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VISCOMI, GERSH,  
SIMPSON & JOOS, PLLP  
121 Wisconsin Avenue  
Whitefish, Montana 59937



Debbie Pierson, Flathead County MT by DD

201800014089  
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Fees: \$21.00  
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## COMMUNITY WATER SYSTEM OPERATING AGREEMENT

### An Amendment of and Supplement to the By-Laws of Rocky Cliff Estates Homeowners Association

This Amendment of and Supplement to the By-Laws of Rocky Cliff Estates Homeowners Association (the "Water Agreement") is made as of July 10<sup>th</sup>, 2018, by the Rocky Cliff Estates Homeowners Association (the "Association").

#### RECITALS

- A. WHEREAS, since its inception the Association has operated and maintained (or hired others to operate and maintain) the Community Water System authorized and required both by Section A.5 of both the Frontage Park at Rocky Cliff Design Guidelines, Conditions, Covenants & Restrictions ("Commercial CCRs"), recorded as Document No. 200435215320, records of Flathead County, Montana and by The Meadows at Rocky Cliff Design Guidelines, Conditions, Covenants & Restrictions ("Residential CCRs"), recorded as Document No. 200435215330, records of Flathead County, Montana;
- B. WHEREAS, the Association desires to formalize the terms governing the maintenance and operation of the Community Water System because no private operator can be found to own, operate, and maintain the Community Water System without involvement of the Association as contemplated both by the Commercial CCRs and the Residential CCRs; and
- C. WHEREAS, pursuant to Section 10.1(1) of the By-Laws of Rocky Cliff Estates Homeowners Association, recorded as Document No. 200435215340, records of Flathead County, Montana (the "By-Laws"), the Association's Board may approve amendments if the amendment does not relate to the number of Directors, the composition of the Board, the term of office of Directors, or the method or way in which Directors are elected or selected, or the method for amending the By-Laws;

NOW THEREFORE, FOLLOWING A VOTE OF THE ASSOCIATION'S BOARD IN THE AFFIRMATIVE, THE ASSOCIATION DOES HEREBY AMEND AND SUBMIT FOR FILING BY THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA, THE FOLLOWING AMENDMENT OF AND SUPPLEMENT TO THE BY-LAWS:

#### 1. The following new language shall be added as Article XI of the By-Laws:

## **ARTICLE XI. WATER SYSTEM OPERATING AGREEMENT**

### **Section 11.1 Scope**

This Water Agreement shall constitute the terms under which the Association's members shall continue to receive water service from the Community Water System, which is the exclusive source of water service for the Association's members.

### **Section 11.2 Control of and Responsibility for Components of Community Water System**

Service from the curbstop to the structure on any Lot shall be the responsibility of the Lot Owner. The remainder of the Community Water System shall be under the sole control of the Association or the operator, and the Association or the operator shall make such repairs as necessary on that remainder. All leaks in the service pipes and fixtures into or upon any Lot beyond the curbstop must be promptly repaired by the Lot Owner. In the event any Lot Owner fails to make such repairs after reasonable notice, the Association or the operator may turn off the water service to that Lot Owner, and the water will not be turned on again until all necessary repairs are made and all bills, including a non-refundable turn-on charge, are paid in full by the Lot Owner. Neither the Association nor the operator shall be responsible for damage caused by water escaping from the service pipe or any other pipe or fixture on the Lot Owner's side of the curbstop.

### **Section 11.3 Limitation on Service and No Guarantee**

Each Lot Owner shall have only one domestic service line per Lot from the curbstop into each lot, and shall use water only in such quantities as would be normal among residential Lots in the Rocky Cliff Subdivision. Neither the Association nor the operator makes any guarantee as to the quantity or pressure of water available.

### **Section 11.4 Installation of Water Meters**

Each Lot Owner who hereafter installs new water service into any Lot shall install a water meter at his/her/its own expense. The installation or existence of a water meter shall be a requirement for any new Lot Owner to receive water service from the Community Water Service. The water meter must be approved by the Association's Board prior to installation to ensure compatibility with the Community Water System. Existing Lot Owners without a meter will be required to install a compatible meter at the Lot Owner's expense when it becomes legally required to do so.

### **Section 11.5 Payment for Water Service**

Each Lot Owner shall pay dues to the Association as required by the applicable CCRs, as amended from time to time. Included in those dues is a flat per lot charge for water service, subject to the terms of the Second Amendment of the Commercial CCRs. The Association's

Board, or any party it nominates pursuant to Section 11.6 below, shall estimate the total cost of water, factoring in usage, future maintenance, capital improvements to the water system, and any other factors the Board or its nominee deems appropriate. The Board shall then adjust the dues when appropriate. Dues paid by Lot Owners shall be allocated first to the Community Water System, but if dues paid by any Lot Owner are not sufficient to cover the portion of dues attributable to the Community Water System, and the Lot Owner fails to pay the dues after 30 days after notice from the Association, or from its nominee under Section 11.6 below, the Board shall have authority to shut off water service to that Lot Owner until the dues are paid.

