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2004-198

STATE OF IDAHO  
COUNTY OF KOOTENAI  
AT THE REQUEST OF \_\_\_\_\_  
**Kootenai County Title Co.**

2004 AUG 18 P 3:13

DANIEL J. ENGLISH *Eno*

DEPUTY  
FEES 18<sup>00</sup>

DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS AND GRANT OF EASEMENT  
FOR  
LOTS 6, 7, 8, 9, 10, 11, 12, 13 and 14, BLOCK 3, ROSENBERGER 1ST ADDITION  
LOCATED IN  
HAYDEN, IDAHO

THIS DECLARATION is made on this 18 day of August, 2004 by the undersigned owner of the subject property, (hereinafter referred to as "Grantor"), to establish certain covenants, conditions, restrictions and easements upon Lots 6, 7, 8, 9, 10, 11, 12, 13 and 14, Block 3 of Rosenberg 1st Addition, a subdivision located in Hayden, Kootenai County, Idaho, as follows:

A. Grantor is the Developer of a certain subdivision located in Hayden, Kootenai County, Idaho, which has been recorded in the City of Hayden and is commonly known as Rosenberg Subdivision according to plats and records of Kootenai County, Idaho, which property is legally described as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

B. Grantor desires to create a Scenic View Easement through and across the Eastern portion of Lots 6, 7, 8, 9, 10, 11, 12, 13 and 14, Block 3, Rosenberg 1st Addition, for the benefit of all of the lot owners of that certain subdivision known as Rosenberg Subdivision as hereinabove set forth.

C. The portion of said lots described in paragraph B above which shall be subject to the Scenic View Easement is delineated by the crosshatched portion designated on each lot on Exhibit "B" attached hereto and incorporated herein by reference. All references to said Scenic View Easement are to the crosshatched portion of each lot as set forth on Exhibit "B" and are hereinafter referred to as the "Property".

D. Grantor desires to make certain that unless amended or modified as set forth hereafter, the Scenic View Easement established hereby shall remain in perpetuity for the benefit of all of the lot owners of Rosenberg Subdivision, including each of the owners of the lots subject to the Scenic View Easement.

E. Grantor desires to grant to Rocking R Homeowners Association, Inc. an Easement for the limited and express purpose of maintaining the character of the Scenic View Easement established hereby and for no other purpose and without any unreasonable interference upon the private property rights of each of the lot owners affected hereby.

**ARTICLE I****RESTRICTIONS**

Section 1.01 No buildings, walls or other structures shall be commenced, erected or maintained upon the Property. No bulldozing or excavation or any action that changes the grade shall be allowed upon the Property. No dumping of any kind shall be allowed upon the Property.

Section 1.02 Tree cutting and/or removal shall not be allowed with the exception of the cutting and removal of dead or diseased trees and removal of brush for the maintenance and health of the trees and forest currently located upon the Property.

Section 1.03 An Easement is granted herein to the Rocking R Homeowners Association, Inc. for the maintenance of the Property, including the cutting and removal of dead, dying or diseased trees and brush.

Section 1.04 Unapproved Construction or Excavation; Remedies. If any structure shall be erected, placed or maintained upon the Property, or any excavation performed in violation of these Covenants, such erection, excavation, maintenance or use shall be deemed to have been undertaken in violation of this Article. Upon written notice from the Rocking R Homeowners Association, Inc. Board of Directors or its designated agent, any such structure so erected, placed or maintained upon the Property in violation hereof shall be removed and any such use shall be terminated, to extinguish such violation. If within fifteen (15) days after the notice of such violation the owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, Rocking R Homeowners Association, Inc. shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation. The cost thereof shall be a binding, personal obligation of such owner as well as a lien upon the Lot in question. The lien provided in this Section shall not be valid as against a bonafide purchaser (or bonafide Mortgagee) of the Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Kootenai County, Idaho prior to the recordation among the land records of Kootenai County of the deed or Mortgage conveying the Lot in question to such purchaser or subjecting the same to such Mortgage.

