

RESTRICTIVE COVENANTS FOR LOTS 1, 2 AND 3, MINOR SUBDIVISION NO. 201

The following Declaration of Restrictive Covenants shall be binding on said Lots, 1, 2, and 3, MINOR SUBDIVISION NO. 201

AGRICULTURAL PRACTICES

- 1. Lots owners and residents of the Minor Subdivision are informed that adjacent users may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in dust, smoke, animal odors, flies and machinery noise. Standard agricultural practices feature the use of heavy equipment, burning, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
- 2. All fences bordering agricultural lands shall be maintained by the homeowners in accordance with state law.

NOXIOUS WEEDS

- 1. Noxious weeds will be controlled according to the Gallatin County Weed Control Standards.

FIRE PROTECTION

- 1. Any new dwelling units shall have automatic fire sprinkler systems installed meeting the requirements of NFPA 13D, and shall be approved by the Fire Chief of RAE Fire District.

AMENDMENT PROCEDURES

- 1. Any covenant which is included herein as a condition of the preliminary plat approval and required by the County Commission may not be amended or revoked without the mutual consent of the owners in accordance with the amendment procedures in these covenants and the governing body of Gallatin County.

This Declaration of Restrictive Covenants shall be in addition to any existing covenants or restrictions already encumbering the property.

Dated this 17th day of December, 1996.

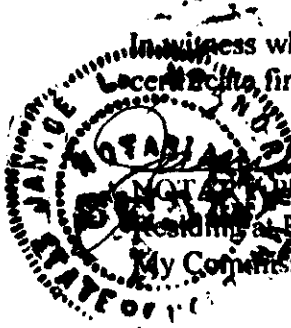
Sidney Dykstra
Sidney Dykstra

Ethel M. Dykstra
Ethel M. Dykstra

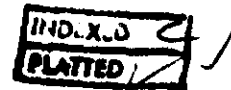
STATE OF MONTANA)
) ss
COUNTY OF GALLATIN)

On this 17th day of December, 1996, before me, a Notary Public in and for said state, personally appeared Sidney Dykstra and Ethel M. Dykstra, known to me to be the persons whose names are subscribed to within this instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my and affixed my official seal the day and year in this location first above written.



Shelly M. Anderson
NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at Bozeman, Montana
My Commission Expires 11-28-98



337168

C:\a\h\96\96189\office\covsum

State of Mont., County of Gallatin, ss Filed for record DECEMBER 31, 19 96
at 2:12 P.M., and recorded in Book 169 of MISCELLANEOUS page 3439
Shelley M. Chancy Recorder. By Carrie Bromcamp Deputy

FEE: \$6.00 PD
RT: AMERICAN LAND TITLE CO

2538451

Page: 1 of 4 02/24/2016 10:17:22 AM Fee: \$28.00
Charlotte Mills - Gallatin County, MT MISC



After recording return to:
Gallik, Bremer & Molloy, P.C.
777 E. Main Street, Suite 203
P.O. Box 70
Bozeman, Montana 59718

**FIRST AMENDMENT TO RESTRICTIVE COVENANTS FOR
LOTS 1, 2 AND 3, MINOR SUBDIVISION NO. 201**

THIS FIRST AMENDMENT TO THE DECLARATION OF RESTRICTIVE COVENANTS FOR MINOR SUBDIVISION NO. 201, ("First Amendment") is made and entered into as of this 16th day of February, 2016, by and between ROSA-JOHNSON DEVELOPMENT, LLC, formerly known as Four Corners Construction, LLC, with an address of 125 Central Avenue, Unit 1A, Bozeman, Montana, 59718 ("Rosa-Johnson") and GALLATIN COUNTY, MONTANA, a political subdivision of the state of Montana, with an address of 311 West Main Street, 3rd Floor, Room 306, Bozeman, Montana 59715.

RECITALS

WHEREAS, Minor Subdivision No. 201, creating three (3) lots, received preliminary plat approval from Gallatin County on October 1, 1996, and final plat approval on December 31, 1996;

WHEREAS, the County's approval imposed a covenant requiring fire sprinklers as a condition of the preliminary plat approval;

WHEREAS, the Declaration of Restrictive Covenants for Minor Subdivision No. 201, containing the covenant requiring fire sprinklers, was recorded December 31, 1996, Book 169 of Miscellaneous, Page 3439, records of Gallatin County, Montana;

WHEREAS, the three lots created by Minor Subdivision No. 201 were annexed into the City of Bozeman in 2004 as part of the Laurel Glen Annexation;

WHEREAS, subsequent to the City's annexation of Lots 1, 2 and 3, Minor Subdivision No. 201, the Plat of Minor Subdivision No. 201 was amended, creating Lots 2A and 3A of Minor Subdivision No. 201A, being an Amended Plat of a Portion of Lot 2 and Lot 3 Minor Subdivision No. 201;

WHEREAS, the Declaration of Restrictive Covenants for Minor Subdivision No. 201 provides that any covenant that was required by the County Commission and included as a

condition of preliminary plat approval may not be amended without the mutual consent of the owners and the governing body of Gallatin County;

WHEREAS, Rosa-Johnson is the present owner in fee simple of Lot 3A of Minor Subdivision No. 201A, being an Amended Plat of a Portion of Lot 2 and Lot 3 Minor Subdivision No. 201;

WHEREAS, the Gallatin County Board of County Commissioners is the governing body of Gallatin County;

WHEREAS, Rosa-Johnson, as owners of Lot 3A of Minor Subdivision No. 201A, and the Gallatin County Board of County Commissioners, as the governing body of Gallatin County, mutually consent and agree to amend the Restrictive Covenants for Minor Subdivision No. 201, as herein provided, to remove the covenant requiring fire sprinklers from Lot 3A, given that Lot 3A has been annexed by and into the City of Bozeman;

NOW THEREFORE, by mutual consent of the parties, the Restrictive Covenants for Lots 1, 2 and 3, Minor Subdivision No. 201 are hereby amended as follows:

1. The following described parcel is released from the Fire Protection covenant, to wit, "Any new dwelling units shall have automatic fire sprinkler systems installed meeting the requirements of NFPA 13D, and shall be approved by the Fire Chief of the RAE Fire District":

Lot 3A of Minor Subdivision No. 201A being an Amended Plat of a Portion of Lot 2 and Lot 3 Minor Subdivision No. 201, located in the SE ¼ of Section 4, Township 2 South, Range 5 East of P.M.M., Gallatin County, Montana.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Restrictive Covenants for Minor Subdivision No. 201 as of the date and year written above.

[Remainder of page intentionally left blank; signature pages to follow.]

ROSA-JOHNSON DEVELOPMENT, LLC

By: *Scott Johnson*

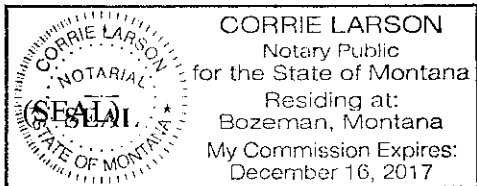
Date: 2/16/16

Scott Johnson, Managing Member

ACKNOWLEDGMENTS

STATE OF MONTANA)
 :SS
County of Gallatin)

This Instrument was **ACKNOWLEDGED** before me this 16th day of February, 2016, by Scott Johnson, as Managing Member of Rosa-Johnson Development, LLC.



Corrie Larson
Notary Public for the State of Montana

Printed Name _____
Residing at _____
My Commission Expires: _____
4 digits

ROSA-JOHNSON DEVELOPMENT, LLC

By: *John Rosa*

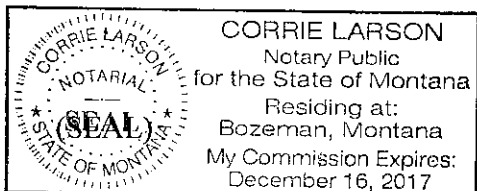
Date: 2/16/16

John Rosa, Managing Member

ACKNOWLEDGMENTS

STATE OF MONTANA)
 :SS
County of Gallatin)

This Instrument was **ACKNOWLEDGED** before me this 16th day of February, 2016, by John Rosa, as Managing Member of Rosa-Johnson Development, LLC.



