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BOOK 120 PAGE 616

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BY *Michael Smith*

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*P. Lowry*  
GARY M. OLSON

DECLARATIONS FOR OPERATION OF WATER SYSTEM

EFFECTIVE DATE:

The date upon which this Declaration is recorded with the Auditor of Skamania County, Washington

DECLARANT:

Michael R. Smith, a married person, but acting in reference to his separate property, or his assigns, hereinafter referred to as "Smith"

RECITALS:

A. Smith is the contract vendee of Lots 1, 2, 3, and 4, together with Lots 7, 8, 10, 11, 12, 13, and 15 of Edgewater Properties, according to the official plat thereof recorded in Book A of Plats at Page 119, Records of Skamania County, Washington, which lots are hereinafter referred to as the "Benefited Properties" or "Benefited Property" when the reference is to a single lot.

B. Smith has agreed to construct and provide a private water system for the use of the Benefited Properties, in accordance with the conditions and provisions hereof.

NOW, THEREFORE, IT IS AGREED:

1. Agreement to Provide Water System. Smith agrees to construct, provide, and maintain a private water system ("Water System") for the use of the Benefited Properties in accordance with the terms and conditions of this Declaration.

2. Location of Water Lines. In order to provide the said Water System, Smith shall construct water lines in the county road adjoining the Benefited Properties, to the extent that such construction is permitted by Skamania County, Washington. In the event that construction cannot be accomplished in the county roads, the owners of the Benefited Properties agree to provide an easement to Smith, or his assigns, over, under and across a ten-foot strip on that portion of the Benefited Properties which adjoins the public road providing access to each Benefited Property, for the purpose of constructing and maintaining the water lines which are required to provide the service contemplated by this Agreement.

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3. Further Description of Relative Responsibilities. The responsibility of Smith for the construction of the water system shall be satisfied by the provision of a water line to the edge of a Benefited Property. Smith or his assigns shall have no responsibility for the construction of lines extending from the main service line to the improvements on the Benefited Property; all such expenses shall be paid by the owner of the Benefited Property.

4. Description of Service. The water service to be provided by Smith shall be a reasonable quantity of water for use for residential purposes only, together with reasonable irrigation which may be required to maintain lawns and gardens related to such residential use. The water shall be the quality required by the Department of Health servicing Skamania County, Washington, and shall conform with the laws, rules, ordinances, regulations, and requirements of Skamania County and the State of Washington.

5. Provision for User Fee. Smith shall have the right to charge a user fee for the services and water provided in accordance with this Agreement. Said user fee shall initially be \$12.50 per month. Smith may make such reasonable adjustments in the user fee which may be required to provide a reasonable return to Smith, amortize the cost of the water system, and pay all costs required to provide the service. Such adjustments in the user fee shall be established in accordance with the provisions of the next-following paragraph.

Commencing one (1) year after the provision of initial service, Smith shall have the right to request an increase in the user fee, to the extent that Smith can establish a reasonable rationale for such increase. Thirty (30) days written notice shall be mailed to the record owner of each Benefited Property, at the address hereinafter provided, announcing Smith's intention to adjust the user fee, and providing a written rationale or explanation of the reasons for such adjustment. If the owners of a majority of the Benefited Properties shall file written objections with Smith to such adjusted user fee, the establishment of the fee shall be referred to a third party arbitrator for determination. The third party arbitrator shall be selected by agreement between Smith and a majority of the owners of Benefited Properties. If no agreement can be reached, the owners of the Benefited Properties shall select one person, Smith or his assigns shall select a second person, and the two persons so selected shall appoint a third. The three persons so designated shall either constitute themselves a board of arbitration, or designate a third-party arbitrator to review the request for adjustment in fees. The decision of the board of arbitration (or the single arbitrator) shall be binding and conclusive upon all parties.

The board of arbitration, or arbitrator, shall consider such matters which it deem appropriate. A decision shall be reached which establishes the user fee for the next succeeding twelve months. ~~For~~

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In addition, the board of arbitration, or arbitrator, shall provide a special assessment against the Benefited Properties equal to the cost of the arbitration proceedings. No attorneys fees shall be allowed to Smith, or to the owners of the Benefited Properties in determining the cost of arbitration. The decision reached through arbitration shall not, however, result in a monthly fee which is less than \$12.50.

6. Provision for Voting by Benefited Owners. Each lot among the Benefited Properties shall have one vote. The record title owner of such lot shall be the person entitled to cast such vote. If more than one person shall hold record title to a given lot, the vote for such lot shall be cast by a majority of such owners. If the owners of a given lot are unable to reach agreement upon such vote, and there shall not be majority cast in favor of any position, no vote shall accrue to such lot. A contract vendee shall be considered the record owner of a lot. If Smith should be the owner of a Benefited Property, no right to vote shall accrue to Smith or his assigns, by reason of such ownership.

7. Lien upon Benefited Properties. All user fees shall be due and payable on the first day of each and every month following the accrual thereof. In the event that any user fee is not paid when due, the Benefited Property shall be subject to a claim of lien by the provider of such water to secure payment of the unpaid sums owing thereon. Said lien shall be subject to foreclosure in the manner provided for mortgages and/or deeds of trust in the State of Washington. The amount owing for user fees shall be increased by the amount of attorneys fees, court costs, title searches, and related expenses incurred in enforcing the lien against the Benefited Properties.

