



Return To:
Pedersen & Hardy, P.C.
1001 South 24th Street West, Suite 110
Billings, Montana 59102
File No. 34143-A

**DECLARATION OF CONDITIONS,
COVENANTS AND RESTRICTIONS
FOR JOSEPHINE CROSSING**

This Declaration is made this 20 day of march, 2007 by McCall Development, Inc., a Montana Corporation, (hereinafter "Developer").

WHEREAS, Developer is the owner of the real property located in Yellowstone County, Montana described on Exhibit "A" attached hereto and incorporated herein by reference, and intends to build a planned development to be known as Josephine Crossing on the property, (the "Development"); and

WHEREAS, Developer intends to construct the Development in phases. The single family lots to be included in the first Phase are described on Exhibit "B", attached hereto; Exhibit "C" is a map showing each of the included lots. and

WHEREAS, at present Developer intends that only the single-family lots described on the attached Exhibit "B" will be subject to this Declaration. However, Developer reserves the right to add additional single family lots, as well as multi-family, commercial and mixed use lots in Josephine Crossing to the provisions of this Declaration. Accordingly, all or some additional lots may, in Developer's sole discretion, be made subject to all or part of this Declaration, as the same may be amended from time to time, by separate written instrument executed by the Developer at a later date.

WHEREAS, Developer desires to provide for the maintenance and enhancement of property values in Josephine Crossing, and for the preservation of the properties and improvements thereon, as well as for the preservation of the distinctive neighborhood style of Josephine Crossing, and to prevent the erection, or maintenance of poorly designed or constructed improvements; and

WHEREAS, to the above end Developer desires to subject real property described in Exhibit "B", to the covenants, restrictions, easements, charges and liens

hereinafter set forth, for the benefit of said property and each owner thereof; and

WHEREAS, Developer has thought it desirable for efficient maintenance and preservation of the values of said Development to create an Association to which should be delegated and assigned the powers of maintaining and administering the common property and facilities and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges as hereinafter or in the future created or established; and

WHEREAS, Developer has incorporated Josephine Crossing Homeowners Association, as a non-profit corporation, under the laws of the State of Montana (the "Association"), and has adopted Bylaws for the Association, a copy of which is attached hereto as Exhibit "D".

NOW, THEREFORE, the Developer declares that the real property described in Exhibit "B" will and shall be sold, transferred and conveyed subject to the easements, covenants, restrictions, assessments, charges and liens hereinafter set forth.

1. **DEFINITIONS.**

- a. "ARC" refers to the Association's Architectural Review Committee.
- b. "Association" shall mean and refer to Josephine Crossing Owners Association.
- c. "Board means the Board of Directors for Josephine Crossing Owners Association.
- d. "Common Property" shall mean and refer to the parks shown on the recorded Plat of Josephine Crossing, First Filing, the clustered mailbox enclosures, and any additional property designated as common by the Developer or the Association in any subsequent amendment to this Declaration, and all improvements located on said property, which are intended to be devoted to the common use and enjoyment of members, Owners and Occupants of Josephine Crossing and, in some cases, by the public. Developer may, by subsequent amendment to this Declaration, designate parts of certain private lands within the Development as Common Property, rendering the Association responsible for maintenance thereof.
- e. "Developer" shall mean and refer to McCall Development, Inc., a Montana Corporation, and its successor and assigns. No successor or assign of McCall Development, Inc. shall be deemed a "Developer", having the rights of a Developer as set forth in this Declaration, unless the conveyance to that successor or assign specifically conveys development rights.
- f. "Property" or "Properties" shall mean and refer to the lands subject to this Declaration which Developer in the future intends to convey to purchasers who shall thereupon become members of the



Association. The term "Lot" shall be synonymous with the term "Property".

- g. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any of the Properties subject to this Declaration, except Developer. A purchaser of any of said Properties by land contract shall be referred to as "Owner" instead of the land contract vendor.
- h. "Occupant" shall mean and refer to the occupant of any of the Properties.

