

WHEN RECORDED MAIL TO:

**Kevin Gabriel**

**852 Old State Road**

**Carson, WA 98610**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR USE OF GROUP B WATER SYSTEM**

This Declaration of Covenants, Conditions, Restrictions and Easements for Use of Group B Water System ("Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Kevin Gabriel ("Declarant").

*Riparia SP AF 2010176038 7-27-2010*

Declarant is the owner of the real property (the "Property") described in Exhibit A attached hereto and incorporated herein by this reference, and Declarant intends to divide the Property into three legal lots through the short plat process.

Declarant owns a well, together with the related casing, pump, pump house, piping, and all other related facilities, collectively known as the Riparia Water System (the "Water System"). The Water System is located on the Property and supplies water to an existing residence located on the Property, as shown in Exhibit B attached hereto [**attached final Short Plat Mylar**]. The purpose of this Declaration is to provide for the use, operation, ownership and maintenance of the Water System, in accordance with the laws of the State of Washington and Skamania County Ordinance 2007-03.

THEREFORE, Declarant declares that (a) the Property is made subject to this Declaration, (b) the land and improvements constructed and to be constructed thereon are hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration, and (c) the rights, obligation and liabilities stated herein or created hereby shall run with title to the Property and shall be binding on all persons having any right, title or interest in the Property or any part thereof.

1. **Service Options.** After division of the Property into three lots, each owner of one of the three lots located within the Property ("Owner"), will be entitled to receive water service from the Water System. Each Owner also shall have the option of connecting to the Skamania County PUD #1 water system ("Carson System") instead of connecting to the Water System, if such service is available. Declarant does not and cannot guarantee the availability of service from the Carson System. An Owner who first chooses to receive water service from the Carson System may later choose to connect to the Water System at any time, unless such connection would cause more than a total of five (5) lots to be connected to the Water System.

1.1 An Owner other than Declarant who chooses to receive service from the Water System shall provide written notice to Declarant prior to applying for a building permit to construct a residence to be served by the Water System. Any Owner other than Declarant who desires to connect a residence to the Water System shall first pay a connection fee of seven thousand five hundred dollars (\$7,500) to Declarant. Declarant shall use the connection fee to provide and install a one-inch meter, shut-off valve (gate valve or ball valve), and, if necessary, an extension of the water line to the property line of the lot to be served at such location as Declarant and the Owner may mutually approve. Declarant shall dispose of the balance of the connection fee, if any, in the manner provided in Section 9. The Owner shall bear all other costs of connecting the Owner's residence to the Water System, including the costs of installing a service line from the property line to the Owner's residence, a one-way check valve and any other facilities not provided by Declarant. In carrying out their respective obligations under this Section, Declarant and the Owner shall comply with the requirements of applicable laws and regulations, including Skamania County Ordinance 2007-03.

2. **Other Properties.** Declarant, in Declarant's sole and absolute discretion, shall have the right to allow surrounding property owners to connect to the Water System, but in no case may Declarant allow more than a total of five (5) service connections. Declarant may amend this Declaration to include additional properties by recording a written amendment in the official real property records of Skamania County, Washington. The owners of properties included by such an amendment shall have all of the rights, obligations and liabilities provided for in this Declaration.

3. **Rights of Use.** Each user of the Water System ("User") shall have an equal interest in and to the use of the Water System. Each User shall be entitled to receive a supply of water for one residential dwelling on each lot owned by the User and shall be furnished a reasonable supply of potable and healthful water for domestic purposes. The rights of use created by this Declaration shall be appurtenant to fee title to lots served by the Water System and shall run with the land, inuring to the benefit of each subsequent owner of fee title of such lots, regardless of whether the instrument of conveyance identifies these use rights as an appurtenance. The use rights created under this Declaration for the benefit of a User may not be assigned or transferred separate from a conveyance of the real property served by the Water System. To ensure that use of water from the Water System continues to qualify as an exempt group domestic use under RCW 90.44.050, each User shall be limited to the following maximum volume per day for domestic purposes, depending on the total number of Users:

