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Donald R. Murray
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Kalispell, MT 59903

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PAULA ROBINSON F¹ ATHEAD COUNTY MONTANA

**DECLARATION OF SKY RANCH ADDITION
WATER USERS ASSOCIATION
AND SHARED WELL AGREEMENT**

160621-CT

Sky Ranch Addition Subdivision, Flathead County
April 15, 2006

THIS DECLARATION is made, and this agreement is entered into, this 15th day of April, 2006, by and between Timothy R. Birk of Kalispell, Montana, Ed Estes of Kalispell, Montana, and Barry Ballenger of Kalispell, Montana, the declarants and organizers of the Sky Ranch Addition Water Users Association. They are referred to collectively herein as "Declarants."

WITNESSETH:

WHEREAS, the Declarants are the owners of all the lots in a five (5) lot subdivision known as Sky Ranch Addition which is located in the Northeast Quarter (NE¹/₄) of Section 7, Township 27 North, Range 20 West, P.M.M. in Flathead County, Montana, and shown on Certificate of Survey No. 11031, records of Flathead County, Montana; and

WHEREAS, the Declarants have installed upon said property a multi-party water system, consisting of a groundwater well, well casing, pump, pump controls and distribution

system. The water system is located on the real property described above as depicted on Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, it is the objective of the Declarants, being all of the owners of the real property described above, that the water from the system be supplied to the individual owners of the five (5) Lots of Sky Ranch Addition for the mutual benefit of said parties, and that all parties receiving water from the system be subject to the conditions and requirements set forth in this Declaration.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the undersigned Declarants, for the benefit of the property described above, do hereby enact and adopt the following conditions and requirements for the Sky Ranch Addition water system, and for the establishment of an Association to govern its operation and maintenance.

PART ONE

ESTABLISHMENT OF ASSOCIATION

1. **Creation of Association.** There is hereby established an unincorporated association which shall be known as the SKY RANCH ADDITION WATER USERS ASSOCIATION. The initial members of the Association are the Declarants, and they form this Association to manage, operate and maintain the Sky Ranch Addition community water system as more specifically set forth herein.

2. **Purposes of the Association.** The purposes of the Association shall be as follows:

- (a) To own, operate, regulate and maintain the water system described herein in accordance with the terms and conditions of this Declaration, and to assure an adequate supply of safe and potable water for the benefit of present and future owners of the properties served by the system; and

(b) To periodically assess each member of the Association a fee for the operation, repair and maintenance of the water system. The timing and amount of assessments shall be established by a majority vote of the members of the Association at the annual meeting of the members or at a special meeting called for that purpose, in accordance with the provisions for assessment set forth herein. In no event, however, may such assessments or fees be set at a level which is insufficient to meet the actual costs of reasonable and reliable operation, maintenance, and repair of the system.

3. **Association Membership.** There shall be no more than five (5) memberships in the Association, one for each of the five (5) lots in Sky Ranch Addition. Memberships shall be for the benefit of and appurtenant to Lots 1 through 5 of Sky Ranch Addition, and shall pass with the lots to any subsequent owner. Transfer of memberships from the Declarants to new members shall be evidenced by placing on any instrument conveying a lot the notation: "Together with and Subject to" this Declaration, and such instrument of conveyance recorded in the office of the Clerk and Recorder of Flathead County, Montana.

4. **Voting Rights.** Each membership shall be entitled to one vote in the Association. When one or more persons or other entities are owners of a membership, the vote for such membership shall be exercised as the owners of said membership may determine, but in no event shall more than one vote be allowed for each membership in the Association. An owner of a membership shall mean and refer to the record owner of the property, including the purchaser of said property under a contract for deed, but shall not include the holder of an interest in a lot merely as security for an obligation.

5. **Ownership of Water System.** The Association shall own and the Declarants hereby convey to the Association, the well and all of the component parts of the water system, as well as any water rights now owned and presently used on the property, in accordance with the following:

(a) Water shall be furnished by the Association to each member in accordance with the terms and conditions of this Declaration. The Declarants shall be permitted to assess a one time hook-up charge as a condition of membership in the Association. Said hook-up charge shall be in such amount as may be determined by the Declarants and shall be paid by each member to Declarants prior to connecting to the water system.

(b) It shall be the responsibility of each member to furnish, at it's own expense, such labor, equipment, pipes, hydro-pneumatic tank and metering devices as may be necessary to connect to the system. All connections shall be completed in accordance with the requirements set forth herein or imposed by the Declarants or the Association. Members may be required to purchase and install metering devices, which shall be read periodically, at intervals to be determined by the Association.