2. MEMBERSHIP AND VOTING RIGHTS.

a. **Members.** Developer and each current Owner of a Lot subject to this Declaration shall automatically become a member of the Association. By acceptance of the Deed or other instrument of conveyance, the Owner(s) of each Lot consent to such Owner's membership in the Association. Membership in the Association is appurtenant to each Lot. Each Owner of a Lot shall automatically be entitled to the benefits and subject to the burdens relating to such membership in the Association. The Association shall have authority to manage the Common Property. Persons or entities, including a land contract vendor, who hold an interest merely as security for the performance of an obligation, shall not be members of the Association. Tenants shall not be members of the Association. Developer shall be a member of the Association so long as Developer owns any part of the property described in Exhibit "A".

b. **Voting Rights.** Each Owner of a Lot shall be entitled to one vote for each Lot owned. When there is more than one Owner of a Lot, said Owners shall only be entitled to one collective vote for each Lot owned. There shall be no fractional votes or voting. When there is more than one Owner of any Property, any Owner may vote in the absence of protest by the other Owners of the Lot. The voting rights of Developer are set forth in the attached Bylaws and may not be changed without Developer's prior written consent.

c. **Proxies.** Any Member may vote by proxy. All proxies shall be in writing and signed by the Member, or in cases where there is more than one Owner of a Lot, by all Owners of the Lot.

3. MAINTENANCE OF COMMON PROPERTY.

a. **Maintenance.** The Association shall provide for the care, operation, management, maintenance and repair of the Common Property. The Association shall maintain the Common Property in a good and safe condition, including, without limitation, performing lawn and landscaping care and snow removal from



the sidewalks adjoining the parks, and assess the cost of maintenance of the Common Property as provided herein. In order to carry out its maintenance obligations, the Association may enter into a contract with a reputable property management company ("Management Company"), pursuant to which contract the Management Company shall assume the maintenance obligations of the Association as provided herein. If the Board hires a professional management agent, the contract with that agent must permit termination of the contract by either party, without penalty, after 90 day advance notice of termination is given.

Any and all expenses incurred by the Board and by the Management Company, on behalf of and pursuant to its contract with the Association, in connection with the management and maintenance of the Common Property and administration of the Association shall be deemed to be common expenses ("Common Expenses"), including, without limitation, expenses incurred for: landscaping and lawn care; snow shoveling and plowing; improvements to the Common Property; common grounds security lighting; municipal utility services; enforcement of this Declaration (including attorneys' fees) and maintenance and management salaries and wages.

b. **Assessments for Maintenance.**

- (1) The Board or the Management Company, on behalf of and pursuant to its contract with the Association, shall levy monthly general assessments ("General Assessments") against each Lot for the purpose of maintaining a fund from which Common Expenses may be paid. General Assessments shall be due in advance on the first day of each month, or in such other manner as the Association may set forth in the Bylaws. Any General Assessment not paid when due shall bear interest at a rate of twelve percent per annum until paid and, together with interest, collection costs, and reasonable attorneys' fees, shall constitute a lien on the Lot on which it is assessed.
- (2) The Board or the Management Company, on behalf of and pursuant to its contract with the Association, may, whenever necessary or appropriate, levy special assessments ("Special Assessments") against the Lots for deficiencies in the case of destruction or condemnation, for defraying the cost of maintenance or improvements to the Common Property or for any other purpose for which the Association may determine a Special Assessment is necessary or appropriate for the improvement or benefit of the Common Properties. Special Assessments shall be paid at such time and in such manner as the Association may determine.
- (3) Any Assessment or installment not paid when due shall bear interest at a rate of twelve percent (12%) until paid and accrued interest, together with the collection costs and reasonable attorneys' fees, shall constitute a lien on the Lot on which it is assessed.



- (4) The Association or the Management Company, on behalf of and pursuant to its contract with the Association, shall have the right to collect all General and Special Assessments and such sums shall constitute a lien on such Lot. The Owner of a Lot, or any portion thereof, shall be personally obligated to pay such charges which were assessed or accrued upon the land owned during the period of Ownership. The Association or its Management Company, on behalf of and pursuant to its contract with the Association, may commence an action against any Owner personally obligated to pay the charges or to foreclose the lien for such charge against any Lots. Any such foreclosure action may be brought at the Board's election, in the same manner as an action to foreclose a construction lien.