<u>No. of Users</u>	<u>Maximum Use (in gallons per day)</u>
1	5,000
2	2,500
3	1,666
4	1,250
5	1,000

Upon issuance of a water right by the State of Washington Department of Ecology for the water uses contemplated in this Declaration, the Users shall no longer be subject to the above water use limitations, but may use water in accordance with the terms and conditions of the duly issued water right. Users shall not (1) extend or permit the extension of water lines for the purpose of supplying water from one property to another; (2) share, re-sell, or sub-meter water to any other person; (3) connect the Water System to any other water system; (4) use water for purposes other than authorized domestic and lawn and garden irrigation purposes; or (5) contaminate or permit any other person to contaminate the water in the Water System.

**4. Water System Ownership.** Declarant owns and shall retain sole ownership of the Water System, except for service lines installed by other Users for the purpose of connecting to the Water System as described in Section 1.1. Such service lines shall be owned by the respective Users. Declarant shall retain ownership of the shut-off valves and meters at all times and may remove a meter without notice upon discontinuance of service for any reason. Declarant shall own the Water System for as long as Declarant owns any lot served by the Water System; provided, that if Declarant desires to sell all property of Declarant that is served by the Water System, Declarant may transfer ownership of the Water System to one or more of the owners of the lots served by the Water System. In the event of a transfer of ownership, Declarant shall comply with any applicable laws and regulations.

**5. User Fees.** Each User who receives service from the Water System shall pay the following user fees to Declarant on a quarterly basis, on January 1, April 1, July 1 and October 1 of each year:

<u>6. Volume of Use (in cubic feet) Per Quarter / Fee</u>		
0 to 6,000	/	\$90.00 (minimum charge)
6,001 to 15,000	/	\$0.75 per 100 cubic feet
Over 15,000	/	\$1.50 per 100 cubic feet

Upon collection, Declarant shall dispose of the above user fees in the manner provided in Section 9.

**6.1** In addition to the above user fees, Declarant may charge a reasonable hourly compensation rate, as determined by Declarant, to Users of the Water System for time spent in carrying out Declarant's maintenance, repair and operation responsibilities under this Declaration (such as meter reading, water sampling, repair, billing, etc.). This shall be at least as much as the rate of the Carson Water System's "Water Plant Operator, After 1<sup>st</sup> 6 mos." (\$22.65 per hour as of Oct. 2008). This hourly compensation charge shall be deducted from the reserve account established under Section 9 or shall be billed to the Users as provided in Section 9.

**7. Maintenance and Operation.** Except as provided in Section 7.1, each User shall be responsible for and promptly maintain, repair, and, if necessary, replace all service lines and related Water System facilities that are located upon the User's lot. Each User, at the User's sole expense, shall install and maintain a one-way check valve on the User's side of the meter.

Declarant shall not be liable for the User's failure to install and maintain this equipment, or for damages due to fluctuations in water pressure. No User shall be obligated to maintain or repair any portion of the Water System that is located upon lots owned by other Users, except as otherwise provided in Section 7.1. Users are responsible for meter accessibility and shall keep their meters clear of brush, excessive landscaping and other obstructions. Declarant will notify a User if access to the User's meter is unsatisfactory and may charge a reasonable hourly fee under Section 7.1 for cleaning the meter box if the User does not clean it prior to the next meter reading.

7.1 Declarant shall be responsible for operating, maintaining, repairing and, if necessary, replacing that portion of the Water System consisting of all facilities (including without limitation, the well, pump, pump house, main distribution lines and related system components) that are owned by Declarant, as provided in Section 4. Declarant shall be responsible for compliance with (and the costs of complying with) applicable drinking water laws and regulations, including drinking water requirements administered by the State of Washington Department of Health and Skamania County. Declarant shall use fees and charges collected under this Declaration, including funds in the reserve account, to carry out Declarant's responsibilities under this Section.