Corrie Larson
Notary Public for the State of Montana

Printed Name _____
Residing at _____
My Commission Expires: _____
4 digits

COUNTY:

BOARD OF COUNTY COMMISSIONERS, GALLATIN COUNTY

By: Joe P. Skinner

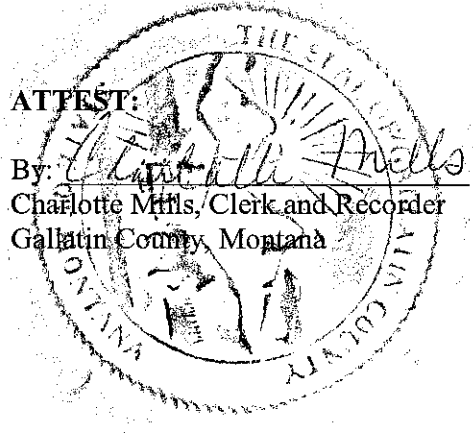
Joe P. Skinner, Chairperson

Date: 2/22/2016

ATTEST:

By: Charlotte Mills
Charlotte Mills, Clerk and Recorder
Gallatin County, Montana

Date: 2/22/2016



2609510Page: 1 of 15 03/28/2018 04:22:56 PM Fee: \$115.00
Charlotte Mills - Gallatin County, MT MISC

**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS
FOR BOULDER CREEK SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR BOULDER CREEK SUBDIVISION (this "**Declaration**") is made this 1 day of February, 2018, by Rosa-Johnson Development, LLC, a Montana limited liability company, hereinafter referred to as "**Declarant**";

WITNESSETH:

WHEREAS, Declarant is the owner of the following described property described in Exhibit A attached hereto and by this reference incorporated herein, situated in Gallatin County, Montana;

WHEREAS, Declarant intends to develop, sell and convey the above-described real property, hereinafter referred to as "**Boulder Creek Subdivision**"; and,

WHEREAS, Declarant desires to subject all of said real property, together with the lots contained therein, to the covenants, conditions, restrictions and reservations herein set forth and referred to as "**Covenants**";

NOW, THEREFORE, Declarant does hereby establish, dedicate, declare, publish and impose upon the property the following Covenants, which shall run with the land, and shall be binding upon and be for the benefit of all persons claiming such property, their grantors, legal representatives, heirs, successors and assigns, and shall be for purposes of maintaining a uniform and stable value, character, architectural design, use, and development of the property. Such Covenants shall apply to the entire property, and all improvements placed or erected thereon, unless otherwise specifically excepted herein. The Covenants shall inure to and pass with each and every parcel, Lot, lot or division. Said Covenants are follows:

ARTICLE I
Definitions

1.1 The term "**Association**" shall mean the Boulder Creek Subdivision Homeowners' Association, its successors and assigns. The Association may be incorporated as a Montana non-profit corporation, with its members as the lot owners.

1.2 The term "**Contract Purchaser**" shall mean a Person buying a lot pursuant to a contract for deed, Montana Trust Indenture or mortgage.

1.3 The term "**Declarant**" shall mean and refer to Rosa-Johnson Development, LLC, and its successors and assigns.

1.4 The term "**Directors**" shall mean the Board of Directors of the Association, and shall consist of three individuals appointed by the Declarant, who need not be Owners of Lots in

the subdivision. Declarant shall have the right to appoint all Members to the Board of Directors until such time as Declarant no longer owns any lots in the subdivision. At that time, the Board of Directors shall be elected at the annual meeting by a simple majority of the Members of the Association. The Board of Directors shall be elected for a term set by a simple majority of the Members, but not less than one year. Any vacancy in the Board of Directors occurring before the next annual meeting of the Members shall be filled by the remaining Directors.

The Directors shall have the authority to act on behalf of the Association and its Members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

1.5 The term "**Member**" shall mean any owner or lot owner. Each Member agrees to abide and be bound by these Covenants, the Articles of Incorporation, the Bylaws and the Resolutions of the Homeowners' Association, if any.

1.6 The term "**Owner**" or "**Lot Owner**" shall mean any person or entity owning a fee simple interest in a lot or a contract purchaser, whether one or more persons or entities, owning or purchasing a lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of a lot for value, the term "Owner" shall mean "Declarant" or its successors or assigns. The term "**Person**" hereinafter shall include any person, persons or entities.

1.7 The term "**Parkland System**" shall mean all land and interest therein which has or may be conveyed to the Association, including but not limited to all lands identified as private common open space, trail network, and park as delineated on the final plat of the Subdivision. Private common open space shall remain in the ownership and control of the Association. This term "Parkland System" does not include any portion of the park lands or open space lands conveyed to the City of Bozeman or designated as a "Public Park" on the final plat for the Subdivision.

1.8 The terms "**Properties**" and "**Lots**" shall mean and refer to only that land so divided into a lot, tract or parcel that is a portion of the real property (a) described on Exhibit A or hereafter annexed to the Subdivision and (b) designed by the Declarant for residential or other permitted use. The term "Lot" or "Properties" does not include any portion of the Parkland System.

1.9 The term "**Subdivision**" shall include all land described on Exhibit A, together with such other land as may be annexed pursuant to the provisions of this Declaration.

1.10 Other definitions may be found throughout these covenants and those definitions are binding upon all Owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

ARTICLE II

Boulder Creek Subdivision Homeowners' Association

2.1 An association is hereby established and known as "Boulder Creek Subdivision Homeowners' Association" hereinafter referred to as the "**Association.**" Said Association may be incorporated under a different name as may be approved by the Montana Secretary of State.

2.2 Every Owner or Contract Purchaser of a Lot shall be a Member of the Boulder Creek Subdivision Homeowners' Association. Membership shall be appurtenant to and may not be separate from the ownership of any Lot. Each Owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address. The initial address of the Association shall be _____ . The address of the Association may be changed by the Board of Directors upon notice to the Owners.

2.3 For purposes of determining membership, at any meeting a Person shall be deemed to be a Member upon the recording of a duly executed deed to that Owner, or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an Owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

Foreclosure of a mortgage, trust indenture or the termination or foreclosure of a contract for deed wherein title is vested in the mortgage, beneficiary or original seller on a contract, or repossession for any reason of a lot or unit sold under a contract shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal owner.

2.4 The annual meeting of the Association shall occur on the ___ day of _____ for each calendar year.

Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of fifty percent (50%) of the Owners. Special meetings shall require seven (7) days' notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner as provided pursuant to Section 2.2 of this Article or by electronic transmission (such as e-mail) if the member so notifies the Board of Directors of its election to receive communications electronically. When meeting notices or other Association communications are sent electronically, delivery shall be deemed complete upon confirmation from the sender's computer of successful transmission and the date and time thereof.

The presence of members representing 30% of the total votes of the membership shall constitute a quorum. Proxy votes are allowed so long as the proxy is provided to the Association not less than twenty-four (24) hours prior to the meeting, is signed by the Lot Owner(s), is dated and clearly identified the party or person entitled to exercise the vote.

At the annual meeting, the Members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other

business as shall be reasonable or necessary to carry out the purpose of the Association. The Members shall have the authority to set the number of Directors, which number shall not be less than three nor more than seven. The presence of Members representing 30% of the total votes of the membership shall constitute a quorum.

Passage of any motions shall require a majority of the Members present. All membership meetings, including the annual meeting, may be held in person, telephonically, or electronically (such as via web-cast) provided all parties can hear each other. Additionally, members may act on any matter, including amendment to these covenants, by written ballots to the extent permitted by the Montana Nonprofit Corporation Act.

2.5 The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the Members. At the annual meeting, the Directors shall elect a President, Vice-President, Secretary and Treasurer for the Association from among the Directors. One Director may serve as both Secretary and Treasurer, but neither the President or Vice President may also serve as a Secretary or Treasurer.

2.6 The Board of Directors shall serve for a term to be set by a simple majority of the Members, which shall not be for less than one year. Each Director shall serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the Members shall be filled by the remaining Directors.

2.7 The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its Members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to taking such actions as shall be necessary or reasonable to care for, protect and maintain the common road, to enforce these Covenants; to collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall act by majority vote.

2.8 The duties of each of the offices shall be as follows:

A. President. The President shall preside over all meetings of the Association. He or she shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association, and shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

B. Vice-President. The Vice-President shall exercise the powers of the President in the absence of the President.

C. Secretary. The Secretary shall give notice of all meetings of the Association, and shall keep a record of the proceedings of the meetings of the Association. The

Secretary shall be authorized to sign on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association.

D. Treasurer. The Treasurer shall keep and maintain adequate and correct accounts of the accounts, properties, and business of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association. The Treasurer shall prepare and report such periodic accountings as shall be required by the Association.

2.9 A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected.

ARTICLE III

Annual and Special Assessments; Association Responsibilities

3.1 Assessments. Each Owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

A. Annual assessments or charges; and

B. Special assessments for capital improvements and reserve assessments, such assessments to be established and collected as hereinafter provided.

The annual, special and reserve assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the Property against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the Owner of such Property at the time when the assessments are due.

3.2 Purpose of Assessments. The assessments levied by the Association shall be used to promote the health, safety, convenience and welfare of the Owners, for the improvement and maintenance of the common roads, the Parkland System within the Subdivision, and for any other purposes, expressed or implied, in these Covenants.

3.3 Amount and Approval of Assessments. The maximum annual assessment per Lot which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

A. At each annual meeting of the Members of the Association, the Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the Members for review, discussion, amendment, comment and approval. The Members shall approve or amend the proposed budget at the annual meeting by a majority vote of the Members present or voting by proxy. If any proposed budget is disapproved or if the Directors fail to determine the budget for any year, then the budget most recently in effect shall be increased by

five percent (5%) to cover anticipated increased expenses for the new fiscal year and this budget shall remain in effect until the next annual meeting of the Members. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth.

3.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy special assessments for purposes of defraying, in whole or in part, the cost of any construction, reconstruction, capital improvements on the Properties or within the Subdivision or to cover any unbudgeted expenses or expenses in excess of those budgeted, provided that any such assessment shall have the approval of fifty percent (50%) or more of all the votes of the Members who are present at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years.

3.5 Rate of Assessment. Annual assessments shall be fixed by the Directors at a uniform rate for each Lot except that each dwelling unit on multifamily Lots or Lot will be assessed an equal proportionate share. Assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis as shall be determined by the Board of Directors of the Association. Special assessments shall be fixed at the same rate for each Lot affected by the special assessments.

3.6 Date of Commencement of Annual Assessments; Due Dates. Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty (30) days in advance of the due date of each annual assessment, and at least ninety (90) days in advance of a special assessment.

3.7 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owners obligated to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or by abandonment of his or her Lot.

