

**Instrument # 316078**  
VALLEY COUNTY, CASCADE, IDAHO  
2006-12-05 11:26:16 No. of Pages: 6  
Recorded for : GORDON BATES  
LELAND G. HEINRICH Fee: 18.00  
Ex-Officio Recorder Deputy *M. Carmichael*  
Index to: RESTRICTIVE COVENANT

Recording Requested By and  
When Recorded Return to:

Walt Wanner  
4225 S. Riva Ridge Way  
Boise, Idaho 83709

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR HAWKS BAY ESTATES**

This Amendment to the Declaration of Protective Covenants, Conditions, and Restrictions for Hawks Bay Estates ("Amendment") is made to that certain Declaration of Covenants, Conditions & Restrictions for Hawks Bay Estates, recorded Mar. 29, 2005, as Instrument No. 193886, Official Records of Valley County, Idaho ("Declaration"), effective the date signed below by W&S Investments, Inc., an Idaho corporation (the "Grantor"), as follows:

The Declaration is hereby amended to replace Article XI with the following:

**ARTICLE XI**  
**DOMESTIC WATER**

**11.1 Definition of Water System.** For purposes of this Article XI, "Water System" shall have the definition listed in Exhibit AA.

**11.2 Ownership and Management of Water System.** Consistent with Sections 6.5.2.5, 6.5.2.7, 7.6.39, and 8.1.2 of the Declaration, and Notwithstanding any other provision of the Declaration to the contrary, the ownership and management of the Water System shall be pursuant to the Water Systems Management Agreement attached to this Amendment as Exhibit "AA". Except as provided in Exhibit AA, Lot Owners shall have no right, title and/or interest in the Water System including any water and water rights, including groundwater and groundwater rights, ditch and ditch rights, and storage and storage rights owned by the Water System Owner.

**11.3 Water System Access.** Each Building Lot shall have access to the Water System for purposes of obtaining water for culinary, other ordinary domestic household use, fire protection and irrigation of individual Lots.

**11.4 Assessments.** Working with the Water System Manager, Grantor or Grantor's successors in ownership of the Water System ("Water System Owner") shall establish charges for Water System use, which charges may be adjusted from time to time and which may be assessed by the Water System Owner and collected by the Water System Manager pursuant to Exhibit AA. Any Lot Owner's or non-Owner's use of the Water System shall constitute an agreement to pay the charges for such use. At the initial transfer of Building Lots, Grantor may

collect user fees from such new Lot Owners, which fees shall cover the costs associated with the connection of laterals, meters or other plant exclusively for such Lot Owner's use. All such user fees shall be used to partially reimburse Grantor for the construction and development costs in connection with the Water System including, without limitation, administration.

Notwithstanding the foregoing, all Lots shall be metered to measure use of the Water System in connection with each Lot. Working with the Water System Manager, the Water System Owner may use such meters to establish a reasonable monthly maximum amount of water allowed for use in connection with each Lot. If any such meter indicates that a Lot Owner uses significantly more water, as reasonably compared to the amount of water used by other Lot Owners, the Water System Manager may read meters regularly and the Water System Owner may charge the Lot Owner a Limited Assessment, which Limited Assessment shall be proportionate to the amount of water used in excess of the reasonable maximum monthly amount. Such Limited Assessment shall be in addition to the portion of the Regular Assessment associated with the Water System. Additionally, if any dispute arises between Lot Owners, which dispute alleges unreasonable water use by another Lot Owner, working with the Water System Manager the Water System Owner shall use the water meters to determine the monthly water volume consumed by such Lot Owners and, if necessary, charge a Limited Assessment to any Lot Owner consuming significantly more water as reasonably compared to the amount of water used by other Lot Owners. Any Lot Owner's or non-Owner's use of the Water System shall constitute an agreement to pay the charges and/or Assessments for such use. Working with the Water System Manager, the Water System Owner may alternatively elect to charge each Lot Owner, at a rate established by the Water System Owner, for actual water usage as metered. Nothing in this section shall prevent the Water System Owner from denying or terminating water service to a Lot pursuant to section 10.11.2 herein, where water consumption for that Lot repeatedly and significantly exceeds per Lot consumption as reasonably compared to the amount of water used by other Lots.

The Water System Manager shall collect Regular Assessments, and may collect Limited Assessments, as set forth in this Section. Working with the Water System Manager, the amount of such Assessments shall be reviewed annually by the Water System Owner, and may be adjusted annually based on actual operation and maintenance expenses and projected future capital expenditures. Such Assessments shall include a reasonable reserve amount for future capital expenditures for facilities maintenance and replacement.

The Water System Manager shall establish a separate bank account and accounting system or system of accounts in connection with the Water System. All charges, Assessments and reserve funds collected and held by the Water System Manager relating to the Water System shall be deposited therein. Revenue in excess of operation and maintenance costs shall be held in reserve for future capital expenditures. If ownership of the Water System is transferred pursuant to the provisions of Section 9.14 of Exhibit AA, the Water System Manager shall transfer the bank account, and all funds deposited therein, to the succeeding Water System Owner or Manager as agreed to by the parties.

**11.5 Backflow Systems and Assemblies.** Each Lot shall be equipped with approved backflow prevention systems and assemblies. All backflow prevention assemblies installed on any Lot must be listed in the most recent edition of the University of California Foundation for Cross-Connection Control and Hydraulic Research. The backflow prevention system and assembly must be installed on the residential service line after the water meter and prior to adding connections to the residential service line. It shall be the responsibility of each Lot Owner, at such Lot Owner's sole cost and expense, to promptly replace any backflow prevention system and assembly existing on any Lot that is no longer listed on the foregoing list of approved backflow prevention systems and assemblies. Each Lot Owner, at such Lot Owner's sole cost and expense, shall ensure the correct operation of the backflow prevention system and assembly on such Lot and shall test the functioning of the backflow prevention system and assembly at least annually and report the result of such testing to the Water System Owner. Testing must be performed by a backflow assembly tester licensed by the State of Idaho.