**ARTICLE II****MAINTENANCE AND REPAIR OBLIGATIONS AND GRANT OF LIMITED EASEMENT  
FOR PURPOSE OF MAINTENANCE**

It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration to maintain areas subject to his control in a neat, sanitary and attractive condition. In addition; however, Grantor hereby grants to the Rocking R Homeowners Association, Inc. an Easement for the express and limited purpose of maintaining the Scenic View Easement, which Easement shall be through over and across each of said lots which are subject to this Declaration of Covenants, Restrictions and Grant of Easement set forth on Exhibit "B". Said Easement shall be

limited to the right of the Rocking R Homeowners Association, Inc., at its own expense, to remove any dead or dying timber, and to generally provide for the maintenance and health of the standing timber. The Rocking R Homeowners Association, Inc. shall be entitled, at all reasonable times, to enter upon each lot for the express and limited purpose of removing dead or dying timber and to provide for the health of the forest. Except under emergency conditions, the Rocking R Homeowners Association, Inc. will provide at least seventy-two (72) hours written notice prior to entering upon said lot for the purposes set forth by this Easement.

ARTICLE III

OWNER'S PROPERTY RIGHTS

Nothing set forth herein shall, in any way, impair the Owner's rights to exclusive use of each of their respective lots, subject only to the limited Easement granted hereby for the express and sole purposes described.

ARTICLE IV

GENERAL PROVISIONS

Section 4.01 Interpretations. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a Scenic View Easement, and for the maintenance of the Property as set forth herein.

Section 4.02 Headings. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction; the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter shall include the masculine, feminine and neuter.

Section 4.03 Amendments. This Declaration may be amended only by the affirmative vote or written consent of not less than seventy-five percent (75%) of the voting power of each class of Members of Rocking R Homeowners Association, Inc. for whose benefit this Declaration and Easement is made. Any supplement or amendment to this Declaration must be signed by at least two (2) officers of said Association, indicating that the requisite approvals have been obtained, and such amendment or supplement must be recorded in the Office of the Kootenai County Recorder.

Section 4.04 No Public Right of Dedication. Nothing contained in this Declaration and Grant of Easement shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

Section 4.05 Notice and Acceptance. Every Person who owns, occupies or acquires right, title, estate or interest in or to any Lot or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitations restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to those restrictions is

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contained in the instrument by which such Person acquires an interest in the Property, or any portion thereof.

Section 4.06 No Warranty of Enforceability. While Grantor has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reasons or to any extent, Grantor makes no warranty or representation as to the present or future validity or enforceability of any such covenants, conditions and restrictions. Any Owner acquiring a lot or Dwelling Unit in Rosenberger Subdivision, for whose benefit this Declaration and Easement is made, in reliance of one or more of such provisions shall assume all risks of the validity and enforceability thereof and, by acquiring such Lot or Dwelling Unit, agrees to hold Grantor harmless therefrom.

The undersigned have executed this Declaration on the date first above written.

GRANTOR:

ROSECO, LLC.

By: [Signature]

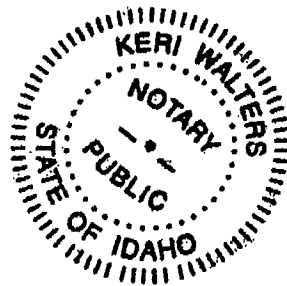
RON ROSENBERGER  
Managing Member

By: [Signature]

SHELLEY ROSENBERGER  
Managing Member

STATE OF IDAHO )  
)ss  
COUNTY OF KOOTENAI )

On this 18<sup>th</sup> day of August, 2004, before me, a Notary Public in and for said State, personally appeared RON ROSENBERGER and SHELLEY ROSENBERGER, known or identified to me to be the Managing Members of ROSECO, LLC, that they executed the within instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.