- (5) **Working Capital.** Developer, as agent of the Board of Directors, shall collect from the initial purchaser of each unit, at the time of closing, an initial capital payment equal to the Buyer's pro-rata share of insurance for the year plus an amount equal to 2 months assessments for the unit. Developer shall be entitled to retain the Buyers pro-rata share of insurance for the current premium period if Developer paid the premium for the unit sold for that period; otherwise, the premium shall be paid to the Association's insurance agent. The remainder of each initial capital payment collected from the buyers shall be delivered to the Board of Directors to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, including insurance, initial maintenance, equipment, supplies, organizational costs, equipment for common areas, and such other purposes as the Board of Directors may determine. These funds may not be used by Developer to defray any of its expenses, construction costs, or other financial obligations, and this payment shall not be considered to be prepayment of regular monthly assessments. In addition, at closing, Developer shall collect from the initial purchaser each unit the buyer's pro-rata share of the assessment for that month.

c. **Damage to or Destruction of Common Property by Owner.** In the event any Common Property is damaged or destroyed by an Owner or any of the Owner's guests, lessees, tenants, licensees, agents or member(s) of the Owner's family, including pets, the owner shall be solely responsible for paying the costs of repair or replacement of the damaged or destroyed common property. Said Owner does hereby irrevocably authorize the Association to repair said damage. The Association shall repair and restore any damaged area to its former condition, and the cost for said repair shall become a Special Assessment upon the Property of the responsible Owner.

d. **Subordination of the Lien.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage executed or recorded prior to the filing of such lien. Sale or transfer of any Lot shall not release the



assessment lien. However, the sale or transfer of any Property pursuant to foreclosure of a first mortgage, shall extinguish the lien of such assessment(s) as to payments which become due prior to such sale or transfer. No sale or transfer pursuant to foreclosure of a first mortgage shall relieve the new Owner from liability for any assessments thereafter becoming due or from the lien thereof.

e. **Joint and Several Liability of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a Property shall be jointly and severally liable with the grantor for all unpaid assessments against the Lot up to the time of conveyance, without prejudice to the grantee's right to recover from the grantor the amount so paid by the grantee. Prior to closing of a sale or transfer, any grantee may request a statement from the Association Treasurer or the Management Company setting forth the amount of unpaid assessments. A grantee shall not be liable for, nor shall the Property conveyed be subject to a lien for, any unpaid assessments in excess of the amount set forth in the statement, for the time period set forth in the statement.

4. **CONDITIONS, COVENANTS AND RESTRICTIONS**

a. **Land Use And Building Type.** Each Lot shall be used for residential purposes, including gardens. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling unit not to exceed two and one-half stories in height. Each dwelling unit shall have an attached or detached garage.

b. **Accessory Buildings.** Accessory buildings are allowable so long as they comply with the zoning requirements for Josephine Crossing Subdivision and the provisions of this Declaration. Accessory buildings must be constructed with like materials to match the home on the Lot. Accessory buildings shall not exceed 200 square feet in floor area, may not block vehicle or pedestrian access to neighboring homes, shall not be constructed within any easement on the Lot and must be approved by the ARC.

c. **Duration of Construction.** Construction of the structure and installation of the landscaping shall be completed within nine months after issuance of a building permit.

d. **Landscaping.** All Lot areas not used as a building site, or under cultivation as a family garden, shall be landscaped in the manner set forth in the landscaping plan for the Lot approved by the ARC. Landscaping shall be maintained on a regular seasonal basis, including mowing lawns at least once every 14 days during the lawn growing season. Maintenance of all landscaping and other

improvements on a Lot shall be the responsibility of the Owner. Maintenance shall include, but not be limited to, watering, pruning and routine fertilizing and mulching of all plantings and plant beds, replacement of dead, dying and/or diseased trees and shrubs, prompt removal of weeds, trash and debris from plant beds and areas adjacent to shrubs and trees so as to keep said landscaping in a healthy, attractive and neat condition.