8. **Easement for Maintenance and Operation.** Declarant reserves unto himself an easement as may reasonably be required for access to all lots located within the Property for the purposes of ascertaining the amount of water used, inspecting water lines and other Water System facilities, turning water on and off through the service connections, ensuring User compliance with the terms of this Declaration, and otherwise exercising and performing Declarant's rights and obligations under this Declaration. Declarant further reserves an easement for the area within a twenty (20) foot radius of the well for the purpose of installing and maintaining a future pump house.

9. **Reserve Account.** Declarant shall establish and maintain a reserve account at a banking institution. Declarant shall deposit excess connection fees paid under Section 1, if any, and all user fees paid under Section 5 into the reserve account until a \$2,000 balance has been established. Any fees collected in excess of the amount necessary to maintain the \$2,000 reserve account balance shall be used to reimburse Declarant for costs incurred by Declarant in constructing the Water System, up to a total reimbursement of \$21,000. Additional fees collected after Declarant has been completely reimbursed for the costs of construction, and which are not necessary to maintain the \$2,000 reserve account balance, shall be reimbursed to the Users in equal amounts on September 1 of each year. Each User shall be entitled to receive an annual statement from the reserve account banking institution regarding the status of the reserve account, and shall be entitled to an annual accounting of the total amount of fees used to reimburse Declarant for the costs of construction. The monetary funds in the reserve account shall be utilized for the following purposes: compliance with drinking water laws and regulations, including, but not limited to minimum water quality testing and reporting requirements for Group B water systems; and constructing, operating, maintaining, repairing or replacing any portion of the Water System for which Declarant is responsible under Section 7.1.

9.1 Whenever the costs of maintaining and operating the Water System (including hourly compensation charges allowed under Section 6.1) exceed the reserve



account balance, Declarant may seek reimbursement of such excess costs by presenting a bill to the other Users. Each User shall be responsible for paying an equal share of such costs, regardless of the User's actual water use. Any User who receives a bill under this section shall pay the bill within 30 days of receipt.

10. **Failure to Pay/Disconnection.** The failure to pay fees and charges duly imposed shall result in the automatic imposition of the following penalties:

10.1 Non-payment for thirty days after due. A \$30 late charge may be assessed as established from time to time by Declarant.

10.2 Non-payment for ninety days. Declarant shall mail a written notice to the User advising that service will be disconnected if all fees and charges are not brought current within thirty (30) days of the date of the notice.

10.3 Non-payment for 120 days. Water service shall be disconnected to the delinquent User and a \$50.00 disconnect fee shall be charged to the User. Declarant may file a lien against the property for the amount due, plus costs and fees, including a reconnect fee.

10.4 At least 12% and up to the maximum allowable interest will be charged on all balances due.

10.5 Declarant shall be entitled to recover past due sums, together with interest at the maximum allowable rate calculated from the date due until the date recovered, by any means available at law or in equity.

11. **Irrigation/Water Shortages.** The Users of the Water System as a group shall not have the right to use water from the Water System for lawn and garden irrigation purposes on more than a total of ½ acre of land, as provided in RCW 90.44.050. Each User shall have the right to use an equal share of the ½ acre total for irrigation, unless the State of Washington Department of Ecology issues a water right authorizing use of the Water System for additional irrigation. In the event the total water supply is insufficient to meet the needs of all Users, or in the event there is a shortage of water for any reason, Declarant may allocate the water among the Users on whatever basis is deemed equitable by Declarant, and may prescribe a schedule for water use; provided that if the total water supply is insufficient to meet all domestic and lawn and garden irrigation needs, Declarant must first satisfy all domestic needs before supplying any water for irrigation.

