

**RESTATED BYLAWS  
OF  
DUFORT WATER ASSOCIATION, INC.**

**ARTICLE I  
PRINCIPAL OFFICE**

The principal office the Dufort Water Association, Inc. (Association) shall be located in Bonner County, Idaho, in a location determined from time to time by the Board of Directors (Board). The initial office shall be located at 212 N. First Avenue, Sandpoint, ID 83864. The Association shall have such other offices either within or without the State of Idaho, as the Board may designate from time to time.

**ARTICLE II  
MEMBERSHIP**

2.1 **Classes of Membership.** The Association shall have two (2) classes of voting membership established according to the following provisions:

2.1.1 **Class A Membership.** Class A Membership shall be held by each individual or entity that owns a lot or parcel of real property (Owner), including The Crossing HOA, Inc., served by the system, excepting the Originating Member. Each Class A Member shall be entitled to one (1) vote for each service provided. The term “service” means an actual water service connection or an equivalent water service connection as the meaning of equivalency is defined by the Board. If the service is owned by more than one person, each such person shall be a Member of the Association, but there shall be no more than one (1) vote for each service. Multiple owners have joint rights and obligations.

2.1.2 **Class B Membership.** Class B Membership is that membership held by the Originating Member. The Class B Member shall be entitled to seven (7) votes for each unallocated equivalent water service connection available through the system. The number of unallocated equivalent water service connections shall be calculated by subtracting from 138 the total number of Class A memberships. If the Originating Member creates additional capacity, it shall receive seven (7) votes for each additional unallocated equivalent water service connection created. Upon the occurrence of one of following events, the Originating Member shall lose its Class B membership status and, thereafter, no votes shall be awarded to unallocated equivalent water service connections:

2.1.2.1 When that number of Class A votes equals or surpasses the number of Class B votes;

2.1.2.2 On the thirtieth (30<sup>th</sup>) anniversary of the original filing of these Articles with the Idaho Secretary of State.

- 2.2 **Member-Designee.** An Owner of real property served by the water system may designate the following as Member-Designee: (a) a co-Owner; (b) the Owner's trustee, conservator, guardian, or attorney-in-fact; (c) an officer of an entity that owns the real property served by the water system; and (d) a lessee of the real property served by the water system. If the Owner registers a Member-Designee with the Secretary, such designation shall remain effective until revoked. The Owner who has made a designation may participate in Association meetings but may not vote so long as such designation remains effective. A designation shall not relieve the Owner of liability for obligations under the Association's governing document. The Owner and Member-Designee shall be jointly and severally liable to the Association.
- 2.3 **Voting Requirements.** Except as otherwise expressly provided in the Articles of Incorporation or these Bylaws, any action by the Association, which must have the approval of the Association membership before being undertaken, shall require the vote or written assent of the prescribed percentage of the total power (both classes combined) of the Association.
- 2.4 **Joint Owner Disputes.** The vote for a lot or parcel being served water by the Association must be cast as a single vote and the vote assigned to a particular lot shall not be fractionalized or split. If joint owners are unable to agree how their vote shall be cast, they shall lose their right to vote on the matter in question.
- 2.5 **Suspension of Voting Rights.** A Member's voting rights in the Association shall be suspended upon the occurrence of any of the following events:
- 2.5.1 **Delinquency.** A Member's fees, fines or other charges are delinquent and notice of such delinquency has been sent to the Member's address of record with the Association;
- 2.5.2 **Termination or Disconnection.** The Member service has been disconnected or terminated or is under a notice of service termination/disconnection;
- 2.5.3 **Failure to Cure Violation.** The Member is under sanction for violation of the Rules and Regulations and/or an outstanding violation has not been cured.
- 2.6 **Reinstatement.** A Member's voting rights shall be reinstated immediately upon cure of the event causing suspension.
- 2.7 **Proof of Membership and Transfer.** Membership in the Association shall not be sold, assigned or transferred except pursuant to these Bylaws and Rules and Regulations of the Association. The right to membership in the Association and the right to water service shall run with the land and shall automatically vest in a successor in interest to the real property served by the water system. A certified copy of a recorded deed vesting current title in an individual or entity shall constitute proof of ownership. The exclusive proof of membership shall be the membership ledger of the Association as kept by the Secretary of the Association. The property Owner shall have the duty to notify the Secretary of ownership changes. The purchaser and seller of real property served by the water system shall remain jointly and severally liable for all unpaid fees and charges until said fees and charges are paid

in full. After the completed transfer, the purchaser (new Member) is solely liable for all future fees and charges.

### **ARTICLE III MEETING OF MEMBERS**

- 3.1 **Annual Meeting.** The annual meeting of the Members shall be held in Bonner County, Idaho, at a time, place and location determined by the Board. If the Board shall fail to set another time and date, then the meeting shall occur on the second Wednesday of October in each year, at the hour of 7:00 o'clock P.M., at a meeting place to be announced in the call of the meeting. The purpose of the meeting shall be to elect Directors and for the transaction of such other business as may come before the meeting.
- 3.2 **Special Meetings.** Special meetings of the Members may be called by the President, or by not less than twenty-five percent (25%) of the Members of each class while more than one class shall exist, at any time with proper notice.
- 3.3 **Meeting Place.** The President or the moving Members may designate any place in Bonner County, Idaho as a place of meeting for any special meeting.
- 3.4 **Notice of Meeting.** Written notice stating the place, day and hour of an annual or special meeting of Members shall be delivered personally or by mail to each Member entitled to vote at such meeting, not less than fourteen (14) days nor more than twenty-eight (28) days before the date of such meeting, by or at the direction of the President or Secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or these Bylaws, the purposes for which the meeting is called shall be stated in the notice. If mailed, the notice shall be delivered when deposited in the United States mail, postage prepaid, addressed to the Member at his address as it appears on the records of the Association.
- 3.5 **Quorum.** A quorum shall consist of thirty percent (30%) of the total voting power of the membership including proxies submitted or on record with the Secretary. If less than a quorum is represented at such meeting, a majority of the Members entitled to vote may adjourn the meeting from time to time without further notice. The required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- 3.6 **Proxies.** At any meeting of Members, a Member entitled to vote may vote by proxy, executed in writing by the Member. Such proxy shall be filed with the secretary of the Association before or at the time of the meeting. The proxy may limit the discretion of the proxy holder.
- 3.7 **Regular Business.** The regular business of the Association may be carried out by a simple majority of voting memberships present in person or by proxy at any annual, regular or special meeting, except as otherwise set forth in these Bylaws. All procedural questions shall be governed by Robert's Rule of Order (latest edition available at meeting).
- 3.8 **Action by Consent of Members.** Any action required or permitted to be taken by the Members may be taken without a meeting if eighty percent (80%) of the total voting power

of the membership collectively consent in writing to such action. Said consent may occur by electronic communication and may later be ratified in writing.

#### **ARTICLE IV GOVERNING BODY**

The Board of the Association shall constitute the governing body of this Association.

#### **ARTICLE V BOARD OF DIRECTORS**

- 5.1 **Term and Qualification of Directors.** The affairs of the Association shall be managed by a Board consisting of three (3) Directors, but may be converted to a larger number by vote of the Members. Directors shall be Members EXCEPT the Class B Member may nominate Directors who are not Members.
- 5.2 **Election of Directors.** Directors shall be elected at the annual meeting. The Board may appoint a Nominating Committee or may offer its own nominee or slate of nominees. Such Nominating Committee or Board nominees shall be included in the notice of meeting. Nominations may be made from the floor.
- 5.3 **Terms.** Each Director shall be elected for a three (3) year term except initial Directors may be elected for less than three (3) terms. Terms shall be staggered so that at least one (1) Director is elected each year.
- 5.4 **Removal.** A Director may be removed at any time and for any reason upon the vote of sixty (60%) of the Members voting at a duly called meeting of the Members.
- 5.5 **Disqualification.** By a vote of two-thirds (2/3) of the remaining Directors, a Director may be deemed disqualified to hold office. Disqualification is limited to the following causes:
- 5.5.1 **Conversion.** Conversion of all memberships to Class A, if the Director is not then a Member;
- 5.5.2 **Absence.** Absence from three (3) consecutive Board meetings without just cause;
- 5.5.3 **Conflict.** Continuing conflict of interest between outside interests and duties as a Director; or
- 5.5.4 **Loss of Membership.** Loss of membership by sale, transfer or otherwise.
- 5.5.5 **Suspension.** Suspension of membership pursuant to Article 2.5.
- 5.5.6 **Felony Conviction.** Conviction in a federal or state court of a crime that would be classified as a felony in the state of Idaho.
- 5.6 **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by majority vote of the remaining Members of the Board for the unexpired term. If the Board deadlocks, the Members shall elect the Director at a meeting to be called with thirty (30) days of deadlock.