Upon delivery of the notice of assessment to the Owner, the assessment shall be a lien upon the Owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney's fees and costs accrued prior to and in association with the collection of delinquent assessments.

3.8 Sale or Transfer of a Lot. The sale, transfer or encumbrance of any Lot shall not affect the assessment lien if recorded in the records of Gallatin County, Montana, or the personal liability of the Owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded

lien thereof. A Person purchasing a Lot shall be responsible for checking with the Association for any outstanding assessments against said lot before the closing upon the purchase.

3.9 Declarant's Obligation to Pay Assessments. The Declarant may, but shall have no obligation, to pay Assessments on Lots owned by the Declarant.

ARTICLE IV

Land Subject to this Declaration; Building and Use Restrictions

4.1 The land described on Exhibit A attached hereto shall be held, sold, conveyed, leased, encumbered, occupied and improved subject to this Declaration and the Covenants contained herein.

4.2 Annexation. The Declarant may, pursuant to the following provisions of this Section 4.2, from time to time and in Declarant's sole discretion, annex to the Subdivision all or any part of the land described in future exhibits (not then constituting a part of the Subdivision) owned by Declarant at the time of such annexation.

A. The annexation of such land shall be effectuated by Declarant recording an amendment to this Declaration describing the land to be annexed; setting forth such additional limitations, restrictions, covenants and conditions as are applicable to such land; and declaring the land is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to these limitations, restrictions, covenants and conditions, and this Declaration.

B. Upon the annexation becoming effective, the annexed land shall become a part of Subdivision.

C. The amendment to the Declaration described in this Section 4.2.A. above may include, but is not limited to, providing for the following:

i. A designation of land classifications as provided for by the Declarant; and

ii. A declaration of restrictions applicable exclusively to a specified area.

D. Only the land described in Exhibit A and specifically annexed as provided for in this Section shall be deemed subject to this Declaration, whether or not shown on any subdivision map filed by Declarant or described or referred to in any document executed or recorded by Declarant. Nothing herein or in any amendment hereto shall be deemed to be representation, warranty or commitment that the Declarant will commit or subject the Subdivision covenants any land Declarant may now own or hereafter acquire except that land described in Exhibit A or annexed thereto.

4.3 Use of each Lot shall be restricted to uses permitted by applicable City of Bozeman Zone Code (Uniform Development Code) ordinances, as the same may be amended from time to time.

4.4 Zoning Restrictions. All Lots within the Subdivision shall be classified into the following City of Bozeman Zone Code (Uniform Development Code) designations, said designations which are subject to change by the City of Bozeman from time to time, as set forth below and shall carry their associated allowable uses, lot areas, widths and coverages, yards, setbacks and heights:

- A. Lots 1 through 4, Block 5 are zoned Residential High Density District (R-4).
- B. All other Lots are zoned Residential Two-Household Medium Density District (R-2).
- C. The dedicated Parkland System within the Subdivision is zoned Public Lands and Institutions District (PLI).

4.5 Minimum Architectural Design Standards:

A. Exterior Siding. Exterior siding on all improvements shall consist of wood, wood look-alikes or wood products, brick, stone, stucco, or other manufactured exterior good quality materials. No sheet or panel metal siding, nor wooden shake siding, cement block siding, or plywood siding is permitted.

B. Exterior Paint. Exterior colors of all improvements shall be of a subdued natural type. Whites, pastels, wood colors, or "earth-tone" browns, tans, grays, blues, and greens are permitted. No bright or shiny exterior colors are permitted.

C. Roofs. Roof design of all improvements should be consistent with building shape and form. Roofs, other than permitted metal roofs, shall be covered with shingles, shakes, or tiles. No rolled roofing shall be permitted. Metal roofs are permitted provided the same are a non-reflective, non-metallic color. Domed roofs are prohibited. The color of the roof should complement and be consistent with the color scheme of the building.

D. Fencing. Fences located in the front, side or rear yard setback of Properties adjacent to any park shall not exceed a maximum height of four (4) feet, and shall be of an open construction designed in a manner to be consistent along all park land and common open space areas. Proposed fencing shall conform with Section 38.23.130, BMC, "Fences, Walls and Hedges."

E. Sidewalks. City standard sidewalks, including concrete sidewalk sections through all private drive approaches, shall be construed on all public and private frontages prior to occupancy of any structure on individual Lots. Upon the third anniversary of the plat recordation of any phase of the Subdivision, the Declarant or any Lot Owner, as the case may be, who has not

constructed the required sidewalk shall, without further notice, construct within 30 days, the sidewalk for their Lot(s), regardless of whether other improvements have been made on the Lot.

4.6 Temporary Structures. No premanufactured mobile homes, trailers, yurts, or geodesic domes shall be permitted on any Lot. Camping trailers, recreational vehicles, motor homes, trucks boats, horse and stock trailers, and the like are permitted, provided that the same shall not be used for residential purposes, and that the same shall not be kept on the premises for more than fourteen (14) days.

4.7 Landscaping. All landscaping is to be completed within 60 days of completion of construction or, if construction is completed during the winter months, as soon as weather reasonably permits. All Lots shall be appropriately landscaped with sod, an underground sprinkler system, and shall contain a mixture of trees, shrubbery and ornamental plants. Any damage to the common access road caused by construction activities shall be repaired in a timely manner at the expense of the Owner(s) who caused such damage.

4.8 Waste. No trash, waste, garbage, or litter, shall be allowed to accumulate or remain on any Lot. All waste shall be kept in sanitary containers and shall be disposed of promptly on a regular basis. No burning of trash shall be permitted on any Lot, however, limited small-scale burning of unwanted vegetative matter derived from or grown on any Lot is permitted in accordance with all applicable local, county, and state regulations.

4.9 Nuisance. No noxious, offensive, or illegal use or activity, or extremely noisy activity, shall be permitted or carried on upon a Lot, nor shall anything be done or permitted on a Lot that may be or become a public or private nuisance.

4.10 Parking. Owners shall park their vehicles in driveways or designated parking areas. No Lot shall be used for the outside parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction. Nothing herein shall prohibit the storage of such vehicles within the confines of a garage.

ARTICLE V Common Areas/Open Space

5.1 The Association shall be responsible for the operation and maintenance of all common areas and open space within the subdivision. Common areas include roadway easements, trails, dedicated parks, publicly accessible open space lands, ponds, storm water runoff facilities, entryway landscaping, wells, structural or other appurtenances, dog waste stations, benches and trash receptacles and enclosures (the "Common Area").

5.2 No Property Owner shall have the right to occupy or possess any of the roadway easements by reason of owning a Lot in Boulder Creek Subdivision.

5.3 Weeds shall be controlled within the Common Area by the Association as set forth and specified under the Montana Noxious Weed Control Act (7-22-2101 through 7-22-2153 MCA) and the rules and regulations of the Gallatin County Weed Control District.

5.4 Declarant has designed the Subdivision to include sidewalks in certain portions of the Common Area designated on the final plat of the Subdivision. Declarant shall have three (3) years from the date the final plat for the Subdivision is recorded to install the sidewalks within the common areas of the Subdivision. City standard sidewalks, including concrete sidewalk sections through all private drive approaches, shall be construed on all public and private frontages prior to occupancy of any structure on individual Lots. Upon the third anniversary of the plat recordation of any phase of the Subdivision, the Declarant or any Lot Owner, as the case may be, who has not constructed the required sidewalk shall, without further notice, construct within 30 days, the sidewalk for their Lot(s), regardless of whether other improvements have been made on the Lot.

5.5 The Common Area is subject to any and all of the following exceptions, obligations, encumbrances and easements:

- A.** Such easements and rights-of-way on, over or under all or any part thereof as may be reserved to Declarant or granted to any Owner or participating facility for the use thereof in accordance with the provisions this Declaration;
- B.** Easements and rights-of-way on, or under all or any part thereof as are hereby reserved to Declarant or which may be granted by Declarant to or for the benefit of the United States of America, the State of Montana, the County of Gallatin, or the City of Bozeman, any other political subdivision or public organization, or any utility corporation, any participating facility, any project, or any lot, for the purpose of constructing, erecting, operating and maintaining utilities thereon, therein and thereunder, at that time or at any time in the future;
 - (i)** Roads, streets, pedestrian walks, trails, and park and open space areas,
 - (ii)** Public and private sewers, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith.
- C.** The obligations imposed, directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Montana or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation;
- D.** Easements depicted on the final plat of the Subdivision.

5.6 If at any time, or from time to time, all or any portion of Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and deposited into either the operating fund or the development fund as the Association may, in its sole discretion, determine. No Owner shall be entitled to participate as

a party, or otherwise, in any proceeding relating to such condemnation, such right or participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interests of all Owners; provided, however, that the portion of any award relating to improvements which constitute a private recreation facility shall be divided equally among the Owners who, at the time of such taking, are permitted users of such facility.

5.7 No motorcycles, ATV's, snowmobiles or similar means of transportation shall be operated in the parkland, open space or trails for recreational purposes. Such motorized vehicles and equipment are allowed in the parkland, open space and trails exclusively for snow removal and landscape maintenance.

5.8 No Owner, guest or invitee may use or occupy the park lands, open space, trails, boulevards, roads, parking areas, or any Lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other Owner, guest or invitee.

