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LINDA DALEY LAPLATA CNTY COLORADO

DECLARATION
OF
FLORIDA RIVER ESTATES HOMEOWNERS' ASSOCIATION, INC.
REGARDING WATER REGULATIONS

Return to:
FLORIDA RIVER ESTATES
P. O. BOX 456
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**DECLARATION
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REGARDING WATER REGULATIONS**

**SECTION I
GENERAL**

1.1 Purpose.

The purpose of these Regulations is to ensure a uniform and equitable fee structure and set of responsibilities for all recipients of water service from the Florida River Estates Homeowners' Association, Inc. (FREHOA). These Regulations also set forth the terms upon which services will be provided by FREHOA. This ensures that the customer agrees to the terms contained herein as a pre-condition to continued water service.

1.2 Scope.

These Regulations govern the contractual relation between the FREHOA and its customers, including the FREHOA's services and fee structure, as well as the duties and liabilities of all customers.

1.3 Amendments.

These Regulations can be amended only by the provisions stated in Section 16 of the By-laws of the FREHOA.

1.4 Variances.

While uniformity is one of its goals, FREHOA recognizes that it cannot anticipate all factual situations that may occur. Accordingly, the Board of Directors (Board) of the FREHOA reserves the right to grant reasonable variances to these Regulations, when in its judgment the variance would be in the interest of fairness to the customer and enhance the interest of the FREHOA, in light of the attendant circumstances.

The Board has the sole authority to waive, suspend or modify these rules. Any waiver, suspension, modification or variance must be in writing, signed by the Board. Any such waiver is not an amendment of these regulations.

An affirmative vote by no less than four (4) members of the Board is required for the passage of a variance.

SECTION II DEFINITIONS

- 2.1 "Applicant" means any member who requests water from the FREHOA.
- 2.2 "Board" means the Board of Directors of the FREHOA.
- 2.3 "Customer" means any property owner within FRE.
- 2.4 "Distribution line" means the pipeline extending from the water main to the water meter.
- 2.5 "Florida River Estates (FRE)" means all the property included in the area of the Florida River Estates Resubdivision, according to the plat thereof recorded on February 5, 1965 at Reception No. 332288; the Florida River Estates Second Subdivision, according to the plat thereof recorded on December 15, 1967 at Reception No. 348616 and Project 82-60, according to the plat thereof recorded April 28, 1982 at Reception No. 468861.
- 2.6 "FREHOA" means the Florida River Estates Homeowners' Association, Inc.
- 2.7 "Meter Appliance Fee" means a fee charged by the FREHOA for the physical metering apparatus utilized and installed in connection with a customer's water service.
- 2.8 "Person" means an individual, firm, company, partnership, corporation or any other entity, whether public or private.
- 2.9 "Capital Account Fee" means a monthly fee charged to all members of the FREHOA, which is used by the FREHOA primarily to retire debt associated with the purchase of the FREHOA's assets. This fee is charged until the Service Fee is initiated.
- 2.10 "Service Fee" means the regular monthly charge made by the FREHOA to its customer after water service is initiated. The Service Fee includes within it the amount previously charged to the member as the Capital Account Fee.

2.11 "Service Line" means the pipeline extending from the water meter to the customer's building or point of use.

2.12 "Tap or Connection" means the physical connecting of the service line from the customer's building or point of use to the distribution line.

2.13 "Tap Fee" means the payment to the FREHOA of a fee for the privilege of connecting a particular use to the water system. Physical tapping is not a criterion for the obligation of paying a Tap Fee.

2.14 "Transfer Fee" means a charge to a buyer in connection with a change of service.

2.15 "Water Consumption Charge" means the fee, in addition to the Service Fee, billed monthly (per each 1,000 gallons or part thereof) by the FREHOA for actual water consumption as metered.

2.16 "Water Main" means the principal artery of the water system to which the distribution line may be connected.

2.17 "Water System" means all water mains, distribution lines, curb valves, water meters, fire hydrants, storage facilities, pumps, Lake Boisclair (formerly Lake Susan), Lake Carol and any other water facilities owned and operated by the FREHOA.