- 5.7 **Quorum.** The presence in person of the majority of the Directors at any meeting of the Board shall constitute a quorum and the vote of the majority of the quorum actually present at any meeting shall constitute an action of the Board.
- 5.8 **Regular Meetings.** Regular meetings of the Board shall be conducted at least annually at a time and a place within Bonner County, Idaho as may be fixed by the Board. Notice of the time and the place of the regular meetings shall be given to each Director personally, by mail, e-mail or by telephone at least three (3) days prior to the day designated for the meeting.
- 5.9 **Special Meetings.** A special meeting of the Board may be called by written notice, signed by the President or by any one-half (1/2) of the Directors other than the President. Notice shall be provided to all Directors. The notice shall include a description and the nature of any special business to be considered by the Board. Special meetings may be held anywhere within Bonner County, Idaho.
- 5.10 **Waiver of Notice.** Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to giving a notice to that Director. Attendance by a Director at any meeting of the Board shall be a waiver of notice to that Director of the time and the place of the meeting except where such attendance is for the limited and expressed purpose of objecting to lack of notice.
- 5.11 **Action by Consent of Directors.** Any action required or permitted to be taken by the Board may be taken without a meeting if all of the Board shall individually or collectively consent in writing to such action. Said consent may occur by electronic communication and may later be ratified in writing.
- 5.12 **Board Meetings Open to Members.** Regular and special meetings of the Board shall be open to all Members, provided that Members who are not on the Board may not participate in any deliberation or any discussion unless expressly so authorized by vote of a majority of the quorum of the Board.
- 5.13 **Executive Session.** The Board may, with the approval of two-thirds (2/3) of a quorum of the Directors, adjourn the meeting and reconvene in Executive Session to discuss and vote upon sensitive matters. The nature of any and all business to be considered in Executive Session shall first be announced in open session. Whether or not a matter is sensitive is left in the sole discretion of the Board.
- 5.14 **Powers and Duties.** The Board shall have the powers and duties necessary for the administration and management of the affairs of the Association to the full extent allowed under the law. The Board, by resolution, shall establish Rules and Regulations concerning the management of the water system and shall attach thereto a schedule of fees and charges for the water system.
- 5.15 **Hearing on Rules.** Prior to the adoption or amendment of a Rule, the Board shall hold a meeting where Members may be heard on the proposed Rule or Amendment. The procedure for rulemaking shall be set forth in the Rules and Regulations.
- 5.16 **Committee Designation.** The Board may, by majority vote of the Directors, designate one (1) or more committees authorizing such committee or committees to act with the authority

of the Board. The delegation of the duty or duties shall be specific, limited in scope, time and type of authority. The composition of the committee shall be determined by the Board.

## ARTICLE VI OFFICERS OF THE ASSOCIATION

- 6.1 **Officers and Terms.** The Board shall annually elect its officers. There shall be a President, Vice President, Secretary and Treasurer. One person may serve as both Secretary and Treasurer. Officers shall be elected by a majority of Directors voting at a duly called meeting of the Directors.
- 6.2 **Removing Officers.** An officer may be removed from office at any time, for any reason, by a majority of the elected Directors. Such removal shall be evidenced by a resolution, executed by a majority of the remaining Directors and delivered to the Secretary and the officer so removed. The officer's authority shall terminate upon delivery of said resolution to the Secretary.
- 6.3 **Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.
- 6.4 **President.** The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. He/she shall preside at all meetings; shall sign any deeds, mortgages, bonds, contracts or other instruments which the Board has authorized to be executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board.
- 6.5 **Vice President.** The Vice President shall perform the duties of the President in the President's absence or in the event of death, inability or refusal to act, and when so acting shall have all of the powers and be subject to all of the restrictions placed upon the President.
- 6.6 **Treasurer.** The Treasurer shall have charge of and be responsible for all funds and securities of the Association; receive and give receipts for monies paid to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories, and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by majority of the Members.
- 6.7 **Secretary.** The Secretary shall keep the minutes of the meetings of the Members in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the Corporate records and of the Seal of the Association, if any, and keep a register of the post office addresses of each Member which shall be furnished to the Secretary by such Member; and in general perform all duties incident to the office of Secretary.
- 6.8 **Compensation.** The officers of the Association may be compensated for their services as determined by the Board in its sole business judgment.

**ARTICLE VII  
RECEIPT OF NON-CORPORATE ASSETS**

The Members or the Board on behalf of the Association may accept any contribution, gift, bequest or devise for general purposes or for any special purpose of the Association.

**ARTICLE VIII  
MINUTES, RECORDS, AUDITS**

- 8.1 **Minutes.** The Association shall keep correct and complete books and records of account and shall also keep Minutes of the proceedings of its Member, Directors, and committees, and shall keep at its principal office a record giving the names and addresses of the Members entitled to vote. All books and records of the Association may be inspected by any Member or Member's agent or attorney for any proper purpose at any reasonable time.
- 8.2 **Financial Records.** The Association shall keep and maintain competent, auditable financial record and said records shall be available for inspection by any Member as set forth above.
- 8.3 **Audits.** The Board shall cause the financial records to be audited from time to time to insure the Association's funds are being properly managed. Such audit shall be available to the Members.

**ARTICLE IX  
FISCAL YEAR**

The fiscal year of the Association shall be the calendar year.

**ARTICLE X  
BUDGET, ASSESSMENTS, CHARGES, DISCONNECTION**

- 10.1 **Preparation and Adoption of Budget.** Not less than thirty (30) days before the end of the fiscal year, the Board shall prepare a budget for the Association for the coming year. In preparing its budget, the Board shall estimate the expenses of the Association to be paid during the year, make suitable provision for accumulation of reserves, and shall take into account any surplus or deficit carried over from the preceding year and any expected income to the Association. If, during the year, the budget proves to be inadequate for any reason, including nonpayment of any assessment, the Board may prepare a supplemental budget for the remainder of the year. The budget shall be approved by the Members at a duly called meeting of the Members.
- 10.2 **Purpose of Fees and Charges.** The fees and charges levied by the Association shall be used for the costs of maintaining, operating, repairing, replacing and building the water system, including wells, pumps, lines, valves, storage tanks and other facilities and equipment associated with the water system, and for other reasonable needs of the system and the Association as deemed appropriate by the Board. Each such fee or charge of the water system together with any collection costs, including but not limited to any interest, costs or

attorney's fees, shall also be a personal obligation of the person who is the owner or party whose name is on the assessment rolls for the particular lot or parcel receiving water service from the Association. Fees and charges of the water system may be secured by a lien against the non-paying Member's lot or parcel and any and all fees and charges of the water system shall be a constructive real covenant affecting title to said lot or parcel. No Member is exempt from any liability because of waiver of use, enjoyment or by abandonment of any premises or lot, unless specifically set forth herein.