ARTICLE VI

Term and Enforcement

6.1 The following covenants, conditions and restrictions contained and set forth herein are covenants that run with the Property and shall bind the Property in perpetuity. Any conveyance in whole or part of the real Property which is the subject of this Declaration of Protective Covenants and Restrictions by sale, lease, assignment or otherwise shall be subject to the covenants, conditions and restrictions contained and set forth herein. The covenants, conditions and restrictions contained and set forth herein shall be enforced by the Owners of the Association at law or in equity to require the full and complete conformance to each and every one and all the terms, covenants and conditions contained and set forth herein. In the event any covenant, condition or restriction set forth herein is required to be enforced judicially, the non-conforming party shall be responsible for attorney's fees and costs as found and determined by the District Court in Gallatin County, Montana.

6.2 Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons violating, or attempting to violate, any Covenant; and the legal proceedings may either be to restrain violation of these Covenants, to recover damages, or both.

Should any lawsuit or other legal proceeding be instituted by the Association or an Owner against an Owner alleged to have violated one or more of the provisions of these Covenants and should the Association or owner enforcing the provisions of the covenants be wholly or partially successful in such proceedings, the offending owner shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees for all time associated with the action.

6.3 The failure of Declarant, the Association or an owner, to enforce any Covenant or restriction contained herein shall not be deemed a waiver or in any way prejudice the rights to later enforce that Covenant, or any other Covenant thereafter, or to collect damages for any subsequent breach of Covenants.

The waiver or approval of a variance of a Covenant provision by the Board of Directors,

or non-action of the Association or Declarant in the event of a violation of a Covenant by a particular Owner or Lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other Owners or Lots.

6.4 Invalidation of any one of these Covenants by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

6.5 In any conveyance of the above-described real property or of any lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the property is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. All the above-described real property and lots shall be subject to the restrictions and Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

6.6 A breach of any of the foregoing restrictions or Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any lot or portion of the real property or any improvements thereon. However, the Covenants shall be binding upon and shall inure to the benefit of any subsequent owner whose title thereto was acquired by foreclosure, trustee sale or otherwise.

ARTICLE VII
City of Bozeman Required Covenants

CITY OF BOZEMAN REQUIRED COVENANTS: The Covenants included in this Article may not be altered or amended without the mutual consent of the Association in accordance with the amendment procedure and governing body for the City of Bozeman.

7.1 Assessment for Sewage Lift Station. The Association shall be responsible for the costs of construction, operation and maintenance of the sewage lift station serving the Boulder Creek Subdivision. The annual assessments levied against the Lots within the Boulder Creek Subdivision shall include an assessment against each Lot for the purpose of construction, operation and maintenance of the sewage lift station as may be required by the City of Bozeman.

7.2 Park and Open Space Maintenance Requirements. The Association shall be responsible for the maintenance and upkeep of dedicated parks and publicly accessible open space lands. The annual assessments levied against the Lots within the Boulder Creek Subdivision shall include an assessment against each Lot for the purpose of maintenance and upkeep of dedicated parks and publicly accessible open space lands. The City of Bozeman may release the Association from the obligation to maintain parks dedicated to the City at the City's discretion.

7.3 Park and Open Space Maintenance Requirements; Future Phases. It is contemplated that the Boulder Creek Subdivision will be completed in phases. The entirety of the property comprising the subdivision, including all future phases, is hereby subjected to the obligations of park and open space maintenance as set forth in these covenants at the time of recording the final plat of initial phase.

7.4 Road Maintenance. The Association shall be responsible for road maintenance and snow plowing on the common roads within Boulder Creek Subdivision. The Association shall use the provision of Article III for collecting funds to pay for such road maintenance.

7.5 Street Frontage. All street rights-of-way contiguous to or within the Subdivision not used for street pavement, curbs, gutters, sidewalks or driveways (i.e., street boulevards) shall be landscaped, as defined in the Bozeman Municipal Code. The right of way shall include one (1) large canopy tree for each 50 feet of total street frontage rounded to the nearest whole number. The planting hole shall be at least twice the diameter of the root ball, the root flare of the newly planted tree must be visible and above ground, and there shall be a mulch ring from three to four feet in diameter around each newly planted boulevard tree.

7.6 Membership in the Association. Membership in the Association is mandatory for each Lot and the Owners of said Lot.

ARTICLE VIII
Amendment

8.1 These Covenants may be amended by the Association upon approval of seventy-five percent (75%) of the Members of the Homeowners' Association at a meeting duly noticed and called for this purpose; provided that, the easements for roads, utilities and common areas shall not be changed without the unanimous consent of all the owners affected by the change. Any proposed change to a County Required Covenant must receive approval from the governing body of the County of Gallatin prior to presentation to the Association. Notwithstanding the foregoing, so long as Declarant owns any Lots in the Subdivision, no amendment shall be effective unless approved in writing by the Declarant.

The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

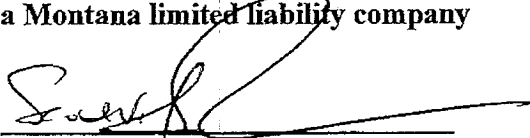
Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. Any change in these Covenants shall not affect existing structures and uses of the lots.

[Signatures on Following Page]

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 7 day of February 2018.

DECLARANT:

**Rosa-Johnson Development, LLC,
a Montana limited liability company**

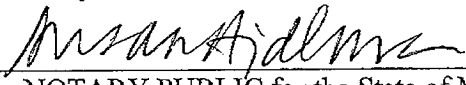


Scott Johnson, Manager

STATE OF MONTANA)
 ss:
County of Gallatin)

On this 1 day of February 2018, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Scott Johnson being the Manager of Rosa-Johnson Development, LLC, known to me to be the person that executed the within instrument on behalf of the limited liability company and acknowledged to me he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.



NOTARY PUBLIC for the State of Montana

(SEAL)

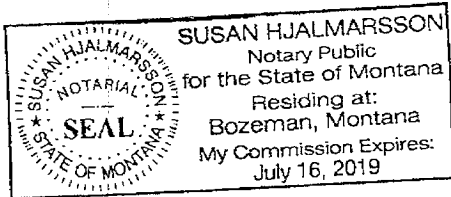


EXHIBIT A
Legal Description to follow immediately

Lot 3A, Minor Subdivision No. 201A, City of Bozeman, according to the plat thereof, on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana, and located in the South Half of Section 4, Township 2 South, Range 5 East of P.M.M., City of Bozeman, Gallatin County, Montana.

RETURN DOCUMENT TO:
American Land Title Company
1800 W. Koch, Bozeman, MT 59715

Order No: RS
~~Upon recording, please~~

return to:

Rosa-Johnson Development, LLC
2264 Jackrabbit Lane, Unit B
Bozeman, Montana 59718

2613422

Page: 1 of 20 05/10/2018 11:38:03 AM Fee: \$140.00
Charlotte Mills - Gallatin County, MT MISC



**AMENDED AND RESTATED COVENANTS FOR BOULDER CREEK
SUBDIVISION**

These AMENDED AND RESTATED COVENANTS FOR BOULDER CREEK SUBDIVISION (this "**Declaration**") is made this 10 day of May 2018, by Rosa-Johnson Development, LLC, a Montana limited liability company, hereinafter referred to as "**Declarant**".

WITNESSETH:

WHEREAS, THE Declarant is the owner of the property described in the Final Plat of Boulder Creek Subdivision, Phase 2 (Plat J-622), document number 2609498, records of Gallatin County, Montana, as amended by the Correction Plat of Lot 4 and Lot 43, Block 9, Boulder Creek Subdivision, Phase 2 (Plat J-622-A), document no. 2610246, records of Gallatin County, Montana;

WHEREAS, Declarant on March 28, 2018, the Declarant recorded a Declaration of Protective Covenants and Restrictions for Boulder Creek Subdivision in the office of the Clerk and Recorder of Gallatin County, Montana as document number 2609510;

WHEREAS, Declarant recorded such Declaration of Protective Covenants and Restrictions for Boulder Creek Subdivision to develop, sell and convey the above-described real property, which shall be referred to herein as "**Boulder Creek Subdivision**"; and,

WHEREAS, Declarant is the Owner of all of the real property described above and is entitled to amend the Declaration of Protective Covenants and Restrictions for Boulder Creek Subdivision;

NOW, THEREFORE, Declarant does hereby establish, dedicate, declare, publish and impose upon the property the following Amended and Restated Covenants ("Covenants"), which shall run with the land, and shall be binding upon and be for the benefit of all persons claiming such property, their grantees, legal representatives, heirs, successors and assigns, and shall be for purposes of maintaining a uniform and stable value, character, architectural design, use, and development of the property. Such Covenants shall apply to the entire property, and all improvements placed or erected thereon, unless otherwise specifically excepted herein. These

Covenants shall inure to and pass with each and every parcel, Lot, or Lot division. The Covenants are follows:

ARTICLE I
Definitions

1.1 The term "**Association**" shall mean the Boulder Creek Subdivision Homeowners' Association, its successors and assigns. The Association has been incorporated as a Montana non-profit corporation, with the Lot Owners as its members.

1.2 The term "**Contract Purchaser**" shall mean a Person buying a Lot pursuant to a contract for deed, Montana Trust Indenture or mortgage.

1.3 The term "**Declarant**" shall mean and refer to Rosa-Johnson Development, LLC, and its successors and assigns.

1.4 The term "**Directors**" shall mean the Board of Directors of the Association, and shall consist of three individuals appointed by the Declarant, who need not be Owners of Lots in the subdivision. Declarant shall have the right to appoint all Members to the Board of Directors until such time as Declarant no longer owns any Lots in the subdivision. The Declarant also has the power to remove any Director for any reason at any time, until such time as the Declarant no longer owns any Lots in the subdivision. At that time, the Board of Directors shall be elected at the annual meeting by a simple majority of the Members of the Association who are present in person or by proxy. The Board of Directors shall be elected for a term set by a simple majority of the Members, but not less than one year. Any vacancy in the Board of Directors occurring before the next annual meeting of the Members shall be filled by the remaining Directors.

