

**Upon recording, please  
return to:**

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

**2650139**

Page: 1 of 22 07/12/2019 01:18:58 PM Fee: \$154.00  
Eric Semerad - Gallatin County, MT MISC

## **COVENANTS FOR BRIDGER HEIGHTS SUBDIVISION**

These COVENANTS FOR BRIDGER HEIGHTS SUBDIVISION (this "**Declaration**") are hereby made this \_\_\_\_ day of April 2019 , by Rosa-Johnson Development, LLC, a Montana limited liability company, hereinafter referred to as "**Declarant**".

### **WITNESSETH:**

WHEREAS, the Declarant is the owner of the following described real property:

Tract 2A of Minor Subdivision 423A in the W ½ of Section 35, T1N, R4E, P.M.M.,  
City of Belgrade, Gallatin County, Montana.

WHEREAS, Declarant desires to develop, sell and convey the above-described real property, which shall be referred to herein as "**Bridger Heights Subdivision**"; and,

NOW, THEREFORE, Declarant does hereby establish, dedicate, declare, publish and impose upon the property the following Covenants for Bridger Heights Subdivision ("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 "**Associations**" shall mean the two Bridger Heights Subdivision Homeowners' Associations, their successors and assigns. The two associations shall be designated "Bridger Heights Owners' Association - West" and "Bridger Heights Homeowners' Association - East." The

Bridger Heights Homeowners' Association - East has been incorporated as a Montana non-profit corporation, with Lot Owners as its members. The members in Bridger Heights Owners' Association - West may incorporate, in their discretion.

**1.2.** The term "**Bridger Heights Owners' Association - West**," shall refer to the association charged with managing the affairs of that portion of Bridger Heights Subdivision designated as Block 29 of the Final Plat of Bridger Heights Subdivision, Phase 1, and that portion of Lot R-3, of the same plat, which is to become Blocks 30, 31 and 32 in future phases, as shown on the attached Exhibit A. Exhibit A is titled "BRIDGER HEIGHTS SUBDIVISION OWNERS' ASSOCIATION DELINEATION," and depicts that portion of the subdivision which will be managed by Bridger Heights Owners' Association - West, and that portion to be managed by Bridger Heights Homeowners' Association - East.

**1.3** The term "**Bridger Heights Homeowners' Association - East**," shall refer to the association charged with managing the affairs of the remainder of Bridger Heights Subdivision not managed by Bridger Heights Owners' Association - West, as shown on attached Exhibit A.

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

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

**1.6** "**Design Review Committee**," also referred to as DRC, shall mean the committee which reviews building proposals within the area governed by "**Bridger Heights Homeowners' Association - East**," 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 Bridger Heights Homeowners' Association - East the responsibilities of the DRC, in which case the Board shall appoint up to three members or consultants to act as the DRC.

**1.7** The term "**Directors**" shall mean the Board of Directors for each association described above, and each Board of Directors shall initially 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 of the Boards of Directors until such time as Declarant no longer owns any Lots in that portion of the subdivision governed by the Board in question. 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 portion of the subdivision governed by the Board in question. Upon relinquishment of a Board by the Declarant, the Board of Directors for that Association shall be elected at the annual meeting of the Association by a simple majority of the Members of the Association who are present in person or by proxy. Each Board of Directors shall be elected for a term set by a simple majority of the Members, but not less than one year, and multi-year terms may be staggered. Any vacancy in a 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 their 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.

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

**1.9** 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.

**1.10** The term "**Parkland System**" shall mean all land and interest therein which has or shall be conveyed to the Associations, 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 Associations, unless another form of ownership and control is approved by the Belgrade city commission.

**1.11** 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 above 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.

