

104966

BOOK 109 PAGE 85

DECLARATION OF COVENANTS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS

This Declaration is made Feb - 8, 1988,
between DUGGAN FALLS WATER SYSTEM, a Washington non-profit
corporation (hereinafter "the Association"), and
SIMON & MARY ELLEN ROTH,
owner(s) of the real property described in Article II herein
(hereinafter the "Owners").

WITNESSETH

WHEREAS, Owners are the owners of real property being within
the Hideaway on the Washougal, Hideaway II, or Whispering Hills
River Estates subdivisions, more particularly described in Article
II of this Declaration (hereinafter "the Property"); and

WHEREAS, the Property presently is without a safe and
reliable water supply for domestic purposes; and

WHEREAS, Owners desire to become Members of the Association
and, thereby, to procure a safe and reliable supply of water for
domestic purposes from the Association; and

WHEREAS, the Association may provide water service to the
Property consistent with its declared purposes, its Articles of
Incorporation and Bylaws; and

WHEREAS, the Association may provide water service to the
Property without exceeding the service limits placed by the laws
of the State of Washington upon the Association's water supply
system; and

WHEREAS, the Association's Board of Directors has determined
that provision of water service to the Property will not otherwise
put an undue burden or strain upon the Association's water system
facilities or in any way compromise service to existing
Association Members;

NOW, THEREFORE, the Owners, for themselves, their successors
and assigns, declare that the Property is subject to the
covenants, restrictions, easements, charges and liens, (sometimes
referred to as "covenants and restrictions"), hereinafter set
forth.

FILED FOR RECORD
SKAMANIA CO. WASH
BY DUGGAN FALLS
WATER SYSTEM

Apr 7 11 29 AM '88

d. N. Olson, Dep.
AUDITOR
GARY M. OLSON

-1-

WILMA J. CORNWALL
TREASURER OF SKAMANIA COUNTY

RECORDED
INDEXED
FILED
MAR 10 1988
CLERK OF COUNTY

ARTICLE I. DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

a) "Association" shall mean and refer to Duggan Falls Water System, a Washington non-profit corporation.

b) "Declaration" shall mean and refer to the Declaration of Covenants, Restrictions, Easements, Charges and Liens applicable to The Properties recorded with the Skamania County Auditor.

c) "Lot" shall mean and refer to a unit of land located within Hideaway on the Washougal, Hideaway II or Whispering Hills River Estates which has been made subject to this Declaration.

d) "Member" shall mean and refer to each holder of Membership interests in the Association, as such interests are set forth in Article III hereof.

e) "Owner" shall mean and refer to the record owner of (fee simple title to) any Lot. Every Lot Owner shall be treated for all purposes as a single owner for each Lot held, irrespective of whether such ownership is community, joint, or common. Where such ownership is community, joint, or common, a majority vote of such owners shall be necessary to cast any vote to which owners are entitled.

f) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration.

g) "Duggan Falls Water System" shall mean and refer to the system of water works and pipelines which are used for the purpose of supplying water to The Properties.

ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Properties. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all those certain plots, pieces or parcels of land situate, lying and being in the County of Skamania, State of Washington, having improvements thereon, being more particularly described in Schedule A annexed hereto and made a part hereof.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership and Voting Rights. The Association shall have one class of Membership interest as follows:

The Owner of each Lot to which water is supplied by the Association shall be a Member, whether such ownership is community, joint or in common.

Each Member is entitled to one vote for each Lot in which the Member holds a membership interest. When more than one person or entity holds such interest in any Lot, the one vote attributable to such Lot shall be exercised as such persons mutually determine but, no more than one vote may be cast with respect to any such Lot. No Member shall split or divide its votes on any motion, resolution or ballot.

ARTICLE IV. PROPERTY RIGHTS IN THE DUGGAN FALLS WATER SYSTEM

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2 of Article III hereof, every Member shall have a right and easement of enjoyment in and to the use of water from the Duggan Falls Water System and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Easement. Owners/Association Members do hereby establish and create for the benefit of the Association, and do hereby give, grant and convey to the Association the following easements, licenses, rights and privileges:

a) right-of-way for ingress and egress across all those Properties described in Article II hereof for all purposes necessary to operate and maintain the Duggan Falls Water System.

b) the right to connect with and make use of pipes, conduits and drainage lines which may from time to time be on or along the Properties described in Article II and the rights to maintain and repair the same.

ARTICLE V. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of a Lien and Personal Obligation. Owners hereby covenant and agree to pay to the Association such assessments as are fixed by the Association. Owners further covenant and agree that any such assessments which have been made by the Association but are unpaid, together with interest thereon, shall be a charge on the land and shall be a continuing lien upon the property owned by the Member against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, as hereinafter provided, shall also be a personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of the Assessment. The assessments levied by the Association shall be used exclusively for the purposes of operation and maintenance of the Duggan Falls Water System, including without limiting the foregoing, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and the cost of labor, equipment, materials, services, management and supervision thereof.