#### Section 11.6 Board Authority for Operation of Community Water System

The Association's Board, in its discretion, shall have authority to operate the water system itself or to hire or nominate another party of its choosing to do so, including but not limited to an operator as contemplated by the CCRs. The Board shall have authority to make all decisions regarding the Community Water System in the same manner as it would have authority to make decisions regarding the business and affairs of the Association under Articles III through VII of the By-Laws.

#### Section 11.7 Conflict

In the event that there is a conflict between this Water Agreement and the terms of the rest of the By-Laws, this Water Agreement will control. In the event that there is a conflict between this Water Agreement and the Second Amendment to the Commercial CCRs, the terms of the Second Amendment to the Commercial CCRs shall control.

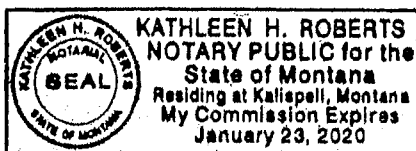
**"ASSOCIATION"**

**ROCKY CLIFF ESTATES HOMEOWNERS ASSOCIATION**

By: Andrea Aiken  
\_\_\_\_\_, as its President

STATE OF MONTANA )  
 ) ss.  
COUNTY OF FLATHEAD )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of JULY, 2018, by ANDREA AIKEN as President of Rocky Cliff Estates Homeowners Association.



Kathleen H Roberts  
Printed Name: Kathleen H. Roberts  
Notary Public for the State of MONTANA  
Residing at Kalispell, MONTANA  
My Commission Expires: Jan 23, 2020



When recorded, return to:  
VISCOMI, GERSH,  
SIMPSON & JOOS, PLLP  
121 Wisconsin Avenue  
Whitefish, Montana 59937



Debbie Pierson, Flathead County MT by DD

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**SECOND AMENDMENT TO THE FRONTAGE PARK AT ROCKY CLIFF DESIGN  
GUIDELINES, CONDITIONS, COVENANTS & RESTRICTIONS**

**AND**

**CONTRACT BETWEEN THE ASSOCIATION AND THE LOT OWNERS OF  
FRONTAGE PARK AT ROCKY CLIFF**

This Amendment to the Frontage Park at Rocky Cliff Design Guidelines, Conditions, Covenants & Restrictions (the "Second Amendment") is made as of July 11, 2018, by the Rocky Cliff Estates Homeowners Association (the "Association").

**RECITALS**

- A. On or about December 17, 2004, each lot of the Rocky Cliff Subdivision was, through the recording of two separate CCR documents, made subject to the terms of at least one of those documents;
- B. The Frontage Park at Rocky Cliff Design Guidelines, Conditions, Covenants & Restrictions ("Commercial CCRs") is applicable to Lots 1-9 of Rocky Cliff Subdivision, which lots are designated for commercial purposes, and was recorded as Document No. 200435215320, records of Flathead County, Montana;
- C. The Meadows at Rocky Cliff Design Guidelines, Conditions, Covenants & Restrictions ("Residential CCRs") is applicable to Lots 10-50 of Rocky Cliff Subdivision, which lots are designated for residential purposes, and was recorded as Document No. 200435215330, records of Flathead County, Montana;
- D. The Association is the single homeowners' association which governs all lots of Rocky Cliff Subdivision pursuant to both the Commercial CCRs and the Residential CCRs; and
- E. The Association and the lot owners of Frontage Park at Rocky Cliff, wish to clarify one or more of their obligations under both sets of CCRs; and



NOW THEREFORE, FOLLOWING A VOTE OF AT LEAST 65% OF THE COMMERCIAL LOT OWNERS, THE ASSOCIATION AND THE COMMERCIAL LOT OWNERS DO HEREBY AMEND AND SUBMIT FOR FILING BY THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA, THE FOLLOWING AMENDMENT TO THE COMMERCIAL CCRs:

**1. The following new language shall be added to the end of Section E, General & Future Provisions of the Commercial CCRs:**

**E.3 MAINTENANCE OF HOMEOWNERS' PARK C**

The owners of Lots 1-9 of Rocky Cliff Subdivision, who may also be described as the lot owners of Frontage Park at Rocky Cliff (hereinafter, the "Commercial Owners"), shall be responsible for the maintenance of Homeowners' Park C as shown on the Subdivision Plat of Rocky Cliff Subdivision, records of Flathead County, Montana, including but not limited to maintenance of the shared commercial drainfield located in Homeowners' Park C, drainage, and landscaping.

**E.4 MAINTENANCE OF COMMERCIAL SECTION OF FRONTAGE PARK ROAD**

The Commercial Owners shall be responsible for the maintenance of the section of Frontage Park Road extending from the northwest corner of Lot 9 of Rocky Cliff Subdivision to the road's southeastern terminus.