SECTION III RESPONSIBILITIES OF CUSTOMER

3.1 Enter and Inspect.

Applicants and customers agree that duly authorized agents or employees of the FREHOA, bearing proper credentials and identification, shall be permitted to enter on their property for the purpose of inspection, observation, measurement, sampling and testing, or for any other necessary and authorized purpose, in accordance with the provisions of these Regulations.

3.2 Installation and Maintenance of Service Line.

The applicant is responsible for the installation of a service line meeting FREHOA standards (See Section VII, below). The applicant must have the pit dug for the meter and have his service line viewable for inspection. Each customer is responsible

for maintaining the entire length of his service line. The customer shall repair promptly all leaks or breaks in the service line. If either the FREHOA or customer knows of a break in a service or distribution line, it shall notify the other. The FREHOA has the right, but not the obligation, to cut off the water supply to any defective service line.

3.3 Change of Ownership.

Customers are required to notify the FREHOA in writing upon change of ownership of their respective properties.

3.4 Discontinuance of Water Service.

Any customer wishing to discontinue water service shall notify the FREHOA in writing ten (10) days prior to the date of discontinuance. Unless the FREHOA receives this notification, the customer remains liable for the cost of FREHOA water service (*i.e.*, Service Fee and Water Consumption Charge). *See also*, Section XI below. If the FREHOA receives such notification, the customer's monthly charge will revert to a Capital Account Fee.

3.5 Damage.

The customer shall be strictly liable for any and all damage to meters, curb stops, vaults or other FREHOA facilities not caused by ordinary wear and tear.

3.6 Stop Valve.

Customers agree that their respective properties are to be equipped with a stop valve. FREHOA is not responsible for problems or damages resulting from the failure of any customer to so equip his property served by the FREHOA.

3.7 Water Pressure.

The FREHOA is not liable for damage to plumbing, other facilities or other pecuniary interest of the customer caused by excess or inadequate water pressure, stoppage of water supply, or loss of water pressure. It is, therefore, suggested that all customers install pressure reducing valves and/or airvac valves.

Each customer having boilers and/or other appliances on his premises dependent on pressure or water in pipes or a continuous supply of water shall provide, at his own expense, suitable safety or augmentation devices to protect himself and his

property against damages from stoppage of water supply, loss of or inadequate pressure, or excess pressure.

3.8 Compliance.

By accepting continued water service from the FREHOA, customer agrees to comply with these regulations, as amended from time to time by the Board.

SECTION IV UNAUTHORIZED USE OF THE WATER SYSTEM

4.1 Unauthorized Connection or Tampering With the System.

4.1.1. No person shall uncover, use, alter, disturb, make any connection with or make any opening into, any FREHOA water main, distribution line or appurtenance thereto, without first obtaining a written permit from the FREHOA.

4.1.2. No person shall break, damage, destroy, uncover, deface or tamper with any portion of the FREHOA's water system.

4.2 Unauthorized Use of Service Line.

The customer shall not connect his service line to any water source, including wells, other than FREHOA facilities. Upon receiving notification of an unauthorized connection, the FREHOA shall immediately discontinue the customer's water service. If the customer wishes to receive water service after the cessation of the unauthorized connection, he must reapply as a new customer following the procedures in SECTION X.

4.3 Use of a Fire Hydrant.

The use of any fire hydrant owned by the FREHOA for purposes other than fighting fire requires a written permit from the FREHOA, signed by the Board. Among other items which may be required by the Board, the permit will include the ownership, make, license number and water load capacity and maximum permissible flow rate of any vehicles which will carry hydrant water, the duration of the permit, and the location of the construction or other activity for which the water will be used. A copy of the permit must be kept in any permitted vehicle at all times during the length of the permit.

**SECTION V
VIOLATIONS OF THE REGULATIONS**

5.1 Any person violating any of the provisions of these Regulations shall be liable to the board for any remedial expense (including, but not limited to, the cost of FREHOA's staff's time) and any and all loss or damage (compensatory, consequential or incidental) caused by reason of the violation.