- 10.3 **Exception to Charges.** The Sagle Fire District and The Crossing, HOA, Inc. shall not pay water service or connection fees. The Originating Member, Crossing Development, Inc. or its successor in interest, shall not pay any fees related to unallocated water service connections. The Originating Member shall not pay connection fees, but shall pay for water service associated with an allocated connection, if any. The Board may, in its discretion, grant waivers of connection fees.
- 10.4 **Transfer of Lot by Sale or Foreclosure.** The sale or transfer of any lot or parcel shall not affect the fees and charges for water service or any lien placed on the property for unpaid fees and charges of the water system. However, the sale or transfer of any lot or parcel pursuant to mortgage foreclosure shall extinguish the lien of such fees and charges as to payments which become due prior to such sale or transfer (except for a lien recorded prior to the mortgage). No sale or transfer shall relieve such lot or parcel from liability for any fees or charges thereafter becoming due or from the lien thereof. Where the mortgagee of the first mortgage of record obtains title to a lot or parcel as a result of foreclosure of any such first mortgage, such mortgagee shall not be liable for the unpaid fees or charges of the Association chargeable to such lot or parcel which accrued prior to the acquisition of title or possession by such mortgagee. In a voluntary conveyance of a lot or parcel, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid fees and charges of the Association against the latter for his/her/its share of the fees and charges up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.
- 10.5 **Late Fee for Failure to Pay.** The Board, in its discretion, may establish a schedule of late fees and penalty in the Rules and Regulations.
- 10.6 **Fines and Sanctions.** The Board, in its discretion, may establish a schedule of fines and sanctions for violations of the Rules and Regulations.
- 10.7 **Water Service Disconnection.** The Board shall have the right and duty to disconnect and terminate water service to a Member for violations of the Rules and Regulations including failure to pay fees, charges, or fines. Termination of service shall not constitute a waiver of the Association's right to collect unpaid fees. Water service shall not be disconnected, except as otherwise set forth in the Rules and Regulations, without prior notice to the property Owner and Member. Notice requirements shall be set forth in the Rules and Regulations.
- 10.8 **Property Lien.** When a notice of default and demand to cure have been recorded, such fees, charges and late fees shall constitute a lien on the subject real property prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would

be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds or trust) made in good faith and for value. Such lien may be enforced by foreclosure of the subject lot in accordance with Idaho law.

## **ARTICLE XI ENFORCEMENT OF BYLAWS**

This Association shall be responsible for the enforcement of these Bylaws. The definition, duties and rights specified in the Bylaws shall guide the management of the Association. Nothing contained herein shall be interpreted to prohibit the Board from delegating a portion of or all of the duties set forth herein to any properly authorized person or agency.

## **ARTICLE XII SEAL**

The Association may, but shall not be required to maintain a corporate stamp or seal.

## **ARTICLE XIII WAIVER OF NOTICE**

Whenever any notice is required to be given under the statutes of the state of Idaho or under the provisions of the Articles of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the legal equivalent to the giving of such notice.

## **ARTICLE XIV DEADLOCK**

If the Directors are equally divided and cannot agree on any issue, the Board may refer the matter to the Members for resolution. If the Members are equally divided on an issue, the Members may refer the matter to Board for resolution. If both the Board and the Members are deadlocked, or the Members cannot agree to refer the matter to Board, then the President shall cause the matter to be decided by an arbitrator of the President's choosing. Said arbitrator shall be qualified in the state of Idaho. If one or more Directors object to the President's selection, the appointment shall be made by the Administrative District Judge of the First Judicial District of the State of Idaho, whose decision shall be final. The decision of the arbitrator shall be final and not appealable.

## **ARTICLE XV INDEMNIFICATION**

Each Director, Officer, or Committee Member shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or

imposed in connection with any proceeding to which he or she may be a party, or in which the person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

**ARTICLE XVI  
AMENDMENTS TO BYLAWS**

These Bylaws may be amended or restated at any regular meeting or at any special meeting of a quorum of the Members thereof, called for such purpose, by the affirmative vote of sixty percent (60%) of the total voting power of the membership present at such meeting.

IN WITNESS WHEREOF, the undersigned certifies that the above Restated Bylaws were duly and lawfully adopted by the Members of the Association on the 24th day April, 2008, and said restated Bylaws shall supersede any and all previously adopted Bylaws.

\_\_\_\_\_  
Brett T. Sullivan  
Secretary

STATE OF IDAHO    )  
COUNTY OF BONNER                                        ) SS.

On this \_\_\_ day of \_\_\_\_\_, in the year of 200\_\_\_, before me, a Notary Public for the state of Idaho, personally appeared **Brett T. Sullivan**, known or identified to me to be the president, or vice-president, or secretary or assistant secretary, of **Dufort Water Association, Inc.** that executed the within instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

(Sign) \_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**RULES AND REGULATIONS  
OF  
DUFORT WATER ASSOCIATION, INC.**

After notice and hearing, and pursuant to Article 5.13 of the Bylaws, the Board of Directors (Board) of the Dufort Water Association, Inc. (Association) hereby adopts the following Rules and Regulations (Rules).

**ARTICLE I.  
WATER SYSTEM USE, CONTROL AND FEES**

**1.1 Water Usage Classifications.**

- 1.1.1 **Residential Use.** Residential use is a regular use that is reasonably necessary to support a single family unit including, by way of illustration, drinking water, cooking, bathing, laundry, sanitary uses and reasonable landscape irrigation.
- 1.1.2 **Commercial Use.** Commercial use is a regular use that is not classed as a Residential Use.
- 1.1.3 **Temporary Use, Bulk Water.** An Owner or his agent may apply to the Association for a temporary use for a designated purpose, including bulk water service. The Board shall set the terms of such temporary use by written agreement. An agreement between the Board and an Owner shall not be construed as precedential. The Board reserves the unilateral right to set terms of use, including an individual fee schedule, or to deny a temporary use altogether.
- 1.1.4 **Fire Flow Use.** Water provided to and through the fire hydrant system (Fire Flow) for the purpose of fire fighting and testing is a special use that shall not be separately metered or charged. However, the Board may, at its discretion, meter such use from time to time for the purpose of verifying usage. Fire Flow provided for other uses, such as construction, irrigation, or wash down, shall be separately metered and charged out as a temporary use, bulk use, or as otherwise determined by the Board.

**1.2 Fees, Rates and Charges.**

- 1.2.1 **Connection Fee (Tap-on).** Each Owner agrees to pay a non-refundable connection fee (tap-on fee), usage charges and other fees and charges as adopted by the Board. The tap-on fee shall be due and payable upon the

assignment a previously unallocated water system connection by the Association to a property Owner.

- 1.2.2 **Water Usage.** Usage fees shall commence upon the earlier of (a) transfer of ownership of a previously assigned water service connection; (b) actual connection; or twenty-four (24) months after the assignment of a previously unallocated water service connection. Usage charges and other fees and charges are payable on a regular basis at times to be established by the Board.
- 1.2.3 **Transfer Fee.** The Association shall charge a fee when the service is transferred from one Owner to a new Owner. Transfer to a corporation or partnership shall be deemed a change of Ownership and the transfer fee shall apply. The fee shall not apply in the following circumstances: (a) transfer of Membership from the Owner to a Member-designee; (b) change of billing name and/or address; (c) the addition of an Owner in fee of the real property served (i.e. addition of spouse on title); or (d) transfer from an Owner, in his individual capacity, to a revocable trust in which the Owner is the current trust beneficiary.
- 1.2.4 **Fee Schedule.** A current schedule of fees, rates and charges is attached hereto as **Exhibit A**, and such schedule may be changed from time to time upon notice to the Members.
- 1.3 **Tap-On Location.** Potable water for residential, non-commercial and commercial uses will be furnished by the Association, and will be available for tap-on at a location specified and approved by the Association. The Association will cooperate with the Owner, when possible, to establish the tap-on connection at a mutually convenient location at or near the property boundary. The Board shall have final authority to locate the tap-on connection.
- 1.4 **Unauthorized Tap-On.** An unauthorized tap-on by an Owner is grounds for immediate termination of service with or without prior notice as provided herein. In addition to the remedies set forth herein, and in the Bylaws, the Board may, at its sole discretion, file a civil or criminal complaint against the violator.
- 1.5 **Meters.** Each property owner taking service, or as otherwise agreed, shall have an operating water meter. The Owner shall purchase the meter from the Association. The Owner shall install the water meter to the Association's specifications. Upon final inspection and approval by the Association, the Association shall take ownership of the meter and shall, thereafter, be responsible for its maintenance and replacement. No meter shall be moved without the prior written consent of the Board. An Owner is liable for all damages related to the Owner's activity that may damage a meter. An Owner shall not move or otherwise tamper with a meter and any unauthorized movement or tampering of any sort shall be grounds for immediate termination of service without notice. Should a meter fail to accurately register water use in any billing cycle, billing for the water used within that cycle shall be calculated to be equal to the lesser of (a) the water usage for the same month of the preceding year, or (b) the average

monthly water usage for the three (3) consecutive months that contain the single month of highest usage during the preceding twelve (12) month period.