(c) The Association shall be responsible for repair and maintenance of the water system to the point of hook-up for each member, and the individual members shall be responsible for the repair and maintenance of their individual system service lines from the point of hook-up to the point of use.

6. **Assessments.** Each member of the Association is hereby deemed to agree to abide by the terms and conditions of this Declaration and to be subject to such assessments as the Association may from time to time levy or impose. Each assessment shall be the personal obligation of the member as of the due date of the assessment. Assessments shall be subject to and levied in accordance with the following conditions:

(a) Assessments shall be used exclusively for the purpose of promoting the health, safety and welfare of the members of the Association and their families, and in particular for the repair, maintenance and improvement of the water system.

(b) Assessments may be required on a monthly, quarterly, semi-annual or annual basis as may be from time to time determined by the members, and the members may further require from time to time such special assessments as they may deem necessary to fulfill the purposes of the Association. All assessments shall be fixed at a uniform rate for all members.

(c) Assessments shall be regular or special. Both types of assessments shall be fixed by the members of the Association. The members shall fix the amount of each assessment at least thirty (30) days in advance of the due date of the assessment, and written notice of such assessment shall be sent to every member

subject thereto. The due dates of payment shall be established by the members and the notice of assessment shall include the date when payment is due.

(d) "Regular" assessments shall be for the purpose of defraying the ordinary and routine costs of operation and maintenance of the system.

(e) "Special" assessments shall be in addition to the regular assessments and shall be for the purpose of defraying, in whole or in part, the cost of any capital improvement, installation, construction, reconstruction, repair or replacement of a capital improvement of the system, provided that before any special assessment be levied, it shall be approved by a majority of the members at a meeting of the Association called for that purpose. At a meeting called for the purpose of levying a special assessment, the presence at the meeting, in person or by proxy, of the members entitled to cast the majority of all of the membership shall constitute a quorum. If the required quorum is not present at such a meeting, another meeting may be called, subject to notice and quorum requirements set at the preceding meeting. All such subsequent meetings shall be held no later than sixty (60) days following the preceding meeting.

(f) Any assessment not paid when due shall be delinquent, and if not paid within thirty (30) days of the due date, the amount unpaid shall bear interest from the date of the delinquency at the rate of ten percent (10%) per annum. The Association may bring an action to collect the amount of the past due assessment, together with interest thereon, litigation costs, and reasonable attorney fees incurred to prosecute such action. By accepting a deed to the property, each owner served by the water system covenants to pay all assessments and charges which shall be a personal obligation of the owner of the Lot at the time the assessments are made.

(g) A maintenance fund for maintenance and repairs of the system shall be established in the name of the Association and administered by the members. The funds in this account shall be used for operation, maintenance, repair and improvement of the water system only.

7. **Notice.** Any notice required by this Declaration shall be deemed served upon the members entitled to notice whether by personal service, or by depositing said notice in the United States Post Office, postage prepaid, addressed to such address as the members shall designate in the books or records of the Association.

8. **Association Management.** The members shall elect, at a meeting called by written notice at least ten (10) days prior to said meeting, a Board of two Directors, which Board

of Directors shall elect from their membership a President and Secretary-Treasurer. Each officer shall have a term of office of one year.

Thereafter, the Directors shall be elected at the annual meeting of the members of the Association, and the officers shall be elected at the annual meeting of the Board of Directors to be held immediately after the annual meeting of the members.

The president shall preside at the meetings and shall have the general responsibility for the management of the affairs of the Association and shall carry out the directives and resolutions of the Board of Directors. The President shall be the person responsible for contact with the Montana Department of Environmental Quality and other state or local governmental agencies. The Secretary-Treasurer shall keep the minutes of the meetings, and shall have care and custody of the Association's funds.

Initially, the principal place for the transaction of its business shall be at _____, Kalispell, Montana 59901. Once there are enough members of the Association to hold an election of officers pursuant to the provisions contained herein, the home of the Secretary-Treasurer of the Association within the boundaries of Flathead County, Montana, shall be the principal place of the Association's business.

The Association shall be bound by all federal, state and local laws pertaining to water quality and use, and should it be necessary that steps be taken to monitor or improve water quality, any attendant costs shall be born equally by all members of the Association.

9. **Association Meetings.** There shall be at least one annual meeting of the Association, which shall be held at the home in Flathead County of the Secretary-Treasurer, or such other place as may be designated by the Board of Directors. The date of the annual meeting shall be set each year by the Board of Directors, and the Board of Directors shall then give

written notice of such meeting to each member at least ten (10) days prior to said meeting. Any and all vacancies on the Board of Directors shall be filled by a majority vote of the members.