5.2 The customer shall be responsible for any court expenses and reasonable legal fees incurred by the FREHOA in enforcing the terms and conditions of these Regulations.

5.3 FREHOA reserves, and customer acknowledges, the right of FREHOA, in the sole discretion of its Board, to deny water service to anyone who has violated any of these Regulations.

5.4 Customer shall be liable for any violation of these Regulations made by his family, lessees, licensees, or invitees.

**SECTION VI
WATER TAPS AND TAP FEES**

6.1 Tap Fees.

6.1.1 The customer shall pay one Tap Fee and one Meter Appliance Fee for each lot owned.

6.1.2 A customer of the FREHOA, where applicable, shall pay a Capital Account Fee for each lot owned.

6.2 Taps.

6.2.1 The applicant is responsible for the payment of all charges related to the installation of one water tap/connection for each lot owned by the applicant. The applicant must both (i) contact the FREHOA's water operator and (ii) have all fees paid (e.g., Tap Fee(s), Meter Appliance Fee(s) and delinquent Capital Account Fee(s), if any) at least seven days prior to the date by which water service is desired.

6.2.2 Each tap/connection to the FREHOA's distribution lines shall be metered.

6.2.3 Water lines from any tap shall not be carried across lot lines for use outside the lot without express approval of the Board and the affected property owners.

6.2.4 Taps shall serve only the lot where the contract for the tap was originally made, and shall not be transferred to any other lot.

6.2.6 If a customer who owns two contiguous properties desires to permanently withdraw one property from water service eligibility, the customer may agree in a writing approved by the Board and recorded with the La Plata County Clerk and Recorder's Office, to waive, disclaim and quitclaim his right, if any, to water service for one of the properties. Upon execution and recording of such a writing, said property shall no longer be accountable for any fees to the FREHOA.

SECTION VII WATER LINES

7.1 Distribution Lines.

Distribution lines shall be installed by the FREHOA at its cost in accordance with its standards. All distribution lines and related equipment are the property of the FREHOA.

7.2 Service Lines.

The customer shall install, maintain and own his own service line. The service line shall meet FREHOA's standards. In installing the service line, the customer shall comply with all local, state and federal health laws, and applicable plumbing and other codes. Upon receiving notification from the proper authority of any violation of these laws and codes, the FREHOA shall notify the customer. The customer shall have ten (10) days following receipt of notice from the FREHOA to bring his service line into compliance with the laws and codes. If the customer does not comply within this period, the FREHOA may discontinue the customer's water service.

The FREHOA reserves the right to inspect service lines at any reasonable time and to require corrections where necessary. The FREHOA shall, however, have no responsibility for the inspection of any service line.

SECTION VIII WATER METERS

8.1 The FREHOA has the right to test, repair, replace or remove any water meter.

8.2 The customer must notify the FREHOA in writing, if he becomes aware that his water meter is operating defectively. If any meter fails to register in any period, the customer shall be charged for his average consumption during the two most recent and comparable periods during which the meter was deemed, by the FREHOA, to have been in working order.

8.3 If a customer complains in writing that his water meter is inaccurate, a new meter will be installed and the old one removed and delivered to a testing service for testing. If the meter is determined to be accurate within manufacturing standards, the customer will be liable for all costs incurred by the FREHOA in removing, transmitting and replacing said meter.

SECTION IX FIRE HYDRANTS

9.1 Hydrant water service for fighting fires is unmetered. Hydrant water used pursuant to Paragraph 4.3 shall be billed according to the FREHOA's water rate schedule, as amended from time to time.

9.2 Hydrants shall not be used for any purpose other than fighting fires without a written permit from the FREHOA, signed by the Board, as provided in Section 4.3 above.

9.3 The FREHOA shall not be liable for any water or other damage or injury resulting from the fighting of fires, nor is the FREHOA liable for any damage or injury resulting from the unavailability of water nor access to, or operation of, the hydrant.