- 1.6 **Cross Connection Control.** All new water connections shall be made in compliance with the cross connection control program and subject to review by certified cross control specialists. The Owner agrees to eliminate before the initiation of service all past or present cross-connections in the Member's system which could lead to a violation of the cross connection control protocol set forth by the State of Idaho and administered by the Idaho Department of Environmental Quality (IDEQ).
- 1.7 **Service Lines, Assemblies and Devices.** Service lines and other associated facilities from the tap-on location to point of water usage shall be constructed and maintained at the sole expense and risk of the Owner. Construction criteria for service lines, back flow prevention assemblies or devices, shut-off valves, pressure reducer valves, and other necessary equipment shall be provided by the Board pursuant to standards prepared by a certified operator for the Association and must be followed. Service may be immediately terminated without notice until installation of service lines, back flow prevention assemblies or devices, shut-off valves, pressure reducer valves, and other necessary equipment meet the criteria established by the Board. Installation of such equipment shall be at the sole expense and risk of the Owner and each Owner shall indemnify and hold harmless the Association for any loss or damage related to such installation. The Owner shall be responsible for any damages to real property, equipment, personal property, or persons, caused by, or related to, any activity associated with tap-on to the water system.
- 1.8 **Repairs.** The Association shall remedy defects in the system main lines (to the tap-on location), the pumps, water meters, wells, reservoir, pump house and other improvements to the well lot. The Owner is responsible for repairs and maintenance of all service lines, valves, and equipment from the tap-on location to the point of ultimate usage.
- 1.9 **Leaks on Owner's Premises.** Owners shall immediately repair all line breaks or leaks in service lines or plumbing to preclude water waste or damage to property. Failure to immediately repair such leaks may result in immediate termination of service without notice until such repairs are completed. Additionally, the Board, in its sole and absolute discretion, has the right to have such leaks repaired at the sole expense and liability of the Owner, without prior notice to the Owner. Costs incurred by the Association for such repairs may be, at the sole discretion of the Board, collected from the Owner in the same manner as fees and charges are collected in accordance with the Bylaws. Each Owner is liable for any loss/damage caused to the Association or third parties by leaks on the Owner's lot.
- 1.10 **Access to Property.** The Association has the right to enter the Owner's property for the purpose of monitoring, maintaining, constructing, repairing, or any other activity related to the water system, with twenty-four (24) hours prior notice to the Owner posted on the door of the residence. If no one resides on the property, no prior notice is required. Obstruction or denial of access to any portion of the

property serviced by water system shall be grounds for termination of service with notice or, at the discretion of the Board, the installation at the service connection, at the Owner's expense, a Reduced Pressure Backflow Prevention Assembly or Air Gap Backflow Prevention Assembly.

- 1.11 **Inspection.** An Owner or his contractor shall not backfill or otherwise cover a service connection without the approval of an Idaho state plumbing inspector and the Association's Licensed Operator.

## ARTICLE II. STANDARDS AND INSPECTION

- 2.1 **Public Drinking Water Standards.** The Board adopts by reference the standards contained in IDAPA §§ 58.01.08.050, .100, .250-.552, inclusive, as such standards apply to the Association's system design, facilities, installation requirement, maintenance, inspection, and testing.
- 2.2 **Local Standards and Specifications.** Local construction criteria are attached as **Exhibit B.** The Board may adopt additional standards and specifications from time to time.
- 2.3 **License Operator.** The Board shall engage the services of a Licensed Operator who is certified in the state of Idaho to inspect and maintain the Association's system.
- 2.4 **Interpretation of Standards.** The Board shall rely on the opinion of the Association's Licensed Operator for the interpretation and application of standards. The Licensed Operator shall, in turn, rely upon and apply appropriate Idaho state standards.
- 2.5 **Inspection Requirement.** Upon completion, an Idaho state plumbing inspector, and the Licensed Operator, shall inspect and approve the installation of individual meters and privately owned facilities connected to the water system. The standards of such inspection shall comply with the Idaho Public Drinking Water Standards.
- 2.6 **Local Inspection Procedures and Standards.** [Reserved]

## ARTICLE III. ENFORCEMENT OF RULES AND TERMINATION OF SERVICE

- 3.1 **Enforcement Authority.** The authority to enforce these Rules shall rest exclusively in the Board. The Board may fashion reasonable enforcement provisions as it deems fit and shall codify such provisions in this article. Adoption and amendment of enforcement provisions shall not require a hearing before the Members but the Board shall give notice of such adoption or amendment. Unless otherwise provided, enforcement provisions shall become effective fourteen (14) days after notice is mailed to Members.
- 3.2 **Fines and Sanctions.** [Reserved]

- 3.3 **Termination/Restriction of Service.** The Association has the right, without liability, to restrict service or terminate service for violation of these Rules. Such violation includes, but is not limited to, the failure to pay assessments, fines, or usage fees for water. Except as otherwise set forth herein, the Board shall give an Owner twenty (20) days prior written notice before restricting or terminating water service. Notice of termination or restriction shall be conspicuously posted on the property and delivered by certified mail, return receipt requested, to the Owner's address of record with the Association. The Board may grant a one-time, sixty (60) day extension upon the Owner's written notice of intent to cure the violation. Upon granting such extension, the Board shall send notice, by first class mail, of the date certain when the termination or restriction shall be effective absent a cure of the violation.
- 3.4 **Reconnection of Service.** To reconnect service after termination or restriction, the Owner shall file with the Board a written request for removal of restrictions or reinstatement of service. The decision to remove restrictions or reconnect service shall rest in the sole and absolute discretion of the Board. The Board may make reconnection contingent upon the Owner entering into a special service agreement on any reasonable terms to which the parties can agree, and/or impose reasonable special fees, and/or require payment of unpaid fees, charges, assessments, fines, and/or require the Owner to comply with a reasonable order related to the provision of service.
- 3.5 **No Liability for Interruption of Service.** The Association and/or Board shall not be liable for any actual or consequential damages arising from, or related to the intentional or unintentional interruption of water services, regardless of the cause of the interruption. Each Owner, and its successors and assigns agree to indemnify and hold harmless the Association, its Board, employees, contractors and agents from any and all liability related to service interruption.
- 3.6 **No Waiver of Enforcement Authority.** No failure to enforce or delay the enforcement of these Rules, or an omission in the exercise of any right or remedy by the Association and/or the Board shall impair such a right of enforcement or remedy, or be construed as a waiver of the Association's authority under these Rules. The receipt and acceptance by the Association of delinquent fees or payments shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular payment involved.

#### **ARTICLE IV. NEW AND AMENDED RULES**

- 4.1 **Authority to Propose Rule.** An Owner, Member, or the Licensed Operator, may propose a Rule or Rule amendment.
- 4.2 **Rulemaking.**
- 4.2.1 **Written Proposal.** A proposed new Rule or Rule amendment shall be in written form and presented to the Board together with a written statement supporting the change.

- 4.2.2 **Reasonableness Test.** Within ninety (90) days of receipt, the Board shall determine whether there is a reasonable basis for the proposed Rule. A Rule is "reasonable" if, more likely than not, its adoption will materially contribute to (a) lawful and/or efficient operation of the water system; (b) cost containment; or (c) environmental safety. The contribution is "material" if the Rule has more than a negligible affect. If the Board finds the proposed Rule unreasonable, it shall promptly give written notice to the proposer and state why the Board has found the proposed Rule unreasonable.
- 4.2.3 **Appeal.** An Owner or Member may appeal to the Members, at an annual or special meeting, the Board's decision as to the proposed Rule's reasonableness. The Members may find the proposal "reasonable" or "unreasonable." The Members may NOT draft or adopt a proposed Rule. If the Members find the proposed Rule "reasonable," the Board shall follow the procedure herein for Rule adoption.
- 4.2.4 **Draft Rule.** Within thirty (30) days of finding the proposed Rule "reasonable," the Board shall draft the Rule in final form for presentation to the Members.
- 4.2.5 **Notice and Hearing.** A copy of the draft Rule shall be promptly sent to each Owner and Member in accordance with the same formalities as required for notice of a special meeting of the Members. A hearing shall be scheduled no less than fourteen (14) days, nor more than thirty (30) days, from the date the notice is placed in the mail.
- 4.2.6 **Hearing and Decision.** At the hearing, all Owners and Members shall be granted an opportunity to address the Board. The Board may limit the time accorded each speaker. The Board may direct the Licensed Operator to answer questions and render an opinion on the draft Rule. After the hearing has been closed to further comment, the Board shall consider the draft Rule and, by majority vote, adopt, amend or reject the Rule. If the Board amends the Rule, the hearing shall be re-opened for additional comment on the amended Rule. The Board should make every reasonable effort to render a final decision immediately following the hearing. If, however, the ability to render an immediate decision is impracticable, the Board may continue the matter to a date and time certain, such date to be no more than thirty (30) days hence. The Board's decision as to the adoption or rejection of a Rule is final and may not be appealed to the Members.
- 4.3 **Determination of Fines.** Upon the adoption of any Rule, the Board may adopt an appropriate fine or other sanction to enforce the Rule. The Board may, but shall not be required to hold a hearing prior to the adoption of such fine or sanction.
- 4.4 **Documentation of New Rule.** The Board shall send copies of any newly adopted Rule to each Owner and Member within thirty (30) days of its adoption. The Board shall compile all Rules of the Association and keep an updated copy

thereof at the same location where other official records and books of the Association are kept.