**1.12** 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.

**1.13** 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**

### **Bridger Heights Subdivision Homeowners' Associations**

**2.1 Associations.** There shall be two Associations created to manage the affairs of Bridger Heights Subdivision. Bridger Heights Subdivision consists of two areas, with distinct land uses, for which two Association are hereby established and known as "Bridger Heights Subdivision Owners' Association - West" and "Bridger Heights Subdivision Homeowners' Association -East," respectively. hereinafter referred to as the "**Associations**," which shall be maintained in perpetuity, unless the consent of the Belgrade city commission is first obtained to make a change. The

Associations 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 in which such Owner's property is located. 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 for deed shall not qualify such vendor for membership. Each Owner shall be responsible for advising the appropriate 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, Belgrade, 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 each Association described above shall occur on the 2<sup>nd</sup> 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 of either Association may be called by the President of that Association, 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 of that particular Association. 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 the election by that member 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 of that Association shall constitute a quorum. Proxy votes are allowed so long as the proxy is provided to the Association prior to the start of 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 of either Association, 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 by majority vote of those Members present at the annual meeting at which such vote is taken, following establishment of a quorum. The number of Directors established by the Members shall not be less than three nor more than seven. The Members shall also have the right to determine the lengths of the terms for the Directors and whether such terms shall be staggered, which will also be accomplished by majority vote of the Members present at a meeting for which a quorum has been established.

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 of that Association 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, after a quorum is established, unless another percentage is established in these Covenants. Additionally, members may act on any matter, including amendment to these covenants, by written ballots, as provided for in Section 35-2-533 of the Montana Nonprofit Corporation Act.

**2.6. Board Meetings.** The annual meeting of the Board of Directors for each Association shall be held immediately after the annual meeting of the Members for that Association. At the annual meeting of the Board, 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 of each Association, 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 of that Association shall be filled by the remaining Directors of that Association.

**2.8 Board Authority.** Each Board of Directors shall have the power and responsibility of acting on behalf of its Association and its Members, as shall be reasonably necessary to carry out the purposes of that Association. Included in such duties shall be taking such actions as shall be necessary or reasonable to care for, protect and maintain the Parkland System, trail system and common areas within that portion of the Subdivision governed by that Association, which shall be owned by that Association, or those areas not owned by that Association for which the Association nevertheless has responsibility; to enforce these Covenants within the area governed by that Association; to collect assessments from its members; 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 that Association shall approve. Each Board of Directors has the power to establish rules and regulations for the portion of the Subdivision governed by that Association, 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 within each Association shall be as follows:

**A. President.** The President shall preside over all meetings of that Association. He or she shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association in which he or she is President, 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 in which he or she holds office, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association in which he or she is a member. The Treasurer shall prepare and report such periodic accountings as shall be required by his or her Association.

**D. Secretary.** The Secretary shall give notice of all meetings of the Association in which he or she holds office, and shall keep a record of the proceedings of the meetings of the Association in which he or she is a member. The Secretary shall be authorized to sign on behalf of his or her Association, all records, documents and instruments when such are authorized to be signed by his or her Association.

**2.10 Standards.** Any Director who acts in good faith on behalf of his or her Association:

**A.** Shall not be liable to the Owners of that Association 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 of that Association or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of their Association in their capacity as such;

**C.** Shall have no personal liability in tort to any Owner within that Association 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 of that Association.

### **ARTICLE III**

#### **Annual and Special Assessments; Association Responsibilities**

**3.1 Assessments.** Unless expressly stated herein, 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 to which he or she belongs:

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 each Association shall be used to promote the health, safety, convenience and welfare of the Owners within that area of the Bridger Heights Subdivision governed by his or her Association, for the improvement and maintenance of the common roads, the Parkland System within that area of the Bridger Heights Subdivision governed by his or her Association, 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 either 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 that 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 established in the following manner:

At each annual meeting of the Members of each Association, the Directors shall present a proposed budget of the estimated expenses for that Association for the coming year to the Members for review, discussion, amendment, comment and approval. The Members of each Association shall approve or amend the proposed budget at the annual meeting of that Association by a majority vote of the Members of that Association present or voting by proxy. If any proposed budget is disapproved, or if the Directors of either Association fail to determine the budget for any year, then the budget for that Association 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 of that Association. After the annual meeting of each Association, the Board of Directors for each Association 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, each 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 portion of the Subdivision governed by that Association, 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 of that Association who are present at a meeting duly called for that purpose and for which a quorum is established. 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 dwelling unit located within the area governed by that Association. 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 that 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 for each Association. Each Board of Directors shall fix the amount of the annual assessments against each dwelling unit 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 to which any assessment is owed may bring an action at law against any delinquent Owners who fail to pay their assessments, or foreclose any lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Parkland System, or other 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 making the assessment 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 recording notice of the lien may foreclose the lien in the manner set forth under Montana law for the foreclosure of mortgages against real property. In the event of an action to collect any delinquent assessments, whether in an action at law or a lien foreclosure, the Association to which the assessment is owed is entitled to collect 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 his or her Association shall be suspended. Upon payment of delinquent assessments and upon complete



compliance, the Member's voting rights within his or her Association shall be automatically restored.

**3.8 Sale or Transfer of a Lot.** The sale, transfer or encumbrance of any Lot, or dwelling unit, whether voluntary or involuntary, shall not affect the assessment lien, if notice of such lien is recorded in the records of Gallatin County, Montana, nor shall a transfer remove or affect 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 or dwelling unit shall be responsible for checking with the relevant Association for any outstanding assessments against such Lot or dwelling unit before the closing upon the purchase.

At the time of the initial sale of each Lot or dwelling unit with the area governed by Bridger Heights Homeowners' Association - East, 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 or dwelling unit from the Declarant sells that Lot or dwelling unit, there shall be a transfer fee assessed against that party in the sum of \$150 per dwelling unit on that Lot. For each subsequent sale there shall be assessed against the seller a transfer fee of \$300 per Lot or dwelling unit. All such transfer fees shall be due and payable to the appropriate Association at the time of the closing of the sale and purchase of the Lot or living unit.

**3.9 Voting.** Each Owner shall have one membership or voting interest for each Lot or dwelling unit being assessed by his or her Association. 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 or dwelling owned by the Declarant, other than as specifically set forth herein.

#### **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 Use.** Use of each Lot shall be restricted to uses permitted by applicable City of Belgrade zoning ordinance, as the same may be amended from time to time. It is the intention of the Declarant to develop the Subdivision in phases and Declarant expressly reserves the right to modify,

amend or reconfigure lots in phases subsequent to the initial phase, as Declarant, in its sole discretion deems advisable; provided, however, that all such modifications, amendments or re-configurations shall conform to the requirements imposed upon Declarant through amendments to the Findings of Fact and Order issued by the Belgrade, Montana City Council, Belgrade zoning ordinances, and any other rules, regulations or laws imposed by and federal, state or local governing body. Specifically included in the right set forth above shall be the right of the Declarant to aggregate lots shown as single family lots in the application for preliminary plat approval into lots designed for multi-family dwellings, or to subdivide lots currently shown in the application for preliminary plat approval as multi-family lots into single family lots.

**4.3 Zoning Restrictions.** All Lots within the Subdivision shall be zoned according to City of Belgrade zoning designations, which designations are subject to change by the City of Belgrade from time to time. All Owners, or potential Owners, are advised to review the City of Belgrade zoning designations prior to purchasing a Lot, or beginning plans to develop a particular Lot.

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.

**4.4 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 within the area governed by Bridger Heights Homeowners' Association - East 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, and shall not be deemed approved until such writing is received by the applicant. 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 Belgrade, 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 be approved by the DRC.

**E. Elevations:** All building elevations must meet the requirements of the City of Belgrade 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.

**4.5 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.

**4.6 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 June 30<sup>th</sup> of the year following the year in which construction is completed. 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 applicable City of Belgrade ordinances.

## **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 upon, or remain on any Lot, during construction, or following completion of construction. 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, but 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 Bridger Heights 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, other than normal household activities, such as lawnmowing.

**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, 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. In order to be characterized as being in operable condition, a vehicle must have all of its tires attached and inflated, and doors and windows must be attached. No junk vehicles shall be stored on any Lot, nor may any parts of Automobiles or Vehicles be stored outside of an enclosed structure. Only drivers regularly removing their Vehicles from the subdivision at least twice per week may park on any road within the subdivision.