8. Right of Assignment; Personal Liability of Smith. Michael Smith shall have the right to assign all benefits and liabilities under this Agreement to a corporation organized for the purpose of operating and maintaining said water system. Upon such assignment being made, the corporation-assignee shall assume all liability to the Benefited Properties under the terms of this Agreement, and the provision of such water; Smith shall have no further responsibility thereon, and shall be relieved of all personal liability for obligations provided in this Agreement.

9. Attorneys Fees. In the event that any party should be required to secure the services of an attorney to protect or enforce rights granted hereunder, and suit shall be commenced thereafter, the losing party in such litigation shall pay the reasonable attorneys fees of the prevailing party, together with costs of suit, and including costs and fees in appellate court proceedings.

10. Compliance with State and Local Laws and Regulations. Smith, and his assigns, shall at all times comply with all rules,

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regulations, and statutes of the State of Washington and/or Skamania County and applicable to the services described herein.

11. Release/Disclaimer. Smith makes no representations to any party concerning the quantity of water available at any given time. The parties recognize that the quantity of water may vary from time to time determined by the amount of use, the demand for water, the time of year, and other factors. Smith, (including all assignees) shall not be liable to any person for or on account of damage incurred by such person, and arising out of a failure of the water system either to provide such water, or to provide it in the quantity or quality which is needed or expected, provided that Smith shall have satisfied all requirements of the relevant state and county regulations, or ordinances, or statutes relating to maintenance and operation of such water system. No greater duty shall devolve upon Smith (including all assignees) than that which is mandated by such statute, regulation, or ordinance.

12. Limitation on Liability of Owners of Benefited Properties. The record owners of Benefited Properties shall be personally liable for the user fees provided in this Declaration. However, such owners, and the Benefited Properties, shall not be liable to any party for additional costs, assessments, or expenses connected with the provision, installation, or maintenance of such water system, other than that provided in this Agreement.

13. Right to Provide Rules and Regulations. From time to time, Smith, reserves the right to establish rules, regulations, and limitations on the use of water when such rules, regulations, and limitations are reasonably required to assure use of the water by all persons. The owners of the Benefited Properties shall at all times comply with such reasonable rules and regulations.

14. Time for Commencement of Charge. Unless otherwise specifically agreed between Smith and the owner of a Benefited Property, the liability for payment of the user fee shall commence at such time that the water is made available for use by a Benefited Property, regardless of whether or not such use is actually utilized.

15. Association. If Smith should request that an association be formed for the purpose of ownership, management, and maintenance of the water system, the owners of the Benefited Properties will form such association to undertake the responsibilities for the maintenance and operation of the water system. If such association should be so requested, the responsibilities for maintenance and operation of the water system shall cease 90 days after the provision of such written notice to the owners of the Benefited Properties, or at such earlier date that an association shall be formed for the benefit of assuming such responsibilities. Upon either of such event occurring, Smith (including all assignees) shall be relieved of all further liability under this Agreement.



ADDENDUM TO DECLARATION OF OPERATION OF A WATER SYSTEM

5a) In determining a user fee for the water system, should the arbitrator or board of arbitration establish a user fee less than the increased fee requested by Smith or his assigns, the cost of the arbitration proceedings shall be borne by Smith or his assigns. Should the arbitrator or board of arbitration establish a user fee equal to or greater than that proposed by Smith or his assigns, the board of arbitration or arbitrator shall provide a special assessment against the benefited properties equal to the cost of the arbitration proceedings.

18) The proper maintenance and operation of the water system is of vital importance to the benefited properties. Should Smith or his assigns fail to satisfy the terms of this agreement, and fail to remedy such failure in a prompt and reasonable fashion, the interested record owners of the benefited properties shall have the option of forming an association to assume ownership, management and maintenance of the water system. The responsibility for ownership, operation and maintenance of the water system by Smith or his assigns would thus cease 90 days after written notification of Smith or his assigns and all record owners of benefited properties, (or at such time as an association might be formed), of failure to comply with the terms of this water agreement. and after such an association is formed no further compensation shall be due Smith or his assigns. Should parties disagree as to compliance with the terms of this agreement, an arbitrator or board of arbitration shall be asked to settle the dispute in a similar manner as provided in part 5) of this agreement with the cost of the arbitration proceedings borne by the losing party.

19) Time of commencement of the user fee for lot 13 shall begin at such time as water use by lot 13 actually begins.

20) No "hook-up" or initiation fee shall be charged to the record owner(s) of lot 13.

21) Water service as described herein shall be made available to lot 13, with approval and permits from all relevant authorities( state and county), no later than 2/15/91.

22) This addendum amends the Declaration for Operation of a Water System as recorded on book(s) 116, pages 29, dated Sept. 20 1987 resp. in the records of Skamania County of the state of Washington.

Thereafter, all user fees shall be paid to the association in such amounts as association shall determine.

16. Notices. All notices provided in this Declaration shall be served at the following address:

With regard to Smith or his assignees:

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With regard to record owners:

At the post office box for each Benefited Property, or at such other address as shall be provided in writing to Smith.

17. Whole Agreement. This Agreement is the whole agreement providing for the matters described herein, and shall not be subject to modification or change except to the extent that such modification or change shall be represented by a written instrument, signed by Smith or his assignee, and by the owner of a Benefited Property.

DATED: ~~September~~ , 1988  
September 13, 1990

Michael R. Smith  
Michael R. Smith

STATE OF WASHINGTON )  
County of ~~Clark~~ Stevenson ) :ss

I certify that I know or have satisfactory evidence that Michael R. Smith signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: September 13, 1990

Rosalind M. Davis  
Notary Public in and for the State of  
Washington, residing at ~~Stevenson~~ Stevenson,  
My Appointment Expires: 6-2-92