SECTION X APPLICATION FOR WATER SERVICE

10.1 Denial of Service.

The FREHOA reserves the right, and customer acknowledges, FREHOA's right, to deny water service when, in the opinion of the Board, the service would create

a substantial threat to the continued operation of the FREHOA. Denial may also be based upon an unresolved obligation between the FREHOA and the applicant or upon a violation of these regulations.

10.2 Service Within FRE.

Any property owner within FRE desiring FREHOA water service may apply for water service.

At the time of executing the application, the property owner shall pay the required Tap Fee(s) and Meter Appliance Fee(s). See SECTION VI. The customer may be required to pay any Capital Account Fee which is in arrears.

Upon request of the FREHOA, the customer shall furnish satisfactory evidence of inclusion within FRE. Satisfactory evidence includes a tax receipt, or certification in lieu thereof, received from, and signed by, the La Plata County Treasurer.

The customer grants to the FREHOA an easement, as reasonably necessary, for the construction or repair of any water line, water meter, and other equipment.

SECTION XI DISCONTINUANCE OF WATER SERVICE

11.1 Voluntary Discontinuance of Water Service.

Customers may request a temporary discontinuance of water service. The FREHOA will charge a reconnect fee as determined by the Board from time to time for reconnection of the water service. Temporary discontinuance of water service does not relieve customers from Capital Account Fees where applicable.

11.2 Discontinuance of Water Service Due to Delinquency in Payment.

The FREHOA shall give ten (10) days' notice of intention to discontinue water service because of a delinquency in payment. This notice shall be delivered by hand to the property serviced or sent by certified mail, addressed to the last known address of the customer. If neither the owner nor the occupant of the property can be located for notice, the FREHOA shall attach the notice to the front door of the property. The FREHOA reconnect fee shall be charged after a discontinuance of water service because of a delinquency in payment. The cost of preparing and certifying the delinquent notice shall be charged to the delinquent customer.

**SECTION XII
WATER SERVICE RATES, FEES AND BILLING PROCEDURES**

12.1 Tap Fee.

The FREHOA's Tap Fee shall be determined by the Board from time to time and does not include the cost of materials (covered by the Meter Appliance Fee).

12.2 Water Rate.

All FREHOA water sales (except fire fighting flows through FREHOA fire hydrants and fire sprinklers) shall be through water meters. The Water Consumption Charge and Service Fee schedule shall be determined by the Board from time to time.

12.2.1 Owners of active, connected taps are responsible for paying the cost of the metered amount of water via the Water Consumption Charge and Service Fee.

12.2.2 FREHOA meters shall be read every month except for periods of snow cover. The customer's average water usage for most recent and comparable period shall be substituted for actual water usage during this period. Under or over billing will be corrected on the bill representing the first month the meter is read after this period.

12.2.3 Water bills are due and payable within thirty (30) days after the billing date. A late fee of ten percent (10%) of the current month's bill will be added, if not paid within thirty (30) days. Thereafter, one percent (1%) interest per month will be added to the customer's bill for the unpaid overdue account.

12.2.4 Where the customer believes his water bill is in error, the customer must file, in writing, a notice to the FREHOA of the presumed error, and request a clarification from the Manager. Upon review by the Manager, and resubmittal and/or revision of the statement, payment shall be due no later than ten (10) days from the postmarked date on the resubmitted statement. Further review may be conducted pursuant to SECTION XIV.

12.2.5 The FREHOA may terminate water service on accounts delinquent over ninety (90) days by giving notice to the customer, pursuant to Section 11.2. The overdue water bill plus late fees and interest and the reconnect fee must be paid before water service is reinstated. The customer shall be notified by mail at the last address left with the FREHOA that the account is delinquent over sixty (60) days.

12.2.6 All costs of collection, including attorney's fees, shall be added to delinquent accounts.

12.3 Reconnect Fee

If water service is discontinued, the current FREHOA reconnect fee will be charged.

12.4 Meter Appliance Fee.

The FREHOA's Meter Appliance Fee shall be determined from time to time by the Board.

12.5 Capital Account Fee.

The FREHOA's Capital Account Fee shall be determined from time to time by the Board.