If the Owner of any Lot, after reasonable notice, fails or refuses to install required landscaping, or maintain it as required above, the Architectural Review Committee, through its duly authorized agents or employees, shall have the right to enter upon said Lot at reasonable hours to perform said landscaping and/or maintenance. The costs of the materials and labor to perform such landscaping and/or maintenance shall be assessed against said Lot as a Special Assessment and collected as provided in Sections 3 and 8 herein.

e. **Driveways.** All driveways shall be of concrete and shall be installed within nine months after substantial completion of the structure.

f. **Swimming Pools.** No above-ground swimming pools shall be permitted.

g. **Snow Removal.** Owners shall be responsible for snow removal from driveways and sidewalks on their Lot and in the right-of-way adjoining their Lot.

h. **Vehicle and/or Equipment Storage.** No inoperable, dilapidated or junk vehicles of any nature may be kept upon any Lot except in a fully enclosed garage. The exterior storage of boats, trailers, travel trailers, campers, motorcycles, recreational vehicles, automobiles or trucks (collectively, without limitation by reason of enumeration "Equipment"), of any nature is prohibited whether or not screened from public view. No equipment or vehicles shall be parked or stored on lawns or driveways. No vehicle shall be parked in an alley or in a location which obstructs access to an alley at any time. Off-alley parking in designated spaces is permitted. No commercial vehicles, including trucks, semi-trailers or trailers, and no recreational vehicles of any type may be parked on any street or driveway except when making pick-ups or deliveries to a Lot for loading or unloading, or during construction.

i. **Easements/Drainage.** No structure, planting, or other materials shall be placed or permitted to remain within any easement of record which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easement. No

drainage swale shall be graded or obstructed so as to impede the flow of storm water through such swale. Any disputes relating to drainage swales, drainage or other surface water issues, shall be resolved by the Board of Directors of the Association, which may seek the advice of the City Engineer of the City of Billings, Montana, or the Montana Department of Environmental Quality. The Association shall establish procedures by which such decisions can be heard by the Board of Directors and decided by said Board.

No structure shall be constructed within any easement.

j. **Nuisances and Illegal Activities.** No illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may have a detrimental effect on the value of other Lots and/or improvements.

k. **Temporary Structures.** No structure of a temporary character, nor any trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

l. **Signs.** No sign of any kind shall be displayed to the public view on any Lot except one sign having an area of not more than one square foot, identifying the occupant or a home business, one sign of not more than six square feet advertising the property for sale or rent, or signs without regard to size used by the Developer, a builder or licensed real estate broker to advertise the property during the construction and sales period or to identify the subdivision and/or its Developer. All such signs must be approved in advance by the ARC.

m. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No animal enclosure, house, pen or fences or similar device shall be placed on any Lot without the prior written approval of the Architectural Review Committee which may require special landscaping and screening. No pets shall be allowed to run loose on the common area. Owners shall be responsible for promptly cleaning up after their pets and for payment for any damage caused by their pets. Owners shall pay a fine, imposed by the Board, of \$50.00 for a second violation of any of these pet restrictions and a fine of \$100.00 for each violation thereafter. Such fines shall be a Special Assessment, payable only by the offending unit owner.

n. **Garbage And Refuse Disposal.** No Lot shall be used or maintained as a dumping ground. Except for recycling containers, trash, garbage or other waste

must be kept in containers screened from view except on collection days. No incinerators shall be permitted. Containers for the storage or disposal of such material shall be kept in a clean and sanitary condition. No trash, building materials, debris, leaves, lawn clippings, rocks or earth shall be placed anywhere else in the subdivision.

o. **Recycling.** The City of Billings, or the Board, may arrange for recycling of waste materials and may place recycling containers within the subdivision in locations designated by the Board. All owners are encouraged to participate in the recycling program, should it become available.