The Directors shall have the authority to act on behalf of the Association and its Members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

1.5 "**Design Review Committee**," also referred to as DRC, shall mean the committee which reviews building proposals for conformance with the provisions of these covenants and approves, conditionally approves or rejects the same. The DRC shall initially consist of representatives of the Declarant, but Declarant may, at any time, turn over to the Association the responsibilities of the DRC, in which case the Board shall appoint up to three members or consultants to act as the DRC.

1.6 The term "**Member**" shall mean any Owner or Lot Owner. Each Member agrees to abide and be bound by these Covenants, the Articles of Incorporation, the Bylaws and the Resolutions of the Homeowners' Association, if any, for as long the Member owns an interest in real property within Boulder Creek Subdivision.

1.7 The term "Owner" or "**Lot Owner**" shall mean any person or entity owning a fee

simple interest in a Lot or a contract purchaser, whether one or more persons or entities, owning or purchasing a Lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of a Lot for value, the term "Owner" shall mean "Declarant" or its successors or assigns. The term "**Person**" hereinafter shall include any person, persons or entities.

1.8 The term "**Parkland System**" shall mean all land and interest therein which has or may be conveyed to the Association, including but not limited to all lands identified as private common open space, trail network, and park as delineated on the final plat of the Subdivision. Private common open space shall remain in the ownership and control of the Association. This term "Parkland System" does not include any portion of the park lands or open space lands conveyed to the City of Bozeman or designated as a "Public Park" on the final plat for the Subdivision.

1.9 The terms "**Properties**" and "**Lots**" shall mean and refer to only that land so divided into a Lot, tract or parcel that is a portion of the real property (a) described on Exhibit A or hereafter annexed to the Subdivision and (b) designed by the Declarant for residential or other permitted use. The term "Lot" or "Properties" does not include any portion of the Parkland System.

1.10 The term "**Subdivision**" shall include all land described above, together with such other land as may be annexed pursuant to the provisions of this Declaration.

1.11 Other definitions may be found throughout these covenants and those definitions are binding upon all Owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

ARTICLE II

Boulder Creek Subdivision Homeowners' Association

2.1 Association. An association is hereby established and known as "Boulder Creek Subdivision Homeowners' Association" hereinafter referred to as the "**Association.**" Said Association may be incorporated under a different name as may be approved by the Montana Secretary of State.

2.2 Membership. Every Owner or Contract Purchaser of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separate from the ownership of any Lot. For purposes of determining membership, a Person shall be deemed to be a Member upon the recording of a duly executed deed to that Owner, or upon the recording of a Notice of Purchaser's Interest or Abstract showing a contract purchase by an Owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership. Each Owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address. The initial address of the Association shall be c/o 406 Property Management, 670 S. Ferguson Ste 2, Bozeman, MT 59718. The address of the Association may be changed by the Board of Directors upon notice to

the Owners.

2.3 Involuntary Termination of Membership. Foreclosure of a mortgage, trust indenture, or the termination or foreclosure of a contract for deed wherein title is vested in the mortgagee, beneficiary, or original seller on a contract, or repossession for any reason of a Lot or unit sold under a contract, shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal Owner.

2.4 Annual Meeting. The annual meeting of the Association shall occur on the 2nd Monday of January of each calendar year or on another date as determined by the Board of Directors, as long as it occurs annually. The meeting notice shall specify the meeting place, date and hour that is selected by the Board of Directors. The notice of the annual meeting may state those matters that will come before the Association for approval.

Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of fifty percent (50%) of the Owners. Notice of annual and special meetings shall be mailed to Owners at the address for each Owner as provided pursuant to Section 2.2 of this Article, or by electronic transmission (such as e-mail) if the member so notifies the Board of Directors of its election to receive communications electronically. When meeting notices or other Association communications are sent electronically, delivery shall be deemed complete upon confirmation from the sender's computer of successful transmission and the date and time thereof.

The presence of members representing 20% of the total votes of the membership shall constitute a quorum. Proxy votes are allowed so long as the proxy is provided to the Association not less than twenty-four (24) hours prior to the meeting, is signed by the Lot Owner(s), is dated and clearly identifies the party or person entitled to exercise the vote.

At the annual meeting, the Members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. The Members shall have the authority to set the number of Directors, which number shall not be less than three nor more than seven.

Written notice of all annual and special meetings shall be mailed, e-mailed, or personally delivered by the Board of Directors or its designated representative to every Member of record no less than ten (10) days and not more than fifty (50) days before the date of the meeting.

2.5 Votes. Passage of any motions shall require a majority of the Members present. All membership meetings, including the annual meeting, may be held in person, telephonically, or electronically (such as via web-cast) provided all parties can hear each other. Additionally, members may act on any matter, including amendment to these covenants, by written ballots to the extent permitted by the Montana Nonprofit Corporation Act.

2.6. Board Meetings. The annual meeting of the Board of Directors shall be held

immediately after the annual meeting of the Members. At the annual meeting, the Directors shall elect a President, Vice- President, Secretary and Treasurer for the Association from among the Directors. One Director may serve as both Secretary and Treasurer, but neither the President or Vice President may also serve as a Secretary or Treasurer.

2.7 Board Term. The Board of Directors shall serve for a term to be set by a simple majority of the Members, which shall not be for less than one year. Each Director may serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the Members shall be filled by the remaining Directors.

2.8 Board Authority. The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its Members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to taking such actions as shall be necessary or reasonable to care for, protect and maintain the common areas maintained by the Association, or those areas not owned by the Association for which the Association nevertheless has responsibility; to enforce these Covenants; to collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve. The Board of Directors has the power to establish rules and regulations, together with a fine schedule for violations of those rules and regulations.

The Directors shall act by majority vote.

2.9 Officers. The duties of each of the offices shall be as follows:

A. President. The President shall preside over all meetings of the Association. He or she shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association, and shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

B. Vice-President. The Vice-President shall exercise the powers of the President in the absence of the President.

C. Treasurer. The Treasurer shall keep and maintain adequate and correct accounts of the accounts, properties, and business of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association. The Treasurer shall prepare and report such periodic accountings as shall be required by the Association.

D. Secretary. The Secretary shall give notice of all meetings of the Association and shall keep a record of the proceedings of the meetings of the Association. The Secretary shall be authorized to sign on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association.

2.10 Standards. Any Director who acts in good faith on behalf of the Association:

A. Shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;

B. Shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;

C. Shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith;

D. Shall have no personal liability arising out of the use, misuse or condition of the property which might in any way be assessed against, or imputed to them, merely as a result of his or her status as a member of the Board.

ARTICLE III

Annual and Special Assessments; Association Responsibilities

3.1 Assessments. Each Owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

A. Annual assessments or charges; and

B. Special assessments for capital improvements and reserve assessments, such assessments to be established and collected as hereinafter provided.

The annual, special and reserve assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the Property against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the Owner of such Property at the time when the assessments are due.

3.2 Purpose of Assessments. The assessments levied by the Association shall be used to promote the health, safety, convenience and welfare of the Owners, for the improvement and maintenance of the common roads, the Parkland System within the Subdivision, and for any other purposes, expressed or implied, in these Covenants.

3.3 Amount and Approval of Assessments. The maximum annual assessment per Lot which may be made by the Association in every calendar year shall not substantially exceed the amount needed to cover the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year. Such assessments shall be for the purposes set forth herein, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

At each annual meeting of the Members of the Association, the Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the Members for review, discussion, amendment, comment and approval. The Members shall approve or amend the proposed budget at the annual meeting by a majority vote of the Members present or voting by proxy. If any proposed budget is disapproved, or if the Directors fail to determine the budget for any year, then the budget most recently in effect shall be increased by five percent (5%) to cover anticipated increased expenses for the new fiscal year and such budget shall remain in effect until the next annual meeting of the Members. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth.

3.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy special assessments for purposes of defraying, in whole or in part, the cost of any construction, reconstruction, capital improvements on the Properties or within the Subdivision or to cover any unbudgeted expenses or expenses in excess of those budgeted, provided that any such assessment shall have the approval of fifty percent (50%) or more of all the votes of the Members who are present at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years.

3.5 Rate of Assessment. Annual assessments shall be fixed by the Directors at a uniform rate for each Lot, except that each dwelling unit on multifamily Lots or Lot will be assessed _____ . Assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis, as shall be determined by the Board of Directors of the Association. Special assessments shall be fixed at the same rate for each Lot affected by the special assessments.

3.6 Date of Commencement of Annual Assessments; Due Dates. Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each Lot at least thirty (30) days in advance of the due date of each annual assessment, and at least ninety (90) days in advance of a special assessment.

3.7 Effect of Nonpayment of Assessments; Remedies of the Association. In the event that any assessment, or any portion of an assessment, is not paid by the due date for such assessment, a late fee of \$25 shall be imposed and the unpaid assessment shall bear interest from the due date at the rate of ten percent (10%) per annum, until paid. The Association may bring an action at law against the Owners obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or by abandonment of his or her Lot.