12. **Emergency Access.** Only Declarant and persons expressly authorized by Declarant will have access to the well pump house and wellhead; provided, that each User not in default in the payment of fees or charges shall have the right to act to correct an emergency situation and shall have access to the Water System in the absence of the Declarant. For emergency purposes, Declarant shall designate an emergency contact person, shall provide that person with a key to the pump house and shall provide each User a telephone number or other means of contacting that person. An emergency situation shall be defined as the failure of any common portion of the Water System to deliver water upon demand.

13. **Well Protection.** Declarant reserves to himself an easement to maintain control of the area within a 100-foot radius of the well (Sanitary Control Area) for the purpose of protecting the ground water source from existing and potential sources of contamination. No User may construct, store, dispose of, or apply the following sources of contamination within the Sanitary Control Area without the permission of the Declarant and the State of Washington Department of Health: septic tanks and drainfields; sewer lines; underground storage tanks; above-ground fuel storage tanks; roads; vehicles and/or vehicle parking activities; barns; maintenance shops for vehicle or motor repair activities; feed stations; domestic grazing animals; enclosures for maintaining fowl or animal manure; liquid or dry chemical storage; herbicides (other than routine weed control carefully applied in accordance with manufactures directions); insecticides; hazardous waste; and garbage of any kind or description.

14. **Quality of Service.** Declarant makes no representations or warranties regarding the quality or volume of water to be produced by the well or the fitness of the same for any purpose, and Declarant shall have no liability of any nature to other Users of the Water System with respect to the quality or quantity of water available.

15. **Fee Increases.** Declarant shall have sole and absolute discretion to increase any fee or charge provided for in this Declaration to an amount reasonably necessary to compensate Declarant for the actual costs of performing Declarant's obligations herein. Prior to increasing any fee or charge, Declarant shall provide at least 60 days written notice to each User and, upon request, shall provide written justification for the proposed increase.

16. **Termination of Service.** Declarant shall have sole and absolute discretion to permanently terminate water service through the Water System by providing at least one year's written notice to affected Users. Each User shall be responsible for locating and connecting to a new water source (and bearing any related costs) on or before the date of termination specified in Declarant's written notice of termination. In the event that the quality or quantity of water from the well becomes unsuitable for the uses contemplated in this Declaration as determined by a government agency with jurisdiction, Declarant shall promptly notify all Users and shall terminate service as and when required by applicable laws or regulations. In the event of such termination, each User will be responsible for locating and connecting to a new water source at the User's sole expense.

17. **Attorney Fees.** If an action is brought to enforce or construe this Declaration, the party prevailing in such action shall be entitled to recover from the other party all fees and expenses incurred at trial or on appeal, including attorney fees.

18. **Modification.** Except as provided elsewhere in this Declaration, no modification or amendment or attempted waiver of any provision of this Declaration shall be binding unless in writing and signed by all Users of the Water System.

## Exhibit A

### Legal Description of the Property:

A tract of land in Skamania County, Washington, Government Lot 5 of Section 6, Township 3 North, Range 8 East of the Willamette Meridian, more particularly described as follows:

Beginning at the Northwest corner of said Government Lot 5; thence East 1,300 feet, more or less; to the East line of said Lot 5; thence South 442.2 feet; thence West 1,300 feet, more or less, to the West line of said Lot 5; thence North 442.2 feet to the Northwest corner of said Lot 5 and the true point of beginning.

EXCEPT that portion on the West line of said Lot 5 for Right of Way for Old State Road as traveled March 2, 1978.

Executed on the day and year first above written.

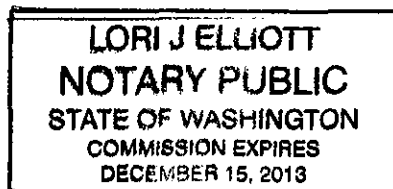
**DECLARANT:**

**DECLARANT:** Kevin Galvez

**KEVIN GABRIEL**

STATE OF WASHINGTON )  
 ) ss.  
County of Skamania )

This instrument was acknowledged before me on this 10 day of June, 2010, by Kevin Gabriel.



King of Eliza

**Notary Public for Washington**

My commission expires: Dec 15 2013