[Signature]  
NOTARY PUBLIC for the State of Idaho  
Residing at: Coeur d'Alene  
My Commission Expires: 8-25-05

NOTATION RECORDING

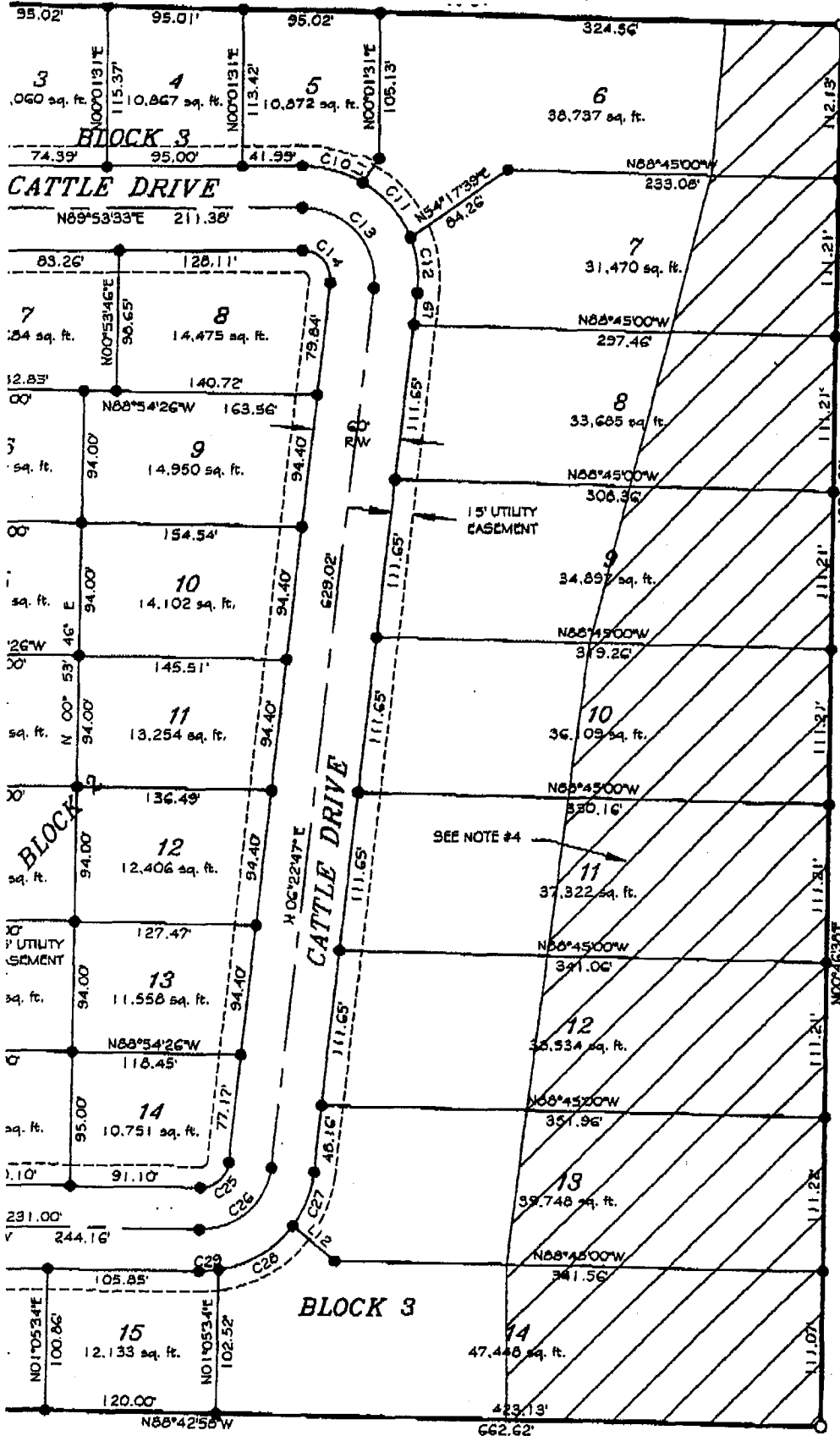
KOOTENAI COUNTY TITLE COMPANY  
has not examined this document,  
assumes no liability as to its validity  
and its affects upon the title.

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EXHIBIT "A"

All of ROSENBERGER SUBDIVISION, according to the plat recorded in the office of the County Recorder in Book I of Plats at Page 389, 389a, and 389b, records of Kootenai County, Idaho.

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LINE TABLE

EXHIBIT "B"