COUNTY CLERKS OFFICE
FILED

AUG 10 2004

MARY JEAN CAHAIL
SAN JUAN COUNTY, WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SAN JUAN

BRADLEY F HENKE and JUDITH M HENKE, Plaintiffs, vs. OLY ROSE, LLC and ROCKRESORTS INTERNATIONAL, LLC Respondents.	**NO. 02 – 2 – 05188 – 1** **STIPULATION FOR ORDER OF DISMISSAL**

COME NOW, Plaintiffs, Bradley F. Henke and Judith M Henke, by and through their attorney, Eric Richter, and Defendants, Oly Rose LLC and Rockresorts International LLC, by and through their attorney, John O. Linde, and stipulate as follows:

1 Oly Rose, LLC is the owner of that certain real property described in attached Exhibit "A" and commonly referred to as Rosario Resort. Oly Rose and its successor owners of Rosario Resort are referred to hereafter as the "Resort owner."

2. Oly Rose, LLC is the successor in interest to Falcon Corporation, which created the Plat of Rosario Estates, as well as Gilbert H. Geiser and Geiser Land Company, a Washington corporation, who created the Plats of Rosario Estates No 2, Rosario Estates No 3, Rosario Palisades, Rosario Shores, and Palisades South, all of which are hereafter referred to the "Rosario residential community."

3 The Plat of Rosario Estates included language in its dedication that made

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reference to free access to and use of a recreation area but failed to define that area The face of the plat includes the language "recreation area" within an area adjacent to the platted lots. The "recreation area" is not within the legal description contained on the face of the plat and the parties disagree as to whether it is otherwise legally defined.

4. The Plaintiffs own three lots within the Plat of Rosario Estates and have sought to obtain a judicial declaration of their rights

5. The parties have disputed the effect of the language on the face of the plat referring to the "recreation area," the location of the "recreation area," and whether an easement, a license or some other use privilege was created by the plat and by subsequent conveyances.

6. While only the Plat of Rosario Estates contains any reference to a "recreation area", various real estate contracts and deeds of record providing for the sale and conveyance of lots within the Rosario Plats identified in paragraph 2 above, as well as certain unplatted tracts, conveyed by Gilbert H Geiser or Geiser Land Company, include language obligating the purchasers to pay unto seller the sum of $4.00 per month, or some other periodic payment, for maintenance of "recreation area." Those lots and unplatted tracts are herein collectively referred to as the "Rosario residential community "

7. The parties, by this stipulation in compromise and settlement of their disputes, desire to define the "recreation area" and provide that an easement be placed of record formally establishing the recreation area and defining the rights and obligations of the "Resort owner" and the owners of lots within the "Rosario residential community "

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8. To resolve their dispute and to remove uncertainty created by the language contained in the Plat of Rosario Estates, and based upon the foregoing stipulated facts, the parties hereto agree

A. Oly Rose, LLC shall declare and establish an easement for a "recreation area" over that portion of the lands described in attached Exhibit "A" as are more particularly set forth on attached Exhibit "B." The easement shall run to the benefit of and be appurtenant to the "Rosario plats" as identified in paragraph 2 herein as well as other lots or tracts, contractually granted access to the "recreation area" upon payment of a monthly maintenance fee.

B. The seasonal, outdoor, heated swimming pool and changing area shall be maintained by the "Resort owner" or its successor in interest.