Section 3. Maintenance Assessments. The Associations' Board of Directors shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and adequate for the continued operation of the Duggan Falls Water System and of administration of the Association. The Board shall determine the total amount required, including operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years. All Maintenance Assessments shall be subject to approval by the Members. An affirmative vote of not less than 51% of the membership is required for approval.

In addition to Maintenance Assessments, the Board of Directors shall, from time to time, levy special assessments to cover the capital costs necessary to improve or maintain the Duggan Falls Water System.

The total annual requirements and any supplemental requirements shall be allocated between, assessed to and paid by the Members as follows:

Each Member owning one Lot, shall pay a portion of said requirements, the numerator of which shall be one (1) and the denominator of which shall be equal to the number of Lots on The Properties subject to this Declaration. The sum due the Association from each individual Lot Owner shall constitute an assessment, and unpaid assessments shall constitute liens on the individual Lots, subject to foreclosure as hereinafter provided.

Section 4. Due Dates; Duties of the Board of Directors. All assessments shall be payable at such time as is proposed by the Board of Directors and approved by the Members. An affirmative vote of not less than 51% of the Membership is required for approval. The Board of Directors of the Association shall prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his mortgagee, the Board shall promptly furnish such Member or his mortgagee with a written statement of the unpaid charges due from such Member.

Section 5. Effect of Non-Payment of Assessment; Suspension of Service; The Personal Obligation of the Member; The Lien, Remedies of the Association. The right to water service is subject to the timely payment of all assessments established pursuant to this Article VII. During any period in which a Member shall be in default in the payment of any assessment levied by the Association, the Member's right to the use of the Duggan Falls Water System may be suspended by the Board of Directors until such assessment has been paid. Water service will be restored within twenty-four (24) hours of payment by a Member of all delinquent assessments together with a charge for disconnection and restoration of service to the Member's Lot(s), unless circumstances beyond the control of the Association preclude restoration of service within that time, in which event, water service shall be restored as soon as possible.

If an assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof, thereupon become a continuing lien on the Member's Lot which shall bind such property in the hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except:

a) Tax or assessment liens on the Lot by any governmental authority, including but not limited to State, County, Town and School District taxing agencies; and

b) All sums unpaid on any first mortgage of record encumbering the Lot.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the maximum rate permitted in Washington, and the Association may bring an action at law against the Member or former Member personally obligated to pay the same or to foreclose the lien against the property. There shall be added to the amount of such assessment all Court costs and attorneys' fees incurred by the Association in obtaining a judgment.

ARTICLE VI. USE OF WATER

The use of the water supplied by the Duggan Falls Water System shall be limited to domestic usage and may not be used off the lands described in Article II.

ARTICLE VII. GENERAL PROVISIONS

Section 1. Beneficiaries of Easements, Rights and Privileges. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of, and restricted solely to, the Association and its Members and are not intended to create nor shall they be construed as creating, any rights in or for the benefit of the general public.

Section 2. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns. Provided, however, that this Declaration may be amended by an instrument signed by not less than eighty per cent (80%) of the Membership. Any amendment must be properly recorded to be effective.

Section 3. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association, its real and personal property shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they are required to be devoted hereunder and as further set out in the Association's Articles of Incorporation and By-Laws. If acceptance is refused by all appropriate public agencies or utilities, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No disposition of Association properties shall be effective as to it under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to the Properties, unless made in accordance with the provisions of this Declaration or said subsequently recorded covenants and deeds.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member or Owner on records of the Association at the time of such mailing.

Section 5. Administration. The administration of the Association shall be in accordance with the provisions of the Association By-Laws which are made a part of this Declaration and attached hereto as Exhibit "B".

Section 6. Severability. If any provision of this declaration is declared invalid by any tribunal, the remaining provisions shall not be affected thereby.

EXECUTED by the parties hereto the date first above written.

DUGGAN FALLS WATER SYSTEM:

OWNERS:

BY Larry Worle

X J. Mary E. Roth
X Simon A. Roth

OREGON
STATE OF WASHINGTON)
MULTNOMAH) SS
County of Skamania)

On this 4th day of APRIL, 1988, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared LARRY WORLE, to me known to be the SECRETARY of DUGGAN FALLS WATER SYSTEM, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that HE IS authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

NOTARY WITNESS my hand and official seal hereto affixed the day and year first above written.

[Signature]
Notary Public in and for the
State of Washington, residing
at Hillsboro, OR

STATE OF WASHINGTON)
County of Clark) SS

On this day personally appeared before me Simon A. Roth, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that He signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

BOOK 109 PAGE 92

GIVEN under my hand and official seal this 8th day of
February, 1988.

Bernice Hansen
Notary Public in and for the
State of Washington, residing
at Vancouver, WA.

Unofficial
Copy

BOOK 109 PAGE 93

SCHEDULE A

OWNER: Simon A. & Mary Ellen Roth

LEGAL DESCRIPTION: Lot 7 Hideaway II Skamania County Washington

Unofficial
Copy