**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 for the Association charged with governing that area of the subdivision, 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 or dwelling unit for all attorney's fees and costs related thereto, and charge a fine in accordance with a fine schedule published by the Board of Directors, which may be amended from time-to-time.

**E.** Notwithstanding anything to the contrary, the Board of the Association charged with governing that area of the subdivision, or its authorized representative may cause an Automobile or Vehicle to be towed immediately, without notification, if the Board or its authorized representative

determines 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 in accordance with the published fine schedule.

**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 total 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 must 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, and other similar maintenance and upkeep, as well as weed control, as more fully described in Section 6.3 below.

**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 and replacement of any portion of a sidewalk which constitutes a hazard.

**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 of the dwelling unit or other enclosure directly adjacent to a structure or fence. In the event that any trash is spilled from a container, the owner of the Lot or dwelling unit from which the trash originates shall be responsible for the clean-up of such trash, regardless of whether the property is occupied by an owner or a tenant.

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 of the Association charged with governance of the area of the subdivision in which the violation takes place, 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 or dwelling unit for all costs involved in such clean-up, including attorney's fees and costs related thereto, and charge a fine.

## **ARTICLE VI**

### **Common Areas/Open Space**

**6.1 Common Areas.** Each Association shall be responsible for the operation and maintenance of all common areas and open space within that portion of the subdivision governed by that Association. 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 Bridger Heights Subdivision, other than to legally drive or park upon such roadways.

**6.3 Weed Control.** The control of noxious weeds by each 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. Each Owners Association is responsible for control of state and county declared noxious weeds in the Parkland System, open spaces, community areas, trails, and roadways, within the area governed by that Association. Each Lot owner shall be responsible for the control of the state and county declared noxious weeds on his or her own Lot and 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 appropriate Owners Association, the Owners Association charged with responsibility 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 Belgrade, 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 charged with governing the Common Area in question and deposited into either the operating fund or the development fund as that 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 charged with responsibility for the Common Area in question, which shall, in its name alone, represent the interests of all Owners who are members of that Association; 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. 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**  
**Environmental**

**7.1 Agricultural Uses.** Lot Owners and tenants of the subdivision are informed that adjacent uses may be agricultural. Lot owners and residents accept and are aware that standard agricultural and farming practices can result in dust, animal odors, flies, smoke 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.

**7.2 Fences.** All fences bordering agricultural lands shall be maintained by the property owners, in accordance with state laws.

**7.3 Water.** The following shall govern water usage and water conveyance facilities within the subdivision:

**A.** No water may be removed from any irrigation ditch, canal, or other water conveyance facility without a water right, permit, or written water lease agreement with the appropriate water users and/or water conveyance facility's authorized representatives.

**B.** Unless there is written consent from the appropriate water users and/or water conveyance facility's authorized representatives, stormwater, snowmelt runoff, water from dewatering practices, or other water originating from within the boundaries of the subdivision shall not discharge into or otherwise be directed into any irrigation ditch, canal, pipeline, or other water conveyance facility.

**C.** Lot owners are hereby notified of the water users, authorized representatives of any water conveyance facilities (irrigation ditch), and/or their designee's right to access the property to maintain and repair the water conveyance facility (this includes, but is not limited to, placement of excavated material, removal of vegetation and debris along the water conveyance facility); to install, repair, or adjust headgates and other diversion structures; and to carry out other normal means of repair and maintenance related to the ditch.

**D.** Neither Lot owners, nor either Association, shall undertake any activity that will result in the interference or obstruction in the transmission of water in the water conveyance facility. Before any maintenance, improvements, or modifications are performed on any water conveyance facility, written permission must be obtained from the water users and/or water conveyance facility's authorized representatives prior to commencing such work. Upon completion of maintenance, improvements, or modifications to any water conveyance facility, the person responsible for such work shall provide written notice to the water users and/or water conveyance facility's authorized representatives and allow them an opportunity to inspect such work.

**7.4 Liability and Nuisance Claims.** Lot purchasers are hereby notified that Montana law provides specific protections in regards to liability and nuisance claims for agricultural operations

and irrigators. Those specific protections include, but are not limited to Section 85-7-221 1, MCA; Section 85-7-2212, MCA; and Section 27-30-101, MCA.