Upon delivery of the notice of assessment to the Owner, the assessment shall be a lien upon the Owner's Lot until paid in full. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana in the event that the assessment is not paid in a timely manner. In the event of non-payment within thirty (30) days after the recording of the

notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney's fees and costs accrued prior to and in association with the collection of delinquent assessments.

In addition to the foregoing, during all periods in which an Owner is delinquent in the payment of assessments, that Owner's voting rights with respect to any business of the Association shall be suspended. Upon payment of delinquent assessments and upon complete compliance, the Member's voting rights shall be automatically restored.

3.8 Sale or Transfer of a Lot. The sale, transfer or encumbrance of any Lot shall not affect the assessment lien, if notice of such lien is recorded in the records of Gallatin County, Montana, or the personal liability of the Owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new Owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A Person purchasing a Lot shall be responsible for checking with the Association for any outstanding assessments against said Lot before the closing upon the purchase.

At the time of the initial sale of each Lot, the Declarant, or Declarant's successor in interest, will pay to the Association the sum of \$150 per Lot as a transfer fee. Thereafter, when the first party who has purchased a particular Lot from the Declarant sells that Lot, there shall be a transfer fee assessed against that party in the sum of \$150 per living unit on that Lot. For each subsequent sale there shall be assessed against the seller a transfer fee of \$300 per unit. All such transfer fees shall be due and payable at the time of the closing of the sale and purchase of the Lot or living unit.

3.9 Voting. Each deeded Owner shall have one membership or voting interest. If ownership is vested in more than one person, only one vote may be cast collectively by such Owners. Such Owners must, prior to a meeting where voting may be allowed, among and between them, determine who is entitled to vote the membership interest, and in what manner it shall be voted. If more than one person seeks to exercise the vote, the vote shall be suspended and the Owners will be deemed to not be eligible to vote on that matter

3.10 Declarant's Obligation to Pay Assessments. The Declarant may, but shall have no obligation, to pay Assessments on Lots owned by the Declarant, other than as set forth above.

ARTICLE IV

Land Subject to this Declaration; Building Restrictions

4.1 Land. The land described above shall be held, sold, conveyed, leased, encumbered, occupied and improved subject to this Declaration and the Covenants contained herein.

4.2 Annexation. The Declarant may, pursuant to the following provisions of this Section 4.2, from time to time and in Declarant's sole discretion, annex to the Subdivision all or any part of

the land described in future exhibits (not then constituting a part of the Subdivision) owned by Declarant at the time of such annexation.

A. The annexation of such land shall be effectuated by Declarant recording an amendment to this Declaration describing the land to be annexed; setting forth such additional limitations, restrictions, covenants and conditions as are applicable to such land; and declaring the land is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to these limitations, restrictions, covenants and conditions, and this Declaration.

B. Upon the annexation becoming effective, the annexed land shall become a part of Subdivision.

C. The amendment to the Declaration described in this Section 4.2.A. above may include, but is not limited to the following:

- i. A designation of land classifications as provided for by the Declarant; and
- ii. A declaration of restrictions applicable exclusively to a specified area.

D. Only the land described in above, or as specifically annexed as provided for in this Section shall be deemed subject to this Declaration, whether or not shown on any subdivision map filed by Declarant, or described or referred to in any document executed or recorded by Declarant. Nothing herein or in any amendment hereto, shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject the Subdivision covenants any land Declarant may now own, or hereafter acquire, except that land described in Exhibit A or annexed thereto.

4.3 Use. Use of each Lot shall be restricted to uses permitted by applicable City of Bozeman Zone Code (Uniform Development Code) ordinances, as the same may be amended from time to time.

4.4 Zoning Restrictions. All Lots within the Subdivision shall be classified into the following City of Bozeman Zone Code (Uniform Development Code) designations, which designations are subject to change by the City of Bozeman from time to time. All Owners are advised that the City of Bozeman designations shall govern in the event of a conflict with these Covenants. The designations set forth below shall carry their associated allowable uses, Lot areas, widths and coverages, yards, setbacks and heights:

- A.** Lots 1 through 4, Block 5 are zoned Residential High Density District (R-4).
- B.** All other Lots are zoned Residential Two-Household Medium Density District (R-2).
- C.** The dedicated Parkland System within the Subdivision is zoned Public Lands and Institutions District (PLI).

D. The Declarant reserves the right to seek and obtain a change in zoning designation for any Lots owned by the Declarant at the time of such request.

4.5 Design standards: No buildings, construction, landscaping, parking, fence, wall or other improvements of any type shall be placed, constructed, erected, repaired, restored, reconstructed, or altered on any Lot or tract until building construction, landscaping, and site plans showing the design, location, materials, and colors, together with the name of the contractor, shall be submitted to, and be approved by the Design Review Committee ("DRC"). The DRC may assess reasonable fees to review plans and specifications. The DRC shall provide a written decision within 30 days of the date of final submittal, which shall be the date upon which all necessary information is provided to the DRC. The decision of the DRC shall be to approve, approve with additional conditions, or to disapprove. In the event that the DRC fails to act within 30 days of the submittal of a complete application package, the application shall be deemed approved, unless such application involves the need for a variance, in which case approval shall only be granted in writing by the DRC. The specific requirements for construction have intentionally been kept to a minimum in order to encourage diversity and originality in design and construction materials. All potential Owners and builders are encouraged to contact the DRC as early in the design process as possible in order to facilitate approval of their plans. With that in mind, the DRC shall be governed by the following guidelines in its consideration of plans and specifications submitted for its approval:

A. Exterior Siding. Exterior siding on all improvements shall consist of wood, wood look-alikes or wood products, brick, stone, stucco, or other manufactured exterior good quality materials. All must be of such quality that such siding will withstand normal weather conditions in the Bozeman, Montana area.

B. Exterior Paint. Exterior colors of all improvements shall be of a subdued natural type. Whites, pastels, wood colors, or "earth-tone" browns, tans, grays, blues, and greens are permitted. No bright or shiny exterior colors are permitted.

C. Roofs. Roof design of all improvements should be consistent with building shape and form. No rolled roofing shall be permitted. Metal roofs are permitted provided the same are a non-reflective, non-metallic color. All roofs shall be consistent with the shape and form of the building and domed roofs are prohibited. The color of the roof should complement and be consistent with the color scheme of the building.

D. Fencing. Backyards and side yards of Lots may be fenced. Front yards, which are defined as that portion of each yard extending across the full width of the Lot between the two side Lot lines, the depth of which is the least distance between the extended plane of the wall of the house nearest the public street which it faces, and the street itself, shall not be fenced. Side yards on corner Lots may be fenced, provided that such fences do not otherwise violate any municipal ordinance, do not restrict intersection sight lines, or extend into the front yard. Fences shall be of attractive materials and shall be maintained in good condition. All homeowner Lot fences shall be a minimum of four (4) feet in height, and not higher than six (6) feet in height, except that side yard fences for corner Lots may be lower if necessary to preserve appropriate

intersection sight lines. Fences located in any required setback of Properties adjacent to any park shall not exceed a maximum height of four (4) feet, and shall be of an open construction designed in a manner to be consistent along all park land and common open space areas. Proposed fencing shall conform with Section 38.23.130, BMC, "Fences, Walls and Hedges."

E. Elevations: All elevations must meet the requirements of the City of Bozeman building codes and must be approved by the DRC.

F. Sidewalks. City standard sidewalks, including concrete sidewalk sections through all private drive approaches, shall be construed on all public and private frontages prior to occupancy of any structure on individual Lots. Regardless of whether a home is constructed on a Lot, prior to the third anniversary of the plat recordation of the phase of the Subdivision in which such Lot is located, the Lot Owner shall construct the required sidewalk.. Each Owner, upon purchase of a Lot from Declarant, shall be required to deposit funds to guarantee construction of such sidewalk and street frontage landscaping, which shall be in the sum of \$2250 for a non-corner Lot and \$6000 for a corner Lot. Such deposit shall be escrowed with the closing agent for the purchase and sale of the Lot, in accordance with the terms and conditions of a separate Construction Completion Agreement.

4.6 Temporary Structures. No pre-manufactured mobile homes, camping trailers, recreational vehicles, motor homes, trucks, boats, horse or stock trailers, yurts, or geodesic domes shall be permitted on any Lot, except as specifically allowed below.

4.7 Landscaping. All landscaping, including street frontage landscaping, is to be completed within 60 days of completion of construction or, if construction is completed during the winter months, as soon as weather reasonably permits, but in any event such landscaping shall be completed no later than the following June 30th. All Lots, including street frontage areas, shall be appropriately landscaped with sod, an underground sprinkler system, and shall contain a mixture of trees, shrubbery and ornamental plants. Where applicable, all such landscaping shall meet the standards imposed by the Bozeman Municipal Code.

ARTICLE V Use restrictions

5.1 Damage to Infrastructure. Any damage to the common access road, curbs, gutters or other infrastructure caused by construction activities shall be repaired in a timely manner at the expense of the Owner(s) who caused such damage. Any damage caused by an Owner's agents or employees, a contractor or subcontractor working directly or indirectly for an Owner while engaged in construction activities on a Lot, or a materialman providing materials in furtherance of such construction shall be deemed damage caused by the Owner of the Lot. No trash, waste, garbage, or litter, shall be allowed to accumulate or remain on any Lot. All waste shall be kept in sanitary containers and shall be disposed of promptly on a regular basis. No burning of trash shall be permitted on any Lot, however, limited small-scale burning of unwanted vegetative matter derived from or grown on any Lot is permitted in accordance with all applicable local, county, and state regulations. Each Owner shall be required to conform to all federal, state and

local laws, ordinances or regulations governing such construction activities and to avoid any impact on common areas, parks, streets, or neighboring properties. At the conclusion of construction, Each Owner shall cause a thorough cleanup of all construction materials, trash, dirt, or other debris on the subject Lot, as well as any common area, park, street, or neighboring property impacted by Owner's construction activities. All such construction cleanup activities shall be completed by the date set forth above for sidewalk installation. Thereafter, no trash, waste, garbage, or litter, shall be allowed to accumulate or remain on any Lot. All waste shall be kept in sanitary containers and shall be disposed of promptly on a regular basis.