- 4.5 **Effective Date.** Unless otherwise stated in the Rule, a Rule's effective date shall be the date of its adoption. The Board may, at its discretion, delay the effective date for up to one year. Retroactive application of a Rule shall be deemed void unless the retroactivity was expressly set forth in the draft Rule considered by the Members and Owners.

## **ARTICLE V. ADMINISTRATIVE PROVISIONS**


- 5.1 **Remedies in Law and Equity.** The failure of any Owner to comply with the provisions of the Rules shall give rise to a cause of action in favor of the Association and any aggrieved Owner for the recovery of damages, or for injunctive relief, or both.
- 5.2 **Court and Attorney Fees.** In any action as to the enforcement or interpretation of these Rules, the prevailing party shall be entitled to its costs and reasonable attorney fees.
- 5.3 **Captions and Titles.** The captions and titles are for convenience and reference only. They shall not define, limit or construe the contents of any provision.
- 5.4 **Governing Law and Severability.** These Rules are established under, and shall be governed by the laws of the state of Idaho. Any Rule prohibited by law or unenforceable shall not affect the remaining Rules.

## **ARTICLE VI. DEFINITIONS**

- 6.1 "Assignment of water service connection" means the allocation of a water service connection to a property owner other than the Originating Member.
- 6.2 "Association" means the Dufort Water Association, Inc.
- 6.3 "Hook-on" (see "Tap-on").
- 6.4 "Licensed Operator" means the person or entity employed or otherwise engaged by the Association for the purpose of monitoring, maintaining, testing and inspecting the water system and connections thereto.
- 6.5 "Member" means a member of the Dufort Water Association, Inc. A "Member" may be an Owner, or the Owner's designee.
- 6.6 "Originating Member" means Crossing Development, Inc., an Idaho corporation, that constructed the water system and has special rights under the Association's Articles of Incorporation.
- 6.7 "Owner" means the owner in fee of property served by the Association.
- 6.8 "Regular use" means a water use provided through a "Tap-on."


- 6.9 "Rule" is a mandatory regulation, guideline or standard. The word "Rule" incorporates and is interchangeable with the word "regulation."
- 6.10 "Tap-on" means the point of connection between the user's water line and the Association's main water line. It also means the same as, and may be used interchangeable with the term "hook on." The terms may also be used to describe the act of making the connection or "tap-on."
- 6.11 "Unallocated Water Service Connection" means an equivalent connection that has not been assigned to a lot or parcel of real property.

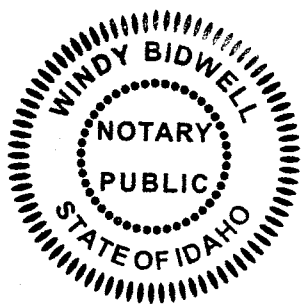
IN WITNESS WHEREOF, the undersigned certifies that the above stated Rules were duly and lawfully adopted by the Board of the Association on April 24, 2008.

  
 \_\_\_\_\_  
**Brett T. Sullivan**  
 Secretary

STATE OF IDAHO )  
 COUNTY OF BONNER ) SS.

On this 24 day of April, in the year of 2008, before me, a Notary Public for the state of Idaho, personally appeared **Brett T. Sullivan**, known or identified to me to be the president, or vice-president, or secretary or assistant secretary, of **Dufort Water Association, Inc.** that executed the within instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

(Sign)   
 NOTARY PUBLIC  
 Residing at: Sandpoint  
 My commission expires: 3/12/13



## EXHIBIT A

### SCHEDULE OF RATES AND CHARGES

Dufort Water Association, Inc

#### Connection Fees:

Standard Residential ( <i>less than 2"</i> <i>water line</i> )	\$ 5,500.00
2"+ Water Line	\$ 18,000.00
3"+ Water Line	\$ 30,000.00
Inspections by Licensed Operator	\$ 200.00 / inspection
Standby Fee	\$ 30.00 / month
Member Transfer Fee	\$ 100.00
Service Termination Fee	\$ 50.00
Service Reconnection Fee	\$ 50.00
Residential Water Usage	
Basic Fee	\$ 48.00/month
( <i>includes 0 – 12,000 gallons</i> )	
12,001 – 30,000 gallons	\$0.005 /gallon
30,001 + gallons	\$0.006/gallon
Commercial Water Usage	Same as Residential Water Usage Rate
Bulk Water Usage	\$0.010/gallon

#### Terms:

- Usage fees are billed monthly and are payable within 30 days.
- A late charge of 10% of the amount due shall be charged for any payments that are not received with 30 days of the due date.
- Interest on past due is 1.5% per month.
- Service charge may be added for operator to provide Bulk Water.

## EXHIBIT B

### WATER SYSTEM CONSTRUCTION CRITERIA

Dufort Water Association, Inc

1. Owner/Member shall cause to be done the necessary engineering, preparation of plans and specifications for the construction of a water line of adequate size to connect to the Association's mains.
2. Water lines shall be constructed in accordance with the standards of, and subject to, the provisions as set forth by the State of Idaho.
3. Owner/Member or his agent shall obtain a permit for the water service line from the Idaho Plumbing Bureau, and any applicable permits required from any other governmental agency.
4. Owner/Member shall purchase from the Association and cause to be installed a water meter equipped with a remote reading device that will allow the reading of the meter by Association personnel from outside of the Owner's premises.
5. The meter shall be installed on or before the date Owner's service line is connected to the water main, with installation being made by a person certified as a plumbing contractor by the Idaho Plumbing Board.
6. Installation of meter and connection of the service to the water main shall be inspected and approved by the Licensed Operator prior to backfill. As-built plans shall be submitted to the Licensed Operator at least five (5) days prior to the time of water turn on.
7. Owner/Member and Licensed Operator shall schedule tap-on at a time of mutual convenience. It is recommended that tap-on occur between March 1st and October 31<sup>st</sup>.

## **DWA DISCLOSURE AND MEMBER AGREEMENT**

The Dufort Water Association, Inc. (DWA) is an Idaho non-profit corporation that owns the water facility (pipes, reservoir, wells, water rights, and distribution system) at The Crossing, a subdivision in Bonner County, Idaho, recorded in an official plat in Book 8 of Plats at Page 124 records of Bonner County, Idaho.

DWA has an easement through The Crossing, granted in The Crossing's Declaration, originally recorded in the records of Bonner County, Idaho as instrument number 721140 and subsequently amended in a restated Declaration, recorded as instrument number \_\_\_\_\_.

Lot Owners in The Crossing are required to join DWA and receive one (1) vote in the Association. The Crossing HOA, Inc. is also required to join DWA by virtue of its water connections, but it does not pay any water service fees. The DWA Board reserves the right to service additional properties in the area. In this regard, DWA has contractual obligations to provide water to the adjacent property, known as Willow Bay Marina, and to provide service to the real property east of Willow Bay Marina, presently in the ownership of Adam Shankman. In addition, DWA has agreed to provide free water service to the Sagle Fire District, for its firehouse located next to The Crossing.

The Association is a non-profit corporation with Articles of Incorporation filed with the Idaho Secretary of State's office. The Association's Articles, Bylaws and Rules and Regulations accompany this disclosure and are maintained in the DWA office. The DWA office is presently located at 212 North First Avenue, Sandpoint ID 83864. In the Association's governing documents, Crossing Development, Inc., an Idaho corporation (CDI), is identified as the "Originating Member" of the Association. As such, CDI receives seven (7) votes for each unallocated water service connection on the system, of which there were, originally, a total of 138. The voting right granted CDI give it effective control of DWA until the individual users have more votes collectively than CDI, at which time CDI then loses its special voting status. By signing this agreement, you are acknowledging receipt of the foregoing governing documents.