10. **Association Powers.** The Association shall have and possess, through its Board of Directors, the following powers:

- (a) To sue and to be sued;
- (b) To enter into contracts;
- (c) To do all acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Association; and
- (d) Such other powers incident to or necessary for the full and complete exercise of any duties or responsibilities set forth herein; provided, however, that the Board of Directors shall not have the authority to amend the provisions of this Declaration unless there is consent to such change by four (4) of the five (5) members in person or by proxy at a meeting of the members notice of which includes notice of the proposal to amend the Declaration.

11. **Duration of Association.** The Association shall exist until dissolved by a formal act of its members during a meeting at which all of the members are present, in person or by proxy, provided that such dissolution is desired by at least four (4) of the members of the Association. Dissolution shall be accomplished only as herein provided or in the following cases:

- (a) By order of the Flathead County Health Department or Montana Department of Environmental Quality; or
- (b) In the event another water system is extended to the property and the Board of Directors in its discretion and upon approval of the appropriate state and county agencies, believes it to be in the best interest of the Association to dissolve and associate with such other water system. Any member of the Association who wishes to withdraw from the Association and connect to another water system may do so, provided that prior to doing so, such withdrawing member shall satisfy all obligations then due.

PART TWO

RECIPROCAL EASEMENTS and WATER USE

12. **Conveyance of Easements.** Each Lot in Sky Ranch Addition shall enjoy as an appurtenance to such Lot an easement across each of the other Lots in Sky Ranch Addition as shown on Exhibit "A" for the installation of the system and to provide reasonable access for construction, repair and maintenance of the system, provided that the initial installation of the community water system shall be completed in accordance with the specifications and requirements of Declarants. Reciprocal easements for the installation, repair and maintenance of the system are hereby granted by each of the Declarants to each of the other Declarants which easements are shown on Exhibit "A."

In addition, the Association, through its officers, employees or agents, shall have an easement across the individual property of members of the Association as is necessary for the repair and maintenance of the system and to read water meters.

Association membership, the easements conveyed for the water system, and the duties and obligations set forth in this Agreement are for the benefit of and shall be appurtenant to the lots in Sky View Addition and the obligations, grants and reservations herein shall run with the land and be binding upon and inure to the benefit of the parties, their heirs, successors and assigns. Any deed of conveyance of any Lot granted a membership shall subject the Lot being conveyed to the conditions, restrictions and obligations contained herein.

13. **Conveyance of Multi-Party Water System.** Declarants hereby declare that the legal and equitable ownership of the water system shall vest in the Association, and that the Association shall have the power to sell, convey or transfer the ownership of the water system, as well as the duties, responsibilities and powers created by this Declaration as follows:

(a) The ownership of the water system may be conveyed or transferred to a corporation, organized for profit or otherwise, without notice of any kind, provided that by said transfer, such corporation shall assume the duties, responsibilities and powers set forth in this Declaration.

(b) The ownership of the water system may be sold, conveyed or transferred to a non-profit corporation or homeowners association, which may hereinafter be created, provided that any such association shall agree to accept the duties, powers and responsibilities provided in this Declaration.

14. **Water Use.** The water from the system shall be used only as a source of domestic water for household consumption and lawn and landscape watering and for irrigation of the lots. The parties shall not use water from the system on or in relation to any property other than the member's lot in Sky Ranch Addition. In this regard, it is understood and agreed that each membership shall be entitled to only one (1) single family residence on each Lot owned. If excessive irrigation causes water use to exceed the capacity of the system as a whole for domestic and irrigation uses, the Association has the power to restrict irrigation use as may be necessary and reasonable to ensure equal and suitable water supply to each and all members.

It is the express intention of the Declarants that the water system established herein shall not be a public utility, but is created for the sole and limited purpose of providing domestic water and water for irrigation to the members.

16. **Compliance with Applicable Laws.** The Association shall be bound by all federal, state and local laws and regulations pertaining to water systems and waste disposal. In the event compliance with such laws or regulations necessitates that changes be made in the operation, maintenance or repair of the system, the cost of such changes shall be borne equally by the members of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have hereunto caused this instrument to be executed the day and year first above written.

DECLARANTS

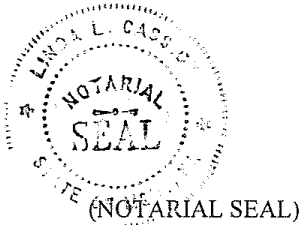
[Signature]
Timothy R. Birk

[Signature]
Ed Estes

[Signature]
Barry Ballenger

STATE OF MONTANA)
) :SS
County of Flathead)

SUBSCRIBED and SWORN to before me this 24 day of April, 2006, by Timothy R. Birk.