5.2 Nuisance. No noxious, offensive, or illegal use or activity, or extremely noisy activity, shall be permitted or carried on upon a Lot, nor shall anything be done or permitted on a Lot that may be or become a public or private nuisance.

5.3 Conduct. Each Owner, whether present or not, shall be responsible for his or her own conduct and for the conduct of his or her family, occupants, guests, invitees, licensees, and tenants while on the Owner's Lot or within the Boulder Creek Subdivision. Each Owner and his or her family, occupants, guests, invitees, licensees, and tenants shall conduct themselves in a manner so as not to disturb the peaceful possession of another Owner's Lot or the use of others of the Common Areas, Open Spaces, or Parks. It is a violation of this Declaration to allow noise to emit beyond the Owner's Lot boundary at a level that disturbs one or more persons.

5.4 Tenants. Each Owner is responsible for the Owner's tenants, and is responsible for providing a copy of the Declaration, Rules and Regulations, and Design Manual to the tenants. Upon the Board of Director's request, the Owner shall provide the Board of Directors with each tenant's name, address, and telephone number.

5.5 Automobiles and Vehicles. "Automobile" means a passenger vehicle, sports utility vehicle, or pick-up truck with or without a canopy cover or topper, or a moped or motorcycle, which is primarily used for transporting a small number of people over public highways. "Vehicle" means any boat, trailer, snowmobile, motor home, mobile home, recreational vehicle, off-highway vehicle, or other similar equipment.

A. No more than two Automobiles or Vehicles, or combinations of the same, per Unit, shall be allowed to be stored/parked outside of a garage in a driveway. Automobiles or Vehicles may only be stored/parked within areas approved for such at the time of approval by the DRC.

B. No Automobile or Vehicle shall obstruct pedestrian traffic.

C. All Automobiles and Vehicles parked anywhere within the Subdivision shall be licensed and in operable condition and shall also comply with all local and state laws. No junk vehicles shall be stored on any Lot, nor may any parts of Automobiles or Vehicles be stored outside of an enclosed structure.

D. In addition to any other remedy allowed under the Declaration or the Rules and Regulations, Owners of Automobiles or Vehicles parked in violation of this Declaration may be asked in writing by certified mail or by placing a written notice on the Automobile or Vehicle to comply with this Declaration and/or to immediately remove the Automobile or Vehicle. If the Automobile or Vehicle is not removed within 24 hours of notification, the Board of Directors or its authorized representative may cause the Automobile or Vehicle to be towed and impounded at the expense of the Owner and assess the Owner of the Lot for all attorney's fees and costs related thereto, and charge a fine.

E. Notwithstanding anything to the contrary, the Board or its authorized representative may cause an Automobile or Vehicle to be towed immediately, without notification, if the Board or its authorized representative determine that the Automobile or Vehicle impedes emergency vehicles or represents a threat to health and safety. The Board of Directors may have the Vehicle towed and impounded at the expense of the Owner, assess the Owner of the Lot for all attorney's fees and costs related thereto, and charge a fine.

5.6 Parking. Owners shall park their vehicles in driveways or designated parking areas. No Lot shall be used for the outside parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction. Nothing herein shall prohibit the storage of such vehicles within the confines of a garage. No trailers, whether for camping or otherwise, recreational vehicles, motor homes, trucks, boats, horse or stock trailers shall be parked or stored on any road or Lot within the subdivision, unless wholly contained within a garage, or in preparation for use outside the subdivision, or cleaning up and unloading upon completion of use outside the subdivision. In the event of implementation of the preceding sentence, such parking within the subdivision shall be for a duration no longer than 36 hours at a time and for no longer than 72 hours in a 7 day period.

5.7 Animals. No animals, except dogs, cats, or small in-house pets, are permitted on the Lots. Owners may comply with all state, city, and local rules regarding animals kept on any Lot. Owners shall pick up after their animals and shall not allow their animals to roam free on any other Lot.

5.8 Wildlife. No hunting of, shooting at or harassing of birds, animals or any wildlife will be permitted. Skunks, gophers and rodents may be trapped, but poison may not be used.

5.9 Lot maintenance. Each Owner is required to maintain his or her Lot, whether developed or undeveloped, in a neat and orderly fashion. This includes, but is not limited to, maintaining the landscape, mowing, trimming, weeding, mitigating and removing noxious weeds, and other similar maintenance and upkeep.

5.10 Sidewalks. Notwithstanding anything contained in this Declaration, every Owner is responsible for maintaining the Owner's sidewalk located on, adjacent to, and between the Owner's Lot and the nearest right-of-way. "Maintain" includes, but is not limited to, snow

removal.

5.11 Building maintenance. Each Owner is required to maintain any structure (buildings, fences, walls, etc.) on the Owner's Lot in a neat and orderly fashion. This includes but is not limited to repainting, re-staining, re-roofing, and other similar maintenance and upkeep.

5.12 Refuse. All garbage and trash that is stored outside shall be kept in a City-approved container. Except on garbage pick-up day, garbage containers shall be kept in the garage or other enclosure directly adjacent to a structure or fence.

In addition to any other remedy allowed under this Declaration, the Rules and Regulations, the Design Manual, or at law or in equity, if an Owner violates any part of this Section, the Board of Directors, after twenty-four hours' notice, may cause the junk, garbage, trash, debris, materials, equipment, or other waste to be controlled, collected, and/or removed, and assess the Owner of the Lot for all attorney's fees and costs related thereto, and charge a fine.

ARTICLE VI **Common Areas/Open Space**

6.1 Common Areas. The Association shall be responsible for the operation and maintenance of all common areas and open space within the subdivision. Common areas include roadway easements, trails, dedicated parks, publicly accessible open space lands, ponds, storm water runoff facilities, entryway landscaping, wells, structural or other appurtenances, dog waste stations, benches and trash receptacles and enclosures (the "**Common Area**").

6.2 Roadways. No Property Owner shall have the right to occupy or possess any of the roadway easements by reason of owning a Lot in Boulder Creek Subdivision, other than to legally park upon such roadways.

6.3 Weed Control. The control of noxious weeds by the Owners Association on those areas for which the Owners Association is responsible and the control of noxious weeds by individual Owners on their respective Lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed District. The Owners Association is responsible for control of state and county declared noxious weeds in the subdivisions parks, open spaces, community areas, trails, and roadways. The Lot owner shall be responsible for the control of the state and county declared noxious weeds on his or her own Lot. Both unimproved and improved Lots shall be managed for noxious weeds. In the event a Lot owner does not control the noxious weeds, after 10 days notice from the Owners Association, the Owners Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the Lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.

6.4 Easements. The Common Area is subject to any and all of the following exceptions, obligations, encumbrances and easements:

A. Such easements and rights-of-way on, over or under all or any part thereof as may be reserved to Declarant or granted to any Owner or participating facility for the use thereof in accordance with the provisions this Declaration;

B. Easements and rights-of-way on, or under all or any part thereof as may be granted by Declarant to or for the benefit of the United States of America, the State of Montana, the County of Gallatin, or the City of Bozeman, any other political subdivision or public organization, or any utility corporation, any participating facility, any project, or any Lot, for the purpose of constructing, erecting, operating and maintaining utilities thereon, therein and thereunder, at that time or at any time in the future;

- i. Roads, streets, pedestrian walks, trails, and park and open space areas,
- ii. Public and private sewers, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith.

C. The obligations imposed, directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Montana or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation;

D. Easements depicted on the final plat of the Subdivision.

6.5 Eminent Domain. If at any time, or from time to time, all or any portion of Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and deposited into either the operating fund or the development fund as the Association may, in its sole discretion, determine. No Owner shall be entitled to participate as a party, or otherwise, in any proceeding relating to such condemnation, such right or participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interests of all Owners; provided, however, that the portion of any award relating to improvements which constitute a private recreation facility shall be divided equally among the Owners who, at the time of such taking, are permitted users of such facility.

6.6 No Motorized Use in Parkland. No motorcycles, ATV's, snowmobiles or similar means of transportation shall be operated in the parkland, open space or trails for recreational purposes. Such motorized vehicles and equipment are allowed in the parkland, open space and trails exclusively for snow removal and landscape maintenance.

6.7 Common Area Usage. No Owner, guest or invitee may use or occupy the park lands,

open space, trails, boulevards, roads, parking areas, or any Lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other Owner, guest or invitee.

ARTICLE VII
Term and Enforcement

7.1 Binding Effect. The following covenants, conditions and restrictions contained and set forth herein are covenants that run with the Property and shall bind the Property in perpetuity. Any conveyance in whole or part of the real Property which is the subject of this Declaration of Protective Covenants and Restrictions by sale, lease, assignment or otherwise shall be subject to the covenants, conditions and restrictions contained and set forth herein. The covenants, conditions and restrictions contained and set forth herein shall be enforced by the Owners of the Association at law or in equity to require the full and complete conformance to each and every one and all the terms, covenants and conditions contained and set forth herein. In the event any covenant, condition or restriction set forth herein is required to be enforced judicially, the non-conforming party shall be responsible for attorney's fees and costs as found and determined by the District Court in Gallatin County, Montana.