CDI constructed the entire water system at a cost of approximately One Million Dollars. The company holds a promissory note from DWA in the amount of \$400,000.00 payable at 8% per annum. Installment payments are required to be made from each connection fee paid to the Association.

Water rates are established by the Association's Board of Directors, composed of three individuals. Members are provided an opportunity to approve the rate setting through the budget process. The budget is approved by the Members, by a majority vote, at a duly called meeting pursuant to the Bylaws. The Board has authority to discontinue the water service of delinquent Members and to recover unpaid assessments through property liens. By signing this agreement, you are granting DWA lien rights on your property to enforcement payment of fees and fines.

The Association's Rules are adopted by the Association's Board of Directors and may be changed at any time pursuant to a rulemaking procedure set forth in the Rules and Bylaws. DWA Members are entitled to be heard before Rules are adopted or amended. The Rules are designed to encourage water conservation and Members are requested to voluntarily comply with all conservation measures. By signing this agreement, you are agreeing to abide by the Rules and Regulations of DWA.

ACKNOWLEDGED AND AGREED.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Please fill out property description and contact information on reverse side.**

Legal Description of Property Requesting Service

Lot Owner Name(s): \_\_\_\_\_

Legal Description: \_\_\_\_\_  
\_\_\_\_\_

Property Address (if assigned): \_\_\_\_\_

City: Priest River  
County: Bonner  
State: ID 83856

Property Owner Contact:

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ Phone: \_\_\_\_\_

Emergency Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Member-Designee  check if Owner is the Member

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ Phone: \_\_\_\_\_

Emergency Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Billing Contact and Address  same as Owner;  same as Member-Designee

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ Phone: \_\_\_\_\_

Emergency Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

**Please disclosure statement on reverse side.**

**RESTATED**  
**ARTICLES OF INCORPORATION**  
**OF**  
**DUFORT WATER ASSOCIATION, INC.**

**Recital**

- A. The original articles of incorporation were filed on August 29, 2006, filing C 168626.
- B. Pursuant to Article 12 of the original Articles of Incorporation, “these Articles shall be amended only by the vote of written assent of at least eighty percent (80%) of a quorum of the voting power each [Class A and Class B] class of membership.”
- C. At a duly called meeting of the Members, held on April 24, 2008, in Sandpoint, Idaho, the Members adopted these Restated Articles of Incorporation by a vote of 9 to 9 of Class A Members, which constitutes 100% in favor of adoption, and 1 to 0 of Class B Members, which constitutes 100% in favor of adoption.

**ARTICLE I**  
**NAME**

The name of this corporation is DUFORT WATER ASSOCIATION, INC. (hereinafter “Association”).

**ARTICLE II**  
**NONPROFIT STATUS**

- 2.1 **Nonprofit Corporation.** The Association is a nonprofit corporation governed by the Idaho Nonprofit Corporation Act, Chapter 3, Title 30, Idaho Code (Act).
- 2.2 **Membership Organization.** The Association shall be organized as a membership association with voting Members and management vested in a Board of Directors.

**ARTICLE III**  
**PERIOD OF DURATION**

The period of duration of the Association is perpetual.

**ARTICLE IV**  
**CORPORATE OFFICE AND REGISTERED AGENT**

The address of the Association office is 212 N. First Avenue, Sandpoint ID 83864. The name and address of the registered agent is William M. Berg, Berg & McLaughlin, Chdt, 708 Superior Street, Ste B, Sandpoint ID 83864.

**ARTICLE V  
PURPOSES AND POWERS**

- 5.1 **Purpose.** The Association's primary purpose is to acquire and maintain a source of drinking water, and to construct and maintain a drinking water storage and delivery system serving real properties within and adjacent to a subdivision known as THE CROSSING, described on an official plat recorded in Book 8 of Plats, Page 124, records of Bonner County, Idaho. As used herein, "adjacent" shall be broadly construed to mean "nearby."
- 5.2 **Powers and Authority.** The Association's Board of Directors shall have the following powers and authority.
- 5.2.1 Perform all of the duties and obligations of the Association in the service of water to the Association's Members;
  - 5.2.2 Fix, levy, collect and enforce assessment fees and fines in a fair and equitable fashion and secure the payment of assessments through liens upon real property, as allowed by Idaho law;
  - 5.2.3 Pay all expenses and obligations incurred by the Association in the conduct of its business, including, without limitation all licenses, taxes or governmental charges levied or imposed against the Association's property;
  - 5.2.4 Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, exchange, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
  - 5.2.5 Make contracts and incur liabilities, borrow money and mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
  - 5.2.6 Dedicate, sell, transfer or grant easements over all or part of any of the Association's property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members;
  - 5.2.7 Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, or annex additional services to the management of the Association;
  - 5.2.8 Convey all, or substantially all, corporate assets to a public entity which would serve water to the Members of this Association;
  - 5.2.9 Litigate, mediate, and arbitrate any and/or all corporate rights and obligations. This Association, in addition to other provisions, may provide for the qualification of Members, the terms and conditions of admission, the time, mode, conditions and effect of expulsion or withdrawal from the restoration of membership, admission fees, charges and assessments; and for reimbursement for services rendered to and expenses incurred on behalf of the Association by any Member or officer of the Association, and such other rules and regulations as are not repugnant to the laws of the state of Idaho; and

5.2.10 To exercise all powers granted by law necessary and proper to carry out the foregoing purposes, including, but not limited to, the power to accept donations of money and property, whether real or personal, or any other things of value.

- 5.3 **Limitation of Powers.** Nothing contained herein shall be deemed to authorize or permit the Association to carry on any business for profit, to exercise any power, or to do any act that is prohibited by a corporation formed under the Act, or any amendment thereto.

## ARTICLE VI LIMITATIONS AND NONDISCRIMINATION POLICY

- 6.1 **Limitation on Political Activities.** No substantial part of the activities of the Association shall be for the carrying on of propaganda, or otherwise attempting to influence legislation, and the Association shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.
- 6.2 **Nondiscrimination Policy.** The Association, its directors, officers, employees, agents and contractors shall not discriminate in the Association's on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital status.

## ARTICLE VII MEMBERS AND MEMBERSHIP

- 7.1 **Non-Stock Corporation.** Participation in management and ownership of the Association shall be by membership only. The Association shall issue no stock and shall have no shareholders.
- 7.2 **Membership.** The Originating Member (Crossing Development, Inc., an Idaho corporation, or its successor in interest) and the owner(s) in fee of real property served by the Association shall be Members. Upon becoming a Member of the Association, the Member shall remain a Member thereof until such time as his/her service ceases for any reason, at which time his/her membership in the Association shall automatically cease. Membership and transfer of membership shall be further regulated by the Bylaws of the Association.
- 7.3 **Membership Transfer.** Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the right to service of water which shall only occur in accordance with the Bylaws of the Association. A prohibited transfer is void. In the event the owner of any a lot or parcel of real property served by the Association fails or refuses to transfer a membership registered such owner's name to a successor in interest to the real property, the Association shall have the right and authority to transfer, and record such transfer upon the records of the Association.
- 7.4 **Classes of Membership.** The Association shall have two (2) classes of voting membership established according to the following provisions:

- 7.4.1 **Class A Membership.** Class A membership shall be held by each individual or entity, including The Crossing HOA, Inc., served by the system, excepting the Originating Member. Each Class A Member shall be entitled to one (1) vote for each service provided. The term “service” means an actual water service connection or an equivalent water service connection as the meaning of equivalency is defined by the Board. If the service is owned by more than one person, each such person shall be a Member of the Association, but there shall be no more than one (1) vote for each service. Multiple owners have joint rights and obligations.
- 7.4.2 **Class B Membership.** Class B membership is that membership held by the Originating Member. The Class B Member shall be entitled to seven (7) votes for each unallocated equivalent water service connection available through the system. The number of unallocated equivalent water service connections shall be calculated by subtracting from 138 the total number of Class A memberships. If the Originating Member creates additional capacity, it shall receive seven (7) votes for each additional unallocated equivalent water service connection created. Upon the occurrence of one of following events, the Originating Member shall lose its Class B membership status and, thereafter, no votes shall be awarded to unallocated equivalent water service connections:
- 7.4.2.1 When that number of Class A votes equals or surpasses the number of Class B votes;
- 7.4.2.2 On the thirtieth (30<sup>th</sup>) anniversary of the original filing of these Articles with the Idaho Secretary of State.
- 7.5 **Additional Classes of Membership.** This Association may add additional classes of membership through the lawful amending of the corporate Bylaws. Nothing in these Articles shall prohibit the institution of additional classes.
- 7.6 **Voting Requirements.** Except where otherwise expressly provided in these Articles or the Bylaws, any action by the Association, which must have the approval of the Association membership before being undertaken, shall require the vote or written assent of the prescribed percentage of the total power (both classes combined) of the Association.
- 7.7 **Limitation of Payment to Dissenting Member.** Membership in the Association is appurtenant to and cannot be segregated from ownership of a lot or parcel of real property within the jurisdiction of the Association. Except upon dissolution of the Association, a dissenting Member shall not be entitled to any return of any contribution or other interest in the Association.