12.6 Charges as Lien.

Until paid, all FREHOA fees, rates, interest, penalties or charges of any kind constitute a perpetual lien on and against the property served to the full extent provided by C.R.S. § 38-33.3-316, or any other laws of Colorado now effective or hereinafter legislated. The lien may be foreclosed in the manner provided by the laws of Colorado.

12.7 Liability for Payment.

The FREHOA assumes no responsibility for any agreement between landlord and tenant regardless of notification of such agreement to the FREHOA. The FREHOA holds the customer liable for all water service charges.

**SECTION XIII
CAPITAL ACCOUNT**

13.1 Fee Liability.

All property owners in FRE are liable for a Capital Account Fee as determined by the Board from time to time. This Capital Account Fee is owed regardless of whether or not water service by the FREHOA is currently being provided to the

property. The Capital Account Fee is separate and distinct from, and does not include Tap Fees, Meter Appliance Fees, Service Fees or any other customer costs associated with establishing water service to the subject lot.

13.2 Fee Assessment Basis.

This fee is assessed on a per-lot basis. Owners of multiple lots are not exempt from payment of said fee for each lot owned, even if they are currently receiving water service on a lot.

13.3 Denial of Water Service Due to Nonpayment of Capital Account Fee.

No water service will be supplied by the FREHOA to any lot if the Capital Account Fee payments are not current.

Capital Account Fees are due and payable according to the provisions of Section 12.2, above.

SECTION XIV ADMINISTRATIVE REMEDY

The customer has thirty (30) days following FREHOA action within which to protest in writing to the Board concerning a specific Board action. The FREHOA shall review the protest at its next Board meeting. The administrative procedure is a necessary precondition to court action. The customer's failure to follow this administrative procedure shall be deemed a waiver of the customer's administrative remedy and the customer's right to court remedies.

SECTION XV RESTRICTION OF CUSTOMER WATER USE

Whenever there is a shortage of water, whether caused by limitation of FREHOA facilities, fire or other emergency, or when, in the opinion of the Board, an emergency exists, the Board has the power to regulate and curtail water usage.

**SECTION XVI
MISCELLANEOUS**

16.1. Waivers.

No consent or waiver, express or implied, by either FREHOA or customers, to or of any breach or default by the other in the performance by the other of its obligations hereunder, shall be deemed or construed to be a consent or waiver to, or of, any other breach or default in the performance by such other party hereunder. Failure on the part of either party to complain of any act or failure to act of any other party, or to declare any other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

16.2. Attorney's Fees.

Should any litigation be commenced between FREHOA and customers regarding these Regulations, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in such litigation, including costs and out-of-pocket expenses, which shall be determined by the court in such litigation or in a separate action brought for that purpose.

16.3. Governing Law.

These regulations and the agreements made in connection therewith are made in and shall be governed and interpreted in accordance with the laws of the State of Colorado, and venue shall be proper in the County of La Plata, State of Colorado.

16.4. Binding Effect.

This agreement shall be binding upon and inure to the benefit of the respective heirs, successors, assigns and personal representatives of the FREHOA and its customers.

16.5. Integration.

These Regulations represent the entire agreement between the FREHOA and its customers. All prior discussions have been merged into these Regulations and there are no understandings, representations or agreements, oral or written, express or implied, other than those set forth herein.

Dugan & Associates, Attorneys at Law, 1015-1/2 Main Avenue, Durango, Colorado 81301

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16.6. Invalid Provisions.

In the event any one or more of the provisions contained in these Regulations shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of these Regulations, but these Regulations shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and the same shall be enforceable to the fullest extent permitted by law.

16.7 Gender and Grammar.

The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

16.8 Titles and Captions.

The section headings are inserted only for convenient reference, and do not define, limit or prescribe the scope of these Regulations.

DATED this 19 day of MAY, 1973.

FLORIDA RIVER ESTATES HOMEOWNERS'
ASSOCIATION, INC.

By *R. W. J. [Signature]*
President

A T T E S T:

[Signature]
Secretary

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