7.2 Enforcement. For any violation or threatened violation of the Declaration, Bylaws, Rules or Regulations, or Design Manual, the Board of Directors (on behalf of the Association) or any Owner may bring a legal proceeding for monetary, injunctive, and/or other relief and damages. The prevailing party shall be entitled to an award of all reasonable attorney fees (including fees for fees and fees on appeal) and all costs and expenses related to or arising from the issues raised in the proceeding.

- A. Before the Board of Directors may bring an action, the Board of Directors shall provide notice of the violation or threatened violation to the Owner.
- B. The notice shall specify the violation and the time period in which the violation must be cured.
- C. The notice shall be served upon the Owner via mail, e-mail, or personal delivery. The notice is deemed served on the date it is personally delivered or e-mailed, or 3 days after it is mailed, whichever date comes first.
- D. The Lot owner has 10 days after service of the notice to submit a written letter to the Board of Directors setting forth all of the reasons why the Owner believes a violation has not occurred. The Owner shall attach to the letter all documentary evidence and, if applicable, a list of witnesses in support of the Owner's position.
- E. If the Owner submits a timely written response, the Board of Directors shall review the Owner's response and determine whether a violation has occurred. If the Owner fails to timely submit a written letter to the Board of Directors, then the violation will be deemed to have occurred.

- F. If a violation is deemed to have occurred, any action or proceeding authorized by the Declaration, these Bylaws, the Rules and Regulations, or by law or equity may be taken against the Owner and/or the Lot. Such action may include, but is not limited to any or all of the following: suspending voting rights, assessing fines, charging interest, filing a lien, filing a lawsuit, and assessing payment for all attorney fees and all costs and expenses,
- G. Even if a violation is determined or deemed to have occurred, the Board of Directors may make a business judgment decision to not take action or initiate a proceeding against the lot owner.

7.3 Waiver. The failure of Declarant, the Association or an Owner, to enforce any Covenant or restriction contained herein shall not be deemed a waiver or in any way prejudice the rights to later enforce that Covenant, or any other Covenant thereafter, or to collect damages for any subsequent breach of Covenants.

The waiver or approval of a variance of a Covenant provision by the Board of Directors, or non-action of the Association or Declarant in the event of a violation of a Covenant by a particular Owner or Lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other Owners or Lots.

7.4 Invalidation. Invalidation of any one of these Covenants by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

7.5 Incorporation by Reference. In any conveyance of the above-described real property or of any Lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the property is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in such deed nor referring to the recording data. All the above-described real property and Lots shall be subject to the restrictions and Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

7.6 Breach. A breach of any of the foregoing restrictions or Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any Lot or portion of the real property or any improvements thereon. However, the Covenants shall be binding upon and shall inure to the benefit of any subsequent Owner whose title thereto was acquired by foreclosure, trustee sale or otherwise.

ARTICLE VIII
City of Bozeman Required Covenants

CITY OF BOZEMAN REQUIRED COVENANTS: The Covenants included in this Article may not be altered or amended without the mutual consent of the Association in accordance with

the amendment procedure and the governing body for the City of Bozeman.

8.1 Assessment for Sewage Lift Station. The Association shall be responsible for the costs of construction, operation and maintenance of the sewage lift station serving the Boulder Creek Subdivision. The annual assessments levied against the Lots within the Boulder Creek Subdivision shall include an assessment against each Lot for the purpose of construction, operation and maintenance of the sewage lift station as may be required by the City of Bozeman.

8.2 Park and Open Space Maintenance Requirements. The Association shall be responsible for the maintenance and upkeep of dedicated parks and publicly accessible open space lands. The annual assessments levied against the Lots within the Boulder Creek Subdivision shall include an assessment against each Lot for the purpose of maintenance and upkeep of dedicated parks and publicly accessible open space lands. The City of Bozeman may release the Association from the obligation to maintain parks dedicated to the City at the City's discretion.

8.3 Park and Open Space Maintenance Requirements; Future Phases. It is contemplated that the Boulder Creek Subdivision will be completed in phases. The entirety of the property comprising the subdivision, including all future phases, is hereby subjected to the obligations of park and open space maintenance as set forth in these covenants at the time of recording the final plat of initial phase.

8.4 Road Maintenance. The Association shall be responsible for road maintenance and snow plowing on the common roads within Boulder Creek Subdivision. The Association shall use the provision of Article III for collecting funds to pay for such road maintenance.

8.5 Street Frontage. All street rights-of-way contiguous to or within the Subdivision not used for street pavement, curbs, gutters, sidewalks or driveways (i.e., street boulevards) shall be landscaped, as defined in the Bozeman Municipal Code. The right of way shall include one (1) large canopy tree for each 50 feet of total street frontage rounded to the nearest whole number. The planting hole shall be at least twice the diameter of the root ball, the root flare of the newly planted tree must be visible and above ground, and there shall be a mulch ring from three to four feet in diameter around each newly planted boulevard tree.

8.6 Membership in the Association. Membership in the Association is mandatory for each Lot and the Owners of that Lot.

ARTICLE IX
Amendment

9.1 Declarant's Right to Change. The covenants, conditions, restrictions and uses created and established herein may be waived, abandoned, terminated, modified, altered or changed as to the whole of the real property described herein, or any portion thereof by the Declarant for a period of three years following the date of recording of these Amended and Restated Covenants. Such waiver, abandonment, termination, modification, alteration or change by the Declarant

shall be for the purpose of enhancing, clarifying or removing these Amended and Restated Covenants, or to further the purpose stated above for these Amended and Restated Covenants.

9.2 Amendment by Association. These Covenants may also be amended by the Association upon approval of seventy- five percent (75%) of the Members of the Homeowners' Association at a meeting duly noticed and called for this purpose; provided that, the easements for roads, utilities and common areas shall not be changed without the unanimous consent of all the Owners affected by the change. As an alternative to a vote held at a meeting of the Association, a written ballot may be conducted by mail or otherwise as provided for in section 35-2-533 of the Montana Nonprofit Corporation Act. Regardless of the manner in which the voting is conducted, the Board of Directors of the Association shall set a record date for determining eligibility for voting, which shall be not more than 50 days prior to the commencement of voting. Any proposed change to a City of Bozeman Required Covenant must receive approval from the governing body of the City of Bozeman prior to presentation to the Association. Notwithstanding the foregoing, so long as Declarant owns any Lots in the Subdivision, no amendment shall be effective unless approved in writing by the Declarant.

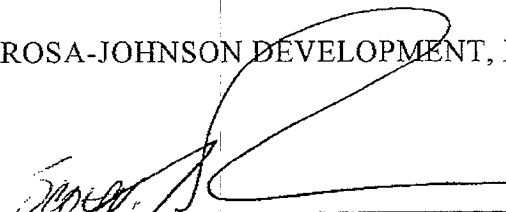
The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. Any change in these Covenants shall not affect existing structures and uses of the Lots.

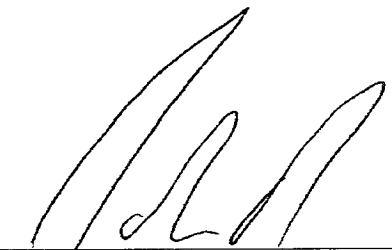
IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 9th day of May, 2018.

DECLARANT:

ROSA-JOHNSON DEVELOPMENT, LLC



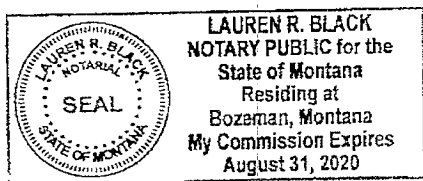
Scott V. Johnson, authorized agent

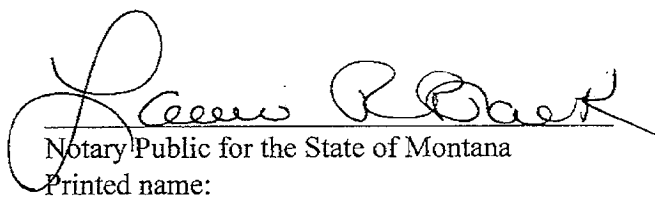


John Rosa, authorized agent

STATE OF MONTANA)
 ss:
County of Gallatin)

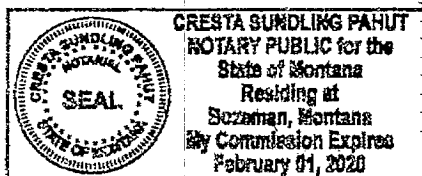
On this 10th day of May, 2018, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Scott V. Johnson being an authorized agent of Rosa-Johnson Development, LLC, known to me to be the person that executed the within instrument on behalf of the limited liability company and acknowledged to me he executed the same.





Notary Public for the State of Montana
Printed name: _____
Residing at _____, Montana
My Commission expires: _____, 20___

STATE OF MONTANA)
 ss:
County of Gallatin)

On this 10th day of May, 2018, before me, the undersigned, a Notary Public of the State of Montana, personally appeared John Rosa, being an authorized agent of Rosa-Johnson Development, LLC, known to me to be the person that executed the within instrument on behalf of the limited liability company and acknowledged to me he executed the same.




Notary Public for the State of Montana
Printed name: _____
Residing at _____, Montana
My Commission expires: _____, 20___