C The "Resort owner" may elect to replace or relocate the existing outdoor swimming pool with a pool of equal or greater size. The replacement pool may be placed within the "recreation easement" as described on attached Exhibit "B" or within that portion of the lands described in attached Exhibit "A" lying west of the "recreation easement", south of the concrete driveway bordering Lots 1 through 10 as shown on the face of the Plat of Rosario Estates, and east of that concrete driveway shown on the face of the Plat of Rosario Estates extending from a point at the intersection of Lots 21E and 22E to the shoreline and hereinafter referred to as "the Resort Expansion Area." So long as the pool remains where it is currently or otherwise relocated within the Resort facility expansion area lot owners shall have a right of access to it. In the event the pool is relocated, construction shall be scheduled so as to ensure that a pool remains in

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operation during those portions of the summer and fall season that a pool has historically been open for use

D. The owner of each lot within the "Rosario residential community" as described herein, shall have the right to use the recreation easement and the outdoor pool upon payment to the "Resort owner" the sum of $4 00 per month, or such other sum as shall have been contractually agreed upon, for maintenance of the recreation area and outdoor swimming pool. The "Resort owner" shall be responsible for billing lot owners for the maintenance fee by regular mail addressed to the last known permanent address of each lot owner or such other address as the lot owner may provide for this purpose. In the event that the lot owner fails to pay the amount due within thirty (30) days of the date of billing, then the right to use the recreation area and outdoor swimming pool shall be suspended until the owner has paid all past due maintenance fees. An owner of more than one lot improved with only one (1) single-family residence shall pay only a single monthly assessment for maintenance.

E. All rights of lot owners within the "Rosario residential community" to use the recreation area easement and outdoor swimming pool, as provided herein, shall be appurtenant to and deemed to run with the land and may not be sold, transferred or assigned except together with a conveyance of the fee interest in the lot or tract.

F. The right of a lot or tract owner within the "Rosario residential community" as described herein to use the recreation area and the outdoor swimming pool is limited to lot owners and their lineal descendents, and guests when accompanied by the owner or family member. Pool access shall not be extended to renters or other non-family

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member / non-owner occupants of lots or tracts within the "Rosario residential community."

G. The Resort owners shall be responsible for maintenance of the recreation easement area and outdoor pool.

H. The "Resort owner" shall have the right to develop and construct new buildings within the "Resort expansion area" described as lying west of the "recreation easement" described in Exhibit "B." Should construction occur during the traditional summer season, the "Resort Owner" shall continue to provide access to the existing outdoor pool.

I. Upon entry of the agreed upon stipulation, Oly Rose, LLC shall record a non-exclusive easement for recreational purposes over and across that parcel of land described on attached Exhibit "B" In addition, Oly Rose, LLC shall pay unto Henke the Plaintiffs' agreed expenses. Thereafter Plaintiffs shall cause to be entered an Order of Dismissal acknowledging that the parties have settled and agreed upon a compromise and that Plaintiffs' claims and causes of actions are to be dismissed with prejudice and without costs to either party.

Dated: August 2, 2004

HENKE & RICHTER

Eric Richter, WSBA #6978
Attorney for Plaintiffs

Dated: August 2, 2004

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John O. Linde, WSBA #4845
Attorney for Defendants

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Exhibit "A"

PARCEL 1A: (160621001) (Mansion)

That portion of Government Lot 3, Section 6, Township 36 North, Range 1 West, W.M., and that portion of Government Lots 4 and 5 Section 31, Township 37 North, Range 1 West, W M, described as follow

Beginning at the southeast corner of Lot 18 as shown on the Plat of Rosario Estates recorded at Volume 2 of Plats at page 3, records of said county, thence along the easterly boundary of said Lot 18 and continuing along the easterly boundaries of Lots 19, 20B and 21B to the southeast corner of Lot 22B, thence along the easterly boundary of Lot 22B North 6°10' West 38.7 feet; thence northwesterly 45 feet, more or less, to the most southerly corner of Lot 10 of said plat; thence continuing northeasterly along the southeasterly boundaries of Lots 1 through 10 to the southeast corner of said Lot 1, thence along the northeasterly boundary of said Lot 1, 75 1 feet, more or less to a point on a line parallel with and 75 0 feet northerly of the north margin of a 40-foot wide easement road as shown on the face of "Sucia" as described at Volume 1 of Condominiums at page 1, said records, thence leaving said boundary and along said parallel line North 82°30' East 130.38 feet; thence North 87°57'40" East 90.38 feet; thence perpendicular to said north margin South 2°02'20" East 115 0 feet to the southerly margin of said 40-foot wide easement; thence along said southerly margin North 87°57'40" East 258.78 feet to the northwest corner of that parcel of land described at Auditor's File No 51101; thence along the westerly boundary of said parcel described at Auditor's File No. 51101 southeasterly to a point on the line of ordinary high tide; thence southwesterly along said line of ordinary high tide to a point on the northerly boundary of Lot 18B of said Plat of Rosario Estates, that bears South 66°09' East from said true point of beginning; thence leaving said line of ordinary high tide and along said northerly lot boundary North 66°09' West to said point of beginning

