appurtenant to the Subdivision, subject to the final outcome of all proceedings in, and the provisions, terms and conditions of the decree or decrees to be issued in, the general water rights adjudication encompassing almost all of the State of Idaho known as In Re The General Adjudication of Rights to the Use of Water From the Snake River Basin Water System, Twin Falls County Case No. 39356 (the "SRBA"). The right to receive and/or use water from the Water System is subject to availability, and the Association is authorized to regulate the use of water to conserve its availability. The Association shall operate and maintain the Water System in accordance with the rules and regulations of applicable governmental authorities. The Association may employ the services of a manager and other personnel to carry out the management of its responsibilities with respect to the Water System.

A Water System water line shall be made available to each Lot, which water line may be located along common boundary lines and may be used by more than one Lot, for hookup to the individual private irrigation systems within the Lots, provided that no hose bibs, or the externally accessible direct outlets or valves (other than sprinkler heads and other outlets or valves utilized in a closed irrigation system approved by the Board) shall be permitted, and further provided that the water therefrom shall be used for irrigation and fire protection purposes only. The Association shall be responsible for operating, maintaining, repairing and improving the Water System only to the point of stub-out at the Lot line. From and after stub-out, all pipes, valves, sprinkler heads and so forth, shall be the sole responsibility of the Owner of the Lot. The Association shall protect the Water System from freezing.

WATER FROM THE WATER SYSTEM IS NOT DRINKABLE. Each Lot Owner shall be responsible to ensure that irrigation water within the boundaries of such Owner's Lot is not consumed by any person or used for culinary purposes.

The following is a list of the irrigation water rights appurtenant to the Subdivision, identified by the water right numbers assigned by IDWR:

WATER RIGHT	SOURCE	PRIORITY	AMOUNT
37-20935	Broadford Slough	June 1, 1885	0.53 cfs
37-20937	Broadford Slough	June 1, 1886	0.55 cfs
37-20939	Broadford Slough	August 15, 1902	0.79 cfs
37-20941	Broadford Slough	August 15, 1902	0.18 cfs
37-20943	Broadford Slough	June 10, 1880	0.22 cfs
37-7745B	ground water	October 25, 1978	0.65 cfs
TOTAL			2.92 cfs

The amount of water which may be delivered to each Lot at any particular time shall be that Lot's portion of the total amount of the above-described water rights then being delivered to and available for use by the Association under then applicable laws and regulations of the State of Idaho. Each Lot's portion of the water rights shall be based upon the maximum number of acres which may be irrigated on each Lot (in excess of the one-half (1/2) acre which may be irrigated by the domestic well on such Lot). The maximum irrigated acres and percentages of the water rights are as follows:

LOT	ACRES	PORTION OF WATER RIGHTS
1	7.6	21.71%
2	6.3	18.00%
3	4.7	13.43%
4	16.4	46.86%
TOTAL	35	100.00%

The Association shall own these water rights, own, operate, maintain and repair the diversion works and delivery system for these water rights, and control and administer the delivery of water

to the Lots for irrigation and fire protection. The Association may apply for and obtain, upon approval by IDWR, such changes or transfers of the points of diversion or places of use of any of these water rights as it, in its sole discretion, determines to be advisable for the more efficient administration of the Water System and use of the irrigation water rights. The Association shall be responsible for actively pursuing and perfecting its claims to these water rights in the SRBA.

EACH OWNER, BY ACCEPTING THE DEED TO A LOT, ACKNOWLEDGES AND AGREES THAT THE AMOUNTS AND IRRIGABLE ACRES FOR EACH WATER RIGHT ARE SUBJECT TO FINAL DETERMINATION BY THE COURT IN THE SRBA, THAT DECLARANT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO SUCH AMOUNTS OR IRRIGABLE ACRES, AND THAT DELIVERY OF THE WATER RIGHTS IS SUBJECT TO AVAILABILITY UNDER THE LAWS OF THE STATE OF IDAHO, RULES AND REGULATIONS OF IDWR, AND CONTROL BY THE WATERMASTER FOR WATER DISTRICT 37. IF THE AMOUNT OR NUMBER OF IRRIGABLE ACRES FOR ANY SUCH WATER RIGHT IS REDUCED IN A FINAL DECREE ISSUED BY THE SRBA COURT, THE AMOUNT OR MAXIMUM IRRIGABLE ACRES ON EACH LOT AND COMMON AREA PARCEL SPECIFIED ON EXHIBIT C SHALL BE REDUCED PROPORTIONATELY.

EACH OWNER, BY ACCEPTING THE DEED TO A LOT, ACKNOWLEDGES AND UNDERSTANDS THAT WATER RIGHTS IN IDAHO MAY BE LOST IN WHOLE OR IN PART IF THEY ARE NOT USED FOR A CONTINUOUS PERIOD OF FIVE (5) YEARS OR MORE. Therefore, for the purpose of maintaining and protecting the irrigation water rights and maintaining the unimproved Lots in a neat, irrigated and weed-free condition, Declarant hereby reserves for itself and the Association the right to use the irrigation water rights and the Water System to irrigate all or such portions of each Lot prior to such time as construction has begun pursuant to a valid building permit. After an Owner has begun such construction, the Owner, at the Owner's expense, shall be responsible for maintaining the Lot in a reasonable condition during the course of construction. All expenses related to the use of the irrigation water rights and the Water System by the Association pursuant to this paragraph shall be assessed to the Lots as described in Section 9.3, below.

9.3 Water System Assessments. All expenses related to the Water System, including any amount required as a reserve for capital improvements to or replacements of all or part of the Water System, shall be born by Declarant until the sale by Declarant of the first Lot within the Subdivision, and thereafter by the Association. These expenses, shall be charged to all Lots, whether or not such Lot is improved, on a pro rata basis according to the maximum number of irrigated acres set forth above. The Association may also levy special assessments against all Lots on this same pro rata basis to cover all or part of the expense and cost of construction, reconstruction, repair or replacement of a capital improvement to the Water System.

11.6.3 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

11.6.4 Captions. All captions and titles used in this Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.

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

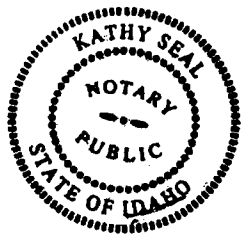
"DECLARANT"

Kathleen B. Rosekrans
KATHLEEN B. ROSEKRANS

STATE OF IDAHO)
)
County of Blaine) ss.

On this 24 day of May, 2004, before me the undersigned notary public in and for said state, personally appeared KATHLEEN B. ROSEKRANS, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

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



Kathy Seal
Notary Public for Idaho
Residing at : Katolum
Commission Expires: 7.9.2006