

Article VIII

WATER SUPPLY AND WATER RESTRICTIONS

1. Irrigation Water and Rights.

- A. **Irrigation Rights.** Declarant will convey to the Homeowners Association the following irrigation water rights: 22 shares of the Roseman Ditch (a/l/a/ Thompkins Ditch) which rights shall be held by the Association for use pursuant to this Article VIII (1). Eight (8) Lots within the subdivision will be granted the right to use Association-owned irrigation water, the source of which will be the Roseman Ditch. The eight Lots to receive such irrigation rights are Lots 1, 3, 14, 15, 16, 18, 19 and 20. All water rights referred to in this paragraph shall be appurtenant to the Lots and may not be conveyed or transferred separately therefrom.

The irrigation rights appurtenant to each of the Lots identified in this paragraph are as follows:

- i. Subject to subparagraph (ii) below, the owners of Lots 1, 3, 16, 18, 19 and 20 (hereinafter "Group A Irrigators") may utilize all 22 shares of the Roseman Ditch held by the Association for irrigation on each owner's respective irrigation day(s) pursuant to the Rotation Schedule outlined in paragraph (B) below.
- ii. Any irrigation by the Group A Irrigators is subject to use by the owners of Lots 14 and 15 on each owner's respective irrigation days(s) pursuant to the Rotation Schedule outlined in paragraph (B) below as follows:
 - a. The owner of Lot 14 may utilize as much irrigation water as may be diverted through a one inch (1") line from the Roseman Ditch on scheduled irrigation days; and
 - b. The owner of Lot 15 may utilize as much irrigation water as may be diverted through a one and one-half (1 ½") line from the Roseman Ditch on scheduled irrigation days.

At the first annual meeting, and at every subsequent annual meeting thereafter, the Association shall designate an association member who shall be the designated contact person concerning all irrigation issues within the Subdivision and with whom all other users on the ditch, as well as the Colorado Division Engineer, may communicate.

- B. **Rotation Schedule.** Unless otherwise agreed to by these eight Lots owners (hereinafter "Eight Owners"), the irrigation water available to each Lot will be determined by a rotation schedule. The eight Lots will be entitled to irrigate from the ditch: Lots 1, 16 and 18: 1 ½ days per week; Lots 19 and 20: ¾ day per week; Lot 3: 1 day per week; Lot 14: 3 days per week; Lot 15: 4 days per week. The Eight Owners shall reach a mutual agreement regarding which days of the week are designated to each Lot for irrigation. If the Eight Owners fail to reach an agreement, the days for irrigation will be determined randomly by chance at a meeting of the Association's Board of Directors.

- C. **Ditch Maintenance Cost Allocation.** Each of the Eight Owners shall bear the cost of operation, maintenance, repair, and replacement of the irrigation system in accordance with their pro rata right of use as follows: Lots 1, 16, and 18: 19%; Lots 19 and 20: 9.5%; Lot 3: 13%; Lot 14: 3.5% Lot 15: 7.5%.

The Eight Owners shall consult with each other regarding operation, maintenance, repair, and replacement of the ditch and, to the greatest extent possible, shall reach unanimous decisions regarding such costs; however, an agreement of a majority of the Eight Owners is sufficient to make decision in this regard. In the event the Eight Owners fail to reach a majority decision regarding any issue related to operation, maintenance, repair, or replacement of the ditch, the Association Board of Directors shall have the authority to make such decision that will be binding on all of the Eight Owners. Any improvement to the ditch exceeding the amount of \$500.00 requires the prior approval of a majority of the seven parties involved. In an emergency situation, any of the Eight Owners may make a decision concerning the ditch and act thereon, so long as the remaining Eight Owners are given notice of such action within a reasonable time. All Eight Owners shall keep an accurate account of the costs and expenses incurred in operation, maintenance, repair, and replacement of the ditch and, upon the completion of the work, shall deliver to each of the other Eight Owners an itemized statement of such costs and expenses.

The Eight Owners shall measure the water taken from the ditch, and a measuring device will be installed. Flood irrigation is the accepted method of irrigation on the ditch. The Eight Owners agree that the ditch shall be maintained in good order and repair, ready to receive water by April 1 of each year, so far as can be accomplished by the exercise of reasonable care and diligence. The Eight Owners shall have the duty of maintaining all headgate structures and keeping such in good working order through the year. The Eight Owners shall construct the necessary outlets or diversion lines in the banks of the canal or ditch for a proper delivery of water, and the location of the same shall be at the most convenient and practicable points consistent with the protection and safety of the ditch for the distribution of water among the Eight Owners. All Owners within the Subdivision shall be prohibited from dumping, diverting, or in any way depositing any trash, wastewater, or other foreign substance into the ditch. All Owners, with the exception of the Eight Owners, shall be prohibited from accessing the ditch and/or diverting water from the ditch at any time.

The Homeowners Association shall be responsible for the maintenance of all internal road ditch crossing within the Subdivision; with the exception that any Owner of a Lot whose driveway crosses the ditch shall be responsible for the maintenance of such ditch crossing. In the event that any Owner whose driveway crosses the ditch has entered into a driveway maintenance agreement with another Owner, such Owners shall be jointly responsible for the maintenance of such ditch crossing.

- D. **Annual and Special Assessments for Irrigation Water.** Prior to each annual meeting of the Board of Directors of the Homeowners Association, the eight Owners of Lots 1, 3, 14, 15, 16, 18, 19 and 20 will convene and discuss the costs involved in the operation, maintenance, repair, and replacement of the ditch for the previous year. Assessments due on ditch stock certificates will be divided among the Eight Owners at such time, based upon each Owner's percentage right of use as set forth in paragraph C above. As special assessments may be levied from time to time

in connection with the Subdivision irrigation water, the Association shall maintain records of such accounts, yet keep a separate accounting of any costs incurred in connection with routine operation, maintenance, repair, and replacement. All provisions of Article VIII shall be applicable to said assessments.