**11.6 Water Quality.** The source water quality associated with the Water System meets all state and federal primary drinking water standards. It is hereby noted that the water has been classified as moderately aggressive and may cause corrosion of metallic plumbing fixtures and fittings. As with all other potential contaminants, the Grantor is responsible for the testing and possible treatment, but the timing is different for lead/copper testing. While source testing can indicate if corrosion is likely to be a problem, final testing can only be completed in private homes after the public drinking water system and house plumbing have stabilized after one year of use. Nevertheless, the Grantor is responsible for water quality testing at the appropriate time, and then providing treatment if required by state rules. Test results must be submitted to the Idaho Department of Environmental Quality within fifteen (15) months after the fifth home is occupied. Five (5) homes must be tested if the system will eventually serve less than one hundred (100) homes. Ten (10) homes must be tested if the system will eventually serve one hundred (100) to five hundred (500) homes. The Water System Owner, or his representative, shall have the right, upon reasonable notice to the Lot Owner, to enter the Lot Owner's home for the purpose of collecting a water sample from a tap within the home.

It is hereby noted that iron and manganese concentrations in the water are above aesthetic standards. Iron and manganese may cause staining of fixtures and basins if treatment is not provided. The Water System Owner, or his representative, is expected to provide chemical treatment to minimize aesthetic effects due to iron and manganese.

**11.7 Easement for Maintenance.** Pursuant to the terms and conditions of Exhibit AA, the Water System Owner and the Water System Manager shall have a permanent easement to go upon the Building Lots and/or Common Area to operate and perform maintenance in connection with the Water System.

**11.8 Access to Water System Facilities.** Access to Water System wells, pump houses, and other facilities shall be restricted to the Water System Owner, the Water System Manager and their authorized representatives and contractors. Such facilities shall be excluded from any Common Area access rights held by Lot Owners.

11.9 **Separate Water Supply.** No separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be constructed on any Building Lot unless such system is approved by all government authorities having jurisdiction, and any such system shall be designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Water System Owner upon advice from the Water System Manager. No Lot Owner may disconnect from the Water System without prior, written approval by the Water System Owner; provided, however, even if a Lot Owner receives permission to disconnect from the Water System, such Lot Owner shall remain responsible for a proportionate share of any and all charges and assessments for the Water System as if such Lot Owner was connected to the Water System.

11.10 **Protection of Water Supply.** Each Lot Owner shall take reasonable measures to protect any and all wellheads serving the Water System, including, without limitation:

11.10.1 No Parking or Chemical Storage. No parking of equipment or vehicles, storage of pesticides, herbicides, fertilizers, petroleum products or other toxic or hazardous materials shall be permitted within a fifty (50) foot radius of the wellhead;

11.10.2 No Petroleum Products. Petroleum products and other chemicals shall not be used on roads within fifty (50) feet of the wellhead;

11.10.3 No Standing Water. No standing water or storm water runoff shall be permitted within a fifty (50) foot radius of the wellhead; and

11.10.4 Compliance of Water Facilities. Design and construction of all water facilities shall be in compliance with all Idaho Department of Environmental Quality and Idaho Department of Water Resources standards established to minimize the potential for groundwater contamination including IDAPA 37.03.09 – “Well Construction Standards,” and IDAPA 58.01-08-550 – “Design Standards for Public Water Systems.”

11.11 **Termination of Service.** Upon reasonable notice, the Water System Owner may deny or terminate water service to a Lot for one of the following reasons:

11.11.1 The Lot Owner denies or willfully prevents the Water System Owner or the Water System Manager from accessing the Water System.

11.11.2 Water consumption for that Lot repeatedly and significantly exceeds per Lot consumption as reasonably compared to the amount of water used by other Lots.

11.11.3 The Lot Owner repeatedly violates the policies and procedures concerning water use.

11.11.4 The Lot Owner fails to comply with the cross connection control program.

11.11.5 The Lot Owner fails to timely repair leaks for which the Lot Owner is responsible.

11.11.6 Such action is necessary to prevent a violation of local, state or federal health codes.

**11.12 Responsibilities for Water System Repair & Maintenance.** The Water System Owner is responsible for repair and maintenance (including repair of leaks, service connections and meters) only from the corporation stop connection at the water main to the water meter. The Lot Owner is responsible for maintenance and repair of the Water System from the water meter to the point of use.


**11.13 Financial Records & Audits.** The Water System Owner may arrange periodic third party financial audits of the Water System financial records.

**11.14 Liability Insurance.** The Water System Owner shall be responsible for ensuring that liability insurance is obtained and maintained for the Water System.

Except as amended or modified hereby, the Declaration remain in full force and effect.

IN WITNESS WHEREOF, Grantor has executed this **Amendment to the Declaration of Protective Covenants, Conditions, and Restrictions for Hawks Bay Estates** this 4<sup>th</sup> day of October, 2006.

W & S Investments, Inc.:

By:   
Walt Wanner, Director

STATE OF Idaho )  
County of Ada ) ss.

On this 4th day of October, 2006, before me, Walt Wanner, a Notary Public in and for said State, personally appeared Walt Wanner, known or identified to me to be one of the directors of the Idaho corporation of W & S Investments, Inc., who subscribed said company name to the foregoing instrument, and acknowledged to me that Walt Wanner executed the same in said company name.

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

Pamela McEwan

Notary Public for SAP Water Engineering  
Residing at Boise ID  
My commission expires 3/30/2011