## **ARTICLE VIII**

### **Term and Enforcement**

**8.1 Binding Effect.** The 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 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 or the appropriate 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.

**8.2 Enforcement.** For any violation or threatened violation of the Declaration, Bylaws, Rules or Regulations, or Design Manual, the Board of Directors for the appropriate Association (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 a 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 providing the notice, 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 charged with responsibility may make a business judgment decision to not take action or initiate a proceeding against the lot owner.

**8.3 Waiver.** The failure of Declarant, an 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 a Board of Directors, or non-action of an Association or the 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.

**8.4 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.

**8.5 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.

**8.6 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. These 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 IX**

### **City of Belgrade Required Covenants**

**9.1.** As a condition of final approval of the plat for Bridger Heights Subdivision, the Declarant is required by the City of Belgrade to include certain covenants within this Declaration, which may

not be altered or amended without the mutual consent of the impacted Association, in accordance with the amendment procedures in these covenants, and the governing body for the City of Belgrade. A summary of the required covenants that may not be altered or deleted and the section numbers of those covenants is as follows:

- a. a requirement that a homeowners' association be created and maintained (Section 2.1);
- b. ownership and maintenance of the parks and trail system within the subdivision (Sections 1.8, 2.8 and 3.2);
- c. control of county declared noxious weeds (Sections 5.9 and 6.3); and
- d. provisions governing adjacent farming practices, water usage and water conveyance facilities and state laws providing liability and nuisance protections for agricultural operations and irrigators (All of Article VII).

## **ARTICLE X**

### **Amendment**

**10.1 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, subject to the provisions of Article IX, above. Such waiver, abandonment, termination, modification, alteration or change by the Declarant shall be for the purpose of enhancing, clarifying or removing these Covenants, or to further the purpose stated above for these Covenants.

**10.2 Amendment by Association.** These Covenants may also be amended by either Association upon approval of seventy- five percent (75%) of the Members of either Association at a meeting duly noticed and called for this purpose, to the extent that the amendment only affects the Owners within that Association. To the extent that any proposed amendment affects the Owners within both Associations, the amendment must be approved by 75% of the Owners of each Association. 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 an 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(s) calling for the vote shall set a record date for determining eligibility for voting, which shall be not more than 50 days prior to the commencement of voting. 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.

**10.3 Amendment of Required Covenants.** Any proposed change to a City of Belgrade Required

Covenant must receive approval from the governing body of the City of Belgrade prior to implementation by the Association seeking such change. This provision shall remain in any amendment or restatement of these covenants.

The President or Vice-President of the Association causing an amendment to these Covenants 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 9<sup>th</sup> day of July 2019.

DECLARANT:

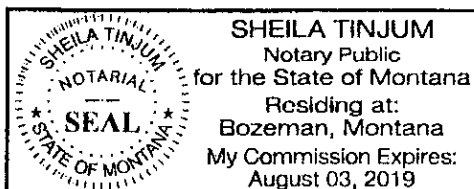
ROSA-JOHNSON DEVELOPMENT, LLC

Scott V. Johnson  
Scott V. Johnson, authorized agent

John Rosa  
John Rosa, authorized agent

STATE OF MONTANA     )  
  ss:  
County of Gallatin     )

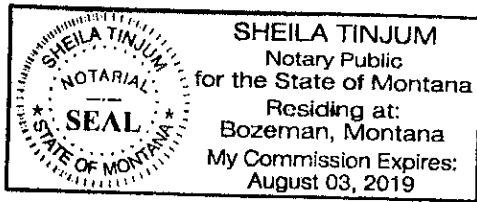
On this 9<sup>th</sup> day of July, 2019, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Scott V. Johnson being an authorized agent of Rosa-Johnson Development, LLC, known to me to be the person that executed the within instrument on behalf of the limited liability company and acknowledged to me he executed the same.




Sheila Tinjum  
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 9<sup>th</sup> day of July, 2019, 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\_\_\_\_