**E.5 CONFIRMATION OF SEPARATE DESIGN REVIEW**

The Association and the Commercial Owners hereby confirm pursuant to the separate language of the separate Commercial CCRs and Residential CCRS, that Lots 1-9 of Rocky Cliff Subdivision, also described as Frontage Park at Rocky Cliff, shall have its own Design Review Board comprised of commercial owners and a technical adviser where necessary, and that the Frontage Park at Rocky Cliff Design Review Board shall be separate from and independent of any design review board governing The Meadows at Rocky Cliff, which may also be described as Lots 10-50 of Rocky Cliff Subdivision. However, the Design Review Board governing the Commercial Owners are entitled to the same water use for the same cost as owners under the Residential CCRs: restrooms, kitchens, irrigation for landscaping, and fire mitigation. However, if a Commercial Owner proposes a commercial use that would include greater than normal water use, for instance including but not limited to a car wash or a pet grooming business, then the Design Review Board may require that Commercial Owner pay an additional recurring water assessment to account for the additional water use.



#### **E.6 NONPERFORMANCE**

If the Commercial Owners fail to perform their duties under E.3 through E.4 above, the Association may provide written notice of the violation via US Certified Mail to said owners describing in detail the violation. If said owners do not remedy the violation within thirty days of the date notice was mailed, the Association may correct the violation itself and file a lien for reimbursement on Lots 1-9 of Rocky Cliff Subdivision in the amount of the cost of such correction. Likewise, if the owners under the Residential CCRs fail to perform any duty under the Residential CCRs, the Commercial Owners may provide written notice of the violation via US Certified Mail to said owners describing in detail the violation. If said owners do not remedy the violation within thirty days of the date notice was mailed, the Association may correct the violation itself and file a lien for reimbursement on the residential lots.

#### **E.7 SEPARATE MANAGEMENT COMPANY**

To the extent that a management company is required to manage the property of the Commercial Owners, those Owners, and not the owners under the Residential CCRs, shall be responsible to hire and pay the same. The owners under the Residential CCRs shall not be responsible to pay for management of the lots burdened by the Commercial CCRs, and the Commercial Owners shall not be responsible to pay for management of the lots burdened by the Residential CCRs.

#### **E.8 ASSOCIATION FEES AND WATER**

The Commercial Owners who own developed lots, in consideration for the duties and responsibilities assigned to them herein, shall no longer be responsible to pay the entire monthly flat fee for Association dues that the owners of developed lots under the Residential CCRs pay. Rather, the Association shall determine what portion of that flat fee is attributable to the shared water system, and the Commercial Owners shall be responsible to pay only that portion of the flat fee which is attributable to the shared water system. The owners of developed lots under the Commercial CCRs shall continue to pay the same amount for the shared water system as the owners under the Residential CCRs pay for the shared water system regardless of changes in the flat fee amount. Lots 1-9 of Rocky Cliff Subdivision shall continue to be available for special assessments by the Association, but only for assessment amounts attributable to the shared water system; Lots 1-9 of Rocky Cliff Subdivision shall no longer be available for special assessments by the association which do not pertain to the shared water system. The Commercial Owners must use the shared Rocky Cliff water facilities, including the wells, pumps, and distribution system. Any Commercial Owner with an undeveloped lot who develops the lot must contact the Association prior to hooking up to the water system.

For lots which are undeveloped, the flat Association fee shall remain the same; however, said fees collected from Commercial Owners with undeveloped lots shall be accounted for separately, and the funds resulting therefrom shall be used exclusively for expenses associated with the Rocky Cliff water facilities. The Commercial Owners shall not use the shared water system for any regular maintenance of landscaping on Homeowners' Park C, but they may use it for fire mitigation on Homeowners' Park C.



**E.9 SPECIAL MODIFICATION PROVISION FOR SECTIONS E.3 THROUGH E.9**

Notwithstanding the Modifications provisions in A.7, which shall remain in effect for all provisions other than E.3, E.4, E.5, E.6, E.7, E.8, and E.9, sections E.3 through E.9 may be amended only by a written document signed by (1) not less than 65% of the owners of Frontage Park at Rocky Cliff; AND (2) not less than 65% of the owners of The Meadows at Rocky Cliff.

**2. Conflict.**

To the extent that the provisions of this Second Amendment conflict with the Commercial CCRs or prior covenants and/or agreements, the terms provided herein shall control. To the extent that the provisions of any of said documents conflict with local, state and/or federal regulations, the governmental regulations shall control.

IN WITNESS WHEREOF, the undersigned Association, on behalf of and voting all Lots has executed this Second Amendment this 11<sup>th</sup> day of JULY, 2018.

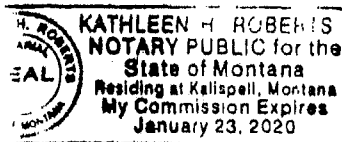
**"ASSOCIATION"**

**ROCKY CLIFF ESTATES HOMEOWNERS ASSOCIATION**

By: Andrea Aiken  
\_\_\_\_\_, as its President

STATE OF MONTANA )  
 ) ss.  
COUNTY OF FLATHEAD )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of JULY, 2018, by Andrea Aiken as President of Rocky Cliff Estates Homeowners Association.



Kathleen H. Roberts  
Printed Name: Kathleen H. Roberts  
Notary Public for the State of Montana  
Residing at Kalispell, MONTANA  
My Commission Expires: Jan 23, 2020