[Signature]
[Signature of Notary]

Linda L Cassidy
[Typed, stamped or printed Name of Notary]

Notary Public for the State of Montana

Residing at Bigfork MT
[City of Residence]

My commission expires: 3-18-2010
[Month] [Day] [Year]

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STATE OF MONTANA)
 :SS
 County of Flathead)

SUBSCRIBED and SWORN to before me this 21st day of April, 2006, by Ed Estes.

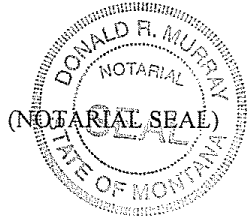
Donald R. Murray
[Signature of Notary]

DONALD R. MURRAY
[Typed, stamped or printed Name of Notary]

Notary Public for the State of Montana

Residing at Kalispell, MT
[City of Residence]

My commission expires: Oct. 17th 2006
[Month] [Day] [Year]



STATE OF MONTANA)
 :SS
 County of Flathead)

SUBSCRIBED and SWORN to before me this 24 day of April, 2006, by Barry Ballenger.

Linda L. Cassidy
[Signature of Notary]

Linda L. Cassidy
[Typed, stamped or printed Name of Notary]

Notary Public for the State of Montana

Residing at Bigfork MT
[City of Residence]

My commission expires: 3-18- 2010
[Month] [Day] [Year]

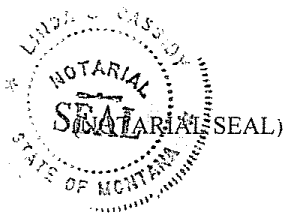
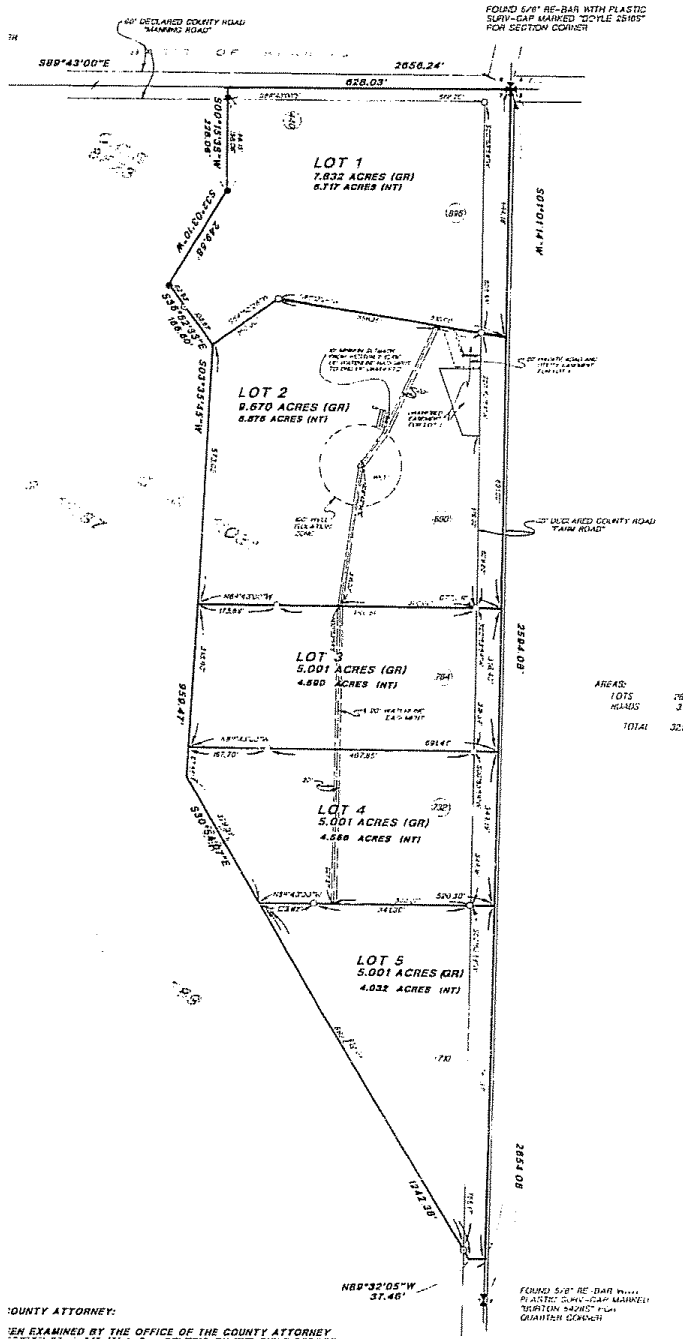


EXHIBIT "A"

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Sky Ranch Add