- E. Lien for Ditch Assessments. All Eight Owners shall promptly pay any and all assessments for costs of operation, maintenance, repair, and replacement of the ditch in the proportions set forth above. In the event that such assessments are not paid promptly, the co-owners of the ditch shall have a lien pursuant to C.R.S. § 38-23-101 et seq., which may be enforced pursuant to said statute.

2. Subdivision Water System.

- A. Water Supply and Meters. Water will be provided to eighteen (18) of the twenty (20) Lots planned for the Subdivision from two wells on the property, known as Cedar Hills Well No. 2 and Cedar Hills Well No. 3. Well No. 3 has been drilled by Declarant and has been certified by an engineer as a sufficient source by which to supply the subdivision with an adequate quantity of water. Augmentation releases will be made through a Ruedi Reservoir contract with West Divide Water Conservancy District. No more than eighteen (18) single-family Lots shall be created within the Subdivision.

The Association will provide domestic water from its well system to all residences constructed within the Subdivision. The Association shall have the power and authority to require each Unit owner served by the subdivision wells, Cedar Hills Well No. 2 and 3, at their sole expense, or at the expense of the Association, if so approved by the Members, to install a water meter or multiple water meters to measure all water use by that Unit. If determined necessary by the Association, such meters will either 1) be placed in a location which provides reasonable access, on the outside of each residence, for purposes of reading the meter to determine charges based upon usage; or 2) otherwise provide the ability to determine water usage on a regularly scheduled basis. In addition to the charges included in the Association's annual assessment for operation of the Association's well system, charges for a minimum and maximum amount of water usage may be determined necessary by the Association and such charges may also be increased or decreased as determined necessary by the Association.

The Association's authority to meter and/or curtail water usage in the Subdivision shall be utilized to ensure that the total diversions for the Subdivision from the Association's well(s) for in-house uses and lawn and garden irrigation do not exceed 8.32 acre-feet per year, no more than 1.26 acre-feet per year to be used for irrigation purposes. Said water supply is based on an assumption that there will be no more than eighteen (18) single-family homes in the Subdivision, with in-house water use totaling approximately 350 gallons per day per house. Total annual diversions for each of the eighteen (18) houses served shall not exceed .49 acre-feet and lawn and garden irrigation shall be limited to 1,000 square feet per Lot per year. Nothing herein shall be deemed to preclude irrigation from other water rights.

The Association shall have the power and authority to impose fines in an amount as determined by the Board of Directors for failure to pay accrued charges for water usage or for failure to pay

annual assessments which include assessments for operation of the Association's water system. Such fines may be imposed if six months have elapsed since any payment has been received for water usage charges or for annual assessments. In such a case, the Association shall also have the power and authority to shut off the water supply to any Unit or Lot. The termination of the water supply to a Unit or Lot may be done by a third party at the direction of the Board of Directors. The Association shall have the power and authority to impose a fee for reconnection of the water supply to a Unit or Lot. The reconnection fee shall be in an amount as determined by the Board of Directors.

- B. **Independent Wells.** It was anticipated that all Lots within the Subdivision will be served by a central well water system, with the exception of three Lots: Lots 1, 19 and 20, on which the existing houses have been historically served by individual wells independent from the central well system. The three Lots have been connected to the central well water system. By way of historical background, Lot 1 was served by the well on Lot 1 (Permit No. 176514; Colorado Division of Water Resources) which shall be solely responsible for the cost of operation, maintenance, repair and replacement. Lots 10 and 20 was served by the well located on Lot 10 (Permit No. 175363; Colorado Division of Water Resources) and the costs of operation, maintenance, repair and replacement shall be pursuant to that certain well sharing agreement recorded herewith simultaneously. Although these residences were served by individual wells, they retained the option to connect to the central well water system at their sole expense. Lots 19 and 20 shall share equally the common portion of the pipeline connection. Until connection to the central well water system, the Owners of Lots 1, 19 and 20 shall not be subject to water assessments imposed by the Association.
- C. **Water Pressure.** Lot owners are hereby advised that Lots 6, 7, 8, 9, 10, 11, 12 and 17 within the Subdivision will require individual pumps at the expense of the Owner to ensure that adequate water pressure from the Association's water supply is maintained.
- D. **Ponds.** A drainage detention pond shall be located on Lot 13 and shall be maintained and repaired by the Association. A second pond shall exist on Lot 16 for fire fighting purposes and the Owner of Lot 16 shall have an obligation and duty to the Association to maintain the pond for such purposes. If the Owner fails to maintain or repair said pond, the Association shall have the right, after notice, to come onto the land and maintain or repair the pond at the Owner's expense for firefighting purposes.

ARTICLE IX COLLECTION OF ASSESSMENTS-ENFORCEMENT

1. **Due Dates.** Installments of the annual assessment as determined by the Association and as allowed for in the Declaration shall be due and payable on the 1st day of each quarter. Assessments or other charges not paid in full to the Association within one day of the due date shall be considered past due and delinquent. Assessments or other charges not paid in full to the Association within 30 days of the due date shall incur late fees as provided below. Assessments or other charges not paid in full to the Association within 90 days of the due date shall incur interest as provided below. In the event notice of acceleration is given to delinquent Owner(s), the Owner(s) of the unit shall also be charged any costs