**ARTICLE VIII  
BOARD OF DIRECTORS**

- 8.1 **Directors and Qualifications.** The Members shall elect a Board of Directors consisting of three (3) Directors who shall serve staggered three (3) year terms. The Members may increase the number of Directors. The Directors shall be Members EXCEPT, so long as the Originating Member holds Class B Membership, the Originating Member's nominees need not be Members.
- 8.2 **Initial Directors.** The initial Directors shall be:  
James W. Sullivan, 16114 E. Indiana, Suite 115, Spokane Valley, WA 99216  
Brett T. Sullivan, 16114 E. Indiana, Suite 115, Spokane Valley, WA 99216  
Claudia Dick, 116 N. First Avenue, Sandpoint ID 83864
- 8.3 **Removing Directors.** The Members may remove a Director, at any time and for any reason, upon the vote of sixty percent (60%) of the Members voting at a duly called meeting of the Members.
- 8.4 **Officers.** The Board shall annually elect its officers. There shall be a President, Vice President, Secretary and Treasurer. One person may serve as both Secretary and Treasurer. Officers shall be elected by a majority of Directors voting at a duly called meeting of the Directors.
- 8.5 **Removing Officers.** An officer may be removed from office at any time, for any reason, by a majority of the elected Directors. Such removal shall be evidenced by a resolution, executed by a majority of the Directors and delivered to the Secretary and the officer being removed. The officer's authority shall terminate upon delivery of said resolution to the Secretary.
- 8.6 **Action of the Board.** The action of the Board shall be the action of the Association.

**ARTICLE IX  
DISTRIBUTION ON DISSOLUTION**

- 9.1 **Requirements for Dissolution.** The Association may be dissolved upon the consent of seventy-five percent (75%) of the Members, each Member signing and acknowledging by law a resolution of dissolution. This provision may not be amended by less than 75% of the Members.
- 9.2 **Distribution of Assets.** Upon dissolution, the assets of the Association, after paying or making provisions for the payment of all liabilities of the Association, shall be divided pro rata among the Members or as otherwise directed by the District Court.
- 9.3 **Statutory Provisions.** Dissolution shall otherwise be accomplished in compliance with Title 30, Chapter 3-110 et. seq.

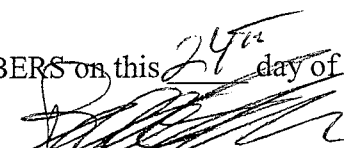
**ARTICLE X  
BYLAWS**

Provisions for the regulation of the internal affairs of the Association shall be set forth in the Bylaws. The Board of Directors of the Association shall be authorized to amend the Association's Bylaws at a properly noticed special or regular meeting of the Board of Directors.

**ARTICLE XI  
AMENDMENT OF ARTICLES**


These Articles shall be amended only by the vote or written assent of Members representing no less than sixty percent (60%) of the total voting power of the Association at a duly called meeting of the Members.

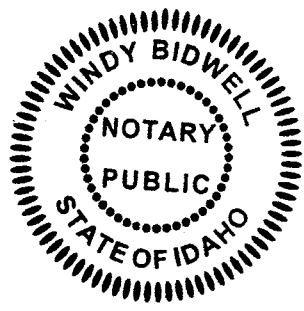
ADOPTED BY THE MEMBERS on this 24<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
Brett T. Sullivan  
Secretary

STATE OF IDAHO )  
COUNTY OF BONNER ) SS.

On this 24 day of April, in the year of 2008, before me, a Notary Public for the state of Idaho, personally appeared **Brett T. Sullivan**, known or identified to me to be the president, or vice-president, or secretary or assistant secretary, of **Dufort Water Association, Inc.** that executed the within instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

(Sign)   
NOTARY PUBLIC  
Residing at: Sandpoint  
My commission expires: 3/12/13



## SEWER CONNECTION AND SERVICE AGREEMENT

This Agreement is by and between **THE CROSSING HOA, INC.**, an Idaho nonprofit corporation (Association) and \_\_\_\_\_ (Lot Owner) and shall be effective upon execution.

### RECITAL

- A. Association owns, operates and maintains a sanitary sewage facility for certain Lots in THE CROSSING, as described on an official plat, recorded as instrument number 721139, in Book 8 of Plats at page 124, records of Bonner County, Idaho.
- B. Lot Owner owns real property in said plat, to wit: Block \_\_\_\_, Lot \_\_\_\_ (Lot).
- C. Lot Owner desires to utilize said sewage facilities and Association desires to regulated such use; now, therefore,

FOR VALUABLE CONSIDERATION, Association and Lot Owner hereby enter into the following

### AGREEMENT

- 1. **Right of Connection.** Lot Owner shall have the right to connect to the sewer service lines as such lines are terminated at each lot.
- 2. **Use Limitation.** Lot Owner shall be limited to one domestic service (sewer) connection. Lot Owner shall not connect any additional structures or vehicles, permanent or temporary into Association's system without the express, written consent of the Association.
- 3. **Association Duties and Responsibilities.** The Association shall provide a facilities and wastewater service adequate for the safe and sanitary collection, treatment and disposal of domestic sewage from Lot Owner's Lot. The Association shall maintain its facilities in good order and repair so that reasonably satisfactory service may be provided to the Lot Owner's property.
- 4. **System Expenses.** The expenses of the sewer system, including reserves for capital improvements, shall be the obligation of system users and shall not be a general expense of the Association. The Association, or its assignee, shall be assessed for its proportional use of the system for Association-owned facilities.
- 5. **Fees and Assessments.** The Association shall establish and collect fees and assessments for sewer service. Lot Owner shall pay the fees and assessments set forth in the schedule attached hereto as **Exhibit A**, and as such schedule is amended from time to time.
- 6. **Lot Owner Maintenance Responsibility.** The Lot Owner shall be responsible for all maintenance, repair and replacement of service connections, septic tanks, pumps, and electrical components installed on Lot Owner's property. All repairs and/or modifications shall be inspected by the License Operator before incorporation into the system. The Association has the authority, at the Lot Owner's expense, to repair and maintain the Lot Owner's septic tank and effluent pump system if the Association determines, at its sole discretion, that such facilities are inadequate or not properly maintained. The Association shall provide Lot Owner with reasonable notice and an opportunity to cure before exercising its right under this provision.
- 7. **Type of Service Connection.** Association facilities are designed for screened septic tank effluent only. Lot Owner connections shall be either gravity or pumped septic tank effluent only.