EXCEPTING THEREFROM that portion described as follows:

A part of Government Lot 6, Section 31, Township 37 North, Range 1 West, W.M., described as follows:

Beginning at a stake at the west corner of the tract, which is 171.6 feet north and 25 feet east of the meander corner common to fractional Sections 6 and 31 on the west side of Cascade Bay (said M.C. being on a fir stump 7 3 feet east of a concrete monument); thence north 65°28' east 72.8 feet to a stake, thence South 38°00' East 58.5 feet to a stake and on in the same direction 30 feet, more or less, to the line of ordinary high water; thence with same southwesterly to a point South 30°34' East of the beginning stake; thence North 30°34' West 30 feet, more or less, to a stake on top of the bank and on in the same direction 58.2 feet more to beginning stake at west corner known as "Round House".

TOGETHER WITH the Tidelands of the Second Class situate in front of, adjacent to, abutting upon that portion of the U.S Government Meander Line of Government Lot 5 as conveyed by the State of Washington by Tideland Deed, recorded January 20, 1906, in Volume 10 of Deeds, at page 130 records of San Juan County, Washington

TOGETHER WITH the Tidelands of the Second Class situate in front of, adjacent to, abutting upon Government Lot 5 lying between the line of mean low tide and the line of extreme low tide as conveyed by the State of Washington by Deed, recorded February 3, 1912, in Volume 12 of Deeds, at page 615, under Auditor's File No. 12709, records of San Juan County, Washington.

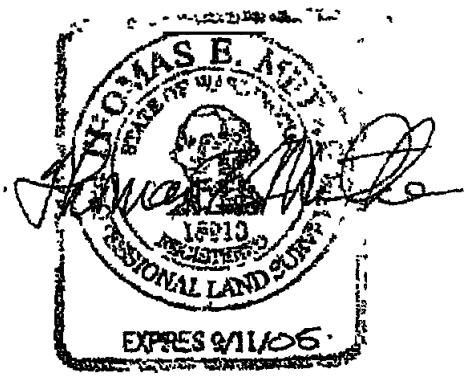
Situate in San Juan County, Washington.

Exhibit "B"

LAND DESCRIPTION
FOR
RECREATION AREA AT ROSARIO RESORT

That portion of Government Lot 5 and Tidelands of the Second Class Abutting Section 31, Township 37 North, Range 1 West, W.M., in San Juan County, Washington, described as follows:

Beginning at a point where the Southeasterly extension of the boundary common to Lot 6 and Lot 6A of the Plat of Rosario Estates, as recorded at Volume 2 of Plats, Pages 3 and 3A, records of San Juan County, Washington, intersects the Southerly face of a concrete curb wall forming the Southerly margin of the concrete driveway abutting said Lots 6 and 6A, as shown on said plat; thence Easterly along said Southerly face 600 feet, more or less, to the intersection of said Southerly face with a line which is parallel with and 10 feet Westerly of the Westerly wall of that building shown as "shop" on said Plat of Rosario Estates; thence leaving said Southerly face and along said parallel line Southerly to the line of mean low tide; thence Westerly along said line of mean low tide to a point on the extension of said line common to Lots 6 and 6A; thence leaving said line of mean low tide Northwesterly along said extension of said common line to the Point of Beginning.



MPD, Incorporated, PS

February 17, 2004

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