8. **Compliance with Specifications.** Lot Owner shall construct, at Lot Owner's expense, the connections into the sewer lines in accordance with the construction criteria set forth in **Exhibit B** and as such criteria may be amended from time to time.
9. **Special Circumstances.** Lot Owner shall further comply with reasonable requirements imposed by the Licensed Operator even though such requirements may deviate from, or be in addition to the general construction criteria.
10. **Work Plans and Specification.** Lot Owner shall submit to the Licensed Operator engineered plans and specifications for the construction of a sanitary sewer line of adequate size to connect to the sewer mains. Such plans and specifications are subject to approval of Association through the Licensed Operator. The sewer lines will be constructed in accordance with (a) the standards of, and subject to, receipt of a permit from the Board of Health of the State of Idaho, or its duly authorized representative; (b) a plumbing permit for the sewer service line by the Idaho Plumbing Bureau and a tank-only permit from the Panhandle Health District; and (c) any applicable permits required from any other governmental agency. Obtaining the permit shall be the responsibility of Lot Owner.
11. **Cross Connection Control.** All new sewer connections shall be made in compliance with the cross connection control program and subject to review by certified cross connection control specialists. The Lot Owner agrees to eliminate, before the initiation of service, all past or present cross-connections in the Lot Owner's system which could lead to a violation of the cross connection control protocol as set forth by the State of Idaho and administered by the Idaho Department of Environmental Quality (IDEQ).
12. **Inspection.** Lot Owner shall not backfill the trench containing the sewer lines and connections, or connect to the sewer system, until authorized by the Licensed Operator after inspection.
13. **Scheduling of Inspection/Hook-on.** Lot Owner shall schedule inspections and hook-on with the Licensed Operator. Hook-on should occur between March 1<sup>st</sup> and October 31<sup>st</sup>.
14. **Interruptions or Delays in Service.** Association shall use all reasonable diligence in providing a constant and uninterrupted supply of sewer service to Lot Owner. However, Association reserves the right to temporarily interrupt or reduce the delivery of service under this Agreement when Association determines, in its sole discretion, that such interruption or reduction is necessary.
15. **Notice of Disruption.** Except in emergencies, Association shall give reasonable notice to Lot Owner of any interruption or reduction in service, stating the reason for, and probable duration of, such interruption or reduction.
16. **Septic Tank Pumping.** Septic tank maintenance is the sole responsibility of the Lot Owner, and the Association assumes no liability for proper maintenance. Septic tanks require periodic pumping because solids accumulate in the tank, and screens require annual cleaning. The Association reserves the right to pump the tank and clean the screens, at Lot Owner's expense, if such action is required in the sole judgment of the Licensed Operator. The Lot Owner shall submit records of septic tank pumping and screen cleaning to the Association. Lot Owner shall be liable for any damage to Association's wastewater facility arising from Lot Owner's failure to properly maintain the septic tank.
17. **Plumber or Representative.** Lot Owner shall not hire or permit anyone other than a licensed plumber or the Licensed Operator (or its qualified agent) to perform maintenance or repair of Lot Owner's sewer system.
18. **Access to Lot.** Lot Owner expressly grants a license to Association to enter the Lot for the purpose of inspection, repair and maintenance. Except in an emergency, the Association shall not enter a dwelling or other structure on the Lot unless reasonable notice has been provided to Lot Owner.
19. **Liability.** Lot Owners waives any and all claims and releases Association from liability for direct, consequential or special damages arising from system failure or interruption except upon a showing of the Association's gross negligence in the maintenance and operation of the system.

20. **Force Majeure.** Association assumes no responsibility for interruption of service due to strikes, labor disputes, acts of God, or other circumstances beyond its reasonable control, including, but not limited to liability for power failure.
21. **Default.** The parties hereto shall all remedies in law and equity, including the right of specific, in the enforcement of this agreement. In addition, the Association shall have the power to impose fines for violation of its rules and to enforce payment of fines, fees, charges and assessments through lien and foreclosure.
22. **Rights and Remedies Cumulative.** The rights and remedies provided herein are cumulative and not exclusive of any other rights or remedies provided at law or in equity. A party's failure to exercise a right, power, privilege, or remedy hereunder shall not preclude further exercise at a later date.
23. **Notice.** Notice to the Association shall be at its registered address in the records of the Idaho Secretary of State. Notice to the Lot Owner shall be its mailing address of record with the Association. Notice shall be by first class mail, postage prepaid, return receipt requested and/or facsimile transmission where the sender has documentation of the date, time, and confirmation of transmission.
24. **Modification.** This agreement may be modified or revoked by written agreement of the parties.
25. **Successors and Assigns.** This agreement shall bind and inure to the benefit of each party's respective heirs, successors, agents, trustees, conservators and assign.
26. **Facsimile Transmission.** Facsimile transmission of any signed original document and retransmission of same shall constitute delivery of the original document.
27. **Counterparts.** This agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature on identical copies of the same agreement, amendment or addendum. Each identical copy of an agreement signed in counterparts is deemed to be an original and all identical copies shall together constitute one and the same instrument.
28. **Attorney's Fees.** If either party initiates an arbitration or judicial action including an appeal, as to the interpretation or enforcement of this agreement, including remedies upon default, the prevailing party shall be entitled to costs and reasonable attorney fees.
29. **Entire Agreement.** This agreement contains the entire agreement of the parties respecting the matters herein and supersedes all prior written and oral agreements between the parties respecting such matters.
30. **Time is of the Essence.** Time is of the essence in this agreement.
31. **Captions and Titles.** The captions and titles are for convenience and reference only. They shall not define, limit or construe the contents of any provision.
32. **Gender Designation.** Unless otherwise suggested by the context of the provision, the masculine gender shall include the feminine and vice versa.
33. **Plural and Singular Words.** Words used in singular include the plural and vice versa.
34. **Governing Law and Severability.** This agreement is established under, and shall be governed by the laws of the state of Idaho. Any provision prohibited by law or unenforceable shall not affect the remaining provisions of the agreement.

**THIS AGREEMENT SHALL BE EXECUTED ON THE ATTACHED SIGNATURE PAGE CONSECUTIVELY NUMBERED.**

**SIGNATURE PAGE**

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

THE CROSSING HOA, INC.

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
(By:) \_\_\_\_\_  
(Its:) \_\_\_\_\_

\_\_\_\_\_  
(By:) \_\_\_\_\_  
(Its:) \_\_\_\_\_

**EXHIBIT A**

**SCHEDULE OF RATES AND CHARGES**

The Crossing HOA Sewer Service

Connection Fee:	All sewer hookup fees are included with the purchase of the property.
Inspections by Licensed Operator	\$100.00 / inspection
Standby Fee: <i>(limited to 12 months following purchase; thereafter Basic Fee is applied)</i>	\$30.00 per month
Member Transfer Fee	\$100.00
Service Reconnection Fee	\$250.00
Residential Sewer Usage	\$48.00 / month

**Terms:**

- Usage fees are billed monthly and are payable within 30 days.
- A late charge of 10% of the amount due shall be charged for any payments that are not received within 30 days of the due date.
- Interest on past due is 1.5% per month.

## **EXHIBIT B**

### **CONSTRUCTION CRITERIA**

#### **FOR INDIVIDUAL SEPTIC SYSTEM TO SERVE SINGLE-FAMILY LOTS.**

##### **SEPTIC TANK REQUIREMENT:**

Lot Owner engineered plans and specifications are to be submitted to Panhandle Health District for a tank-only permit. Sizing and type of septic tank will be included with the documentation requesting the tank-only permit.

##### **PUMP AND SCREENING REQUIREMENTS:**

See attached ORENCO SYSTEMS, INC. DRAWING S2.1 for typical pump and screening requirements. Final HOA approval is required prior to installation and is to be included in the Lot Owner supplied engineered plans and specifications.

Also attached for engineering purposes is the ORENCO SYSTEMS, INC. Effluent pumps ½ Hp to 1 Hp Single Phase, 60 HZ 115/230 Volt PC#1 pump curves chart.

Each lot will require a two compartment concrete septic tank with a "Biotube" effluent pumping system. Recommended components are as follows:

##### **Septic Tank:**

- Double compartment septic tank with a minimum liquid depth of 48" and minimum inside height of 57". Required access diameter for "Biotube" installation is 20" minimum.
- A minimum liquid capacity of 1000 gal. for homes up to 4 bedrooms, 1500 gal. for homes up to 6 bedrooms.
- Tanks must be supplied by a Panhandle Health District (PHD) approved supplier, and installed by a PHD approved installer.

##### **Effluent Pumping System:**

- 24" dia. PVC access riser, Orenco model RR2424
- 24" fiberglass lid, Orenco model FL24-4B.
- 24" dia. ABS riser/tank adapter, Orenco model FTA.
- "Biotube" pump vault, Orenco model PVU57- 1819.
- 1" discharge plumbing assembly, Orenco model HV100BPR.
- 1/2hp, 115V, 60Hz, effluent pump capable of providing a flow rate of 5 gpm against a head of 200 feet. Orenco model P100511.
- Epoxy encapsulated splice.
- Mechanical float switch assembly, Orenco model MF2.
- P Simplex control panel, 115V, Orenco model A1.

Septic tank permits are required from Panhandle Health District, and inspection is required by HOA Personnel.

All provisions of the HOA Sewer Service connection and Service agreement are included with the above requirements by reference.

For additional information or to schedule inspection contact the Licensed Operator: Water Systems Management, at (208) 265-4270.