p. **Sight Distance At Intersections.** No fence, wall, hedge or shrub which obstructs sight lines at elevations between 30" and 72" above the roadways and alleys shall be placed or permitted to remain within a sight triangle or clear vision triangle designated on the recorded Plat of Josephine Crossing, First filing, or described in the Subdivision Improvements Agreement or Planned Development Agreement for Josephine Crossing, First Filing. No tree or shrub shall be permitted to remain within a sight triangle or clear vision triangle unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

q. **Fences.** All fences must be vinyl. The height, design and location of all fences must be approved by the Architectural Review Committee. The Architectural Review Committee may require the installation and maintenance of landscape materials for screening and aesthetic purposes.

r. **Antennae/Wind Powered Electric Generators.** No wind powered electric generators shall be placed or maintained upon any portion of a Lot without prior written approval of the Architectural Review Committee. No antennas or satellite dishes exceeding one meter in diameter or diagonal measurement, or any other device shall be installed on the exterior of any building, or in a yard, or on common property without prior written approval of the Architectural Review Committee.

s. **Firewood Storage.** No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed on a non-street side yard and screened from street view by plantings or a fence approved by the Architectural Review Committee.

t. **Solar Collectors.** No active solar collector or apparatus may be installed on any Lot unless such installation is first approved in writing by the Architectural Review Committee which shall consider the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed

flat against or parallel to the plane of the roof shall be preferred.

u. **Lighting.** Exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity that such lighting will not disturb the residents of adjacent Lots.

v. **Mailboxes.** Mailboxes serving homes in the neighborhood shall be clustered and will be provided by the Developer at the Developer's sole cost and expense. Mailboxes and keys to the box shall be replaced if necessary, with a mailbox identical in all respects with that originally provided, at the sole cost and expense of the Owner(s). The Association shall maintain the mailbox enclosures and the cost of maintenance shall be a common expense.

5. **ARCHITECTURAL REVIEW COMMITTEE**

a. **Membership.** The Architectural Review Committee is composed of the following persons, three of whom are also the initial Directors of the Association:

Gregory J. McCall
Bradley R. McCall
Carolee A. McCall
Frank Nienaber IV

A majority of the Architectural Review Committee may designate a representative to act for it. The initial designated representative shall be Gregory J. McCall. In the event of the death or resignation of any member of the Architectural Review Committee, the remaining members shall have full authority to designate a successor.

b. **Architectural Control.** No building or landscaping shall be erected, placed or altered on any Lot until the construction plans and specifications, a plan showing the location of the structure and a landscaping plan have been approved by a majority of the Architectural Review Committee (the "Committee") as to quality of workmanship and materials, diversity of color and design, compliance with the provisions of this Declaration, and as to location with respect to topography and finish grade elevation. There must be a variation in exterior building design and colors of homes on adjacent Lots. If possible, the exterior design for any home shall not be the same as the exterior design of another home located within five Lots of the home in any direction. Similarly, if possible, the color of any home shall not match the color of any home located within three lots of the home in any direction. Approval shall be as provided below.

No structure or other improvement, whether residence, garage, tennis court, swimming pool, flag pole, wall, landscaping or other improvements, including

exterior colors and materials to be applied to said improvements, shall be constructed, maintained or performed upon any Lot and no alteration or repainting of the exterior of a structure shall be made unless complete building or landscaping plans, specifications and site plans have been submitted to and approved in writing by a majority of the Architectural Review Committee or by its designated representative. Approval shall also be required for location of improvements with respect to topography and finish grade elevation. Said plans, specifications and site plans shall show the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the plans for landscaping, and the grading plan. A copy of such plans and specifications as finally approved shall be deposited with the Architectural Review Committee.

c. **Procedure and Fees.** Neither the members of the Architectural Review Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant for the initial approval of a residential structure. Thereafter, said Architectural Review Committee may charge each Lot Owner a "request for action" or "approval" fee not to exceed \$50.00 for each request for approval by that Owner. The Architectural Review Committee's approval or disapproval, as required in these Covenants, shall be in writing. In the event the Architectural Review Committee fails to approve or disapprove within 30 days after all required plans and specifications or any other matters requiring approval have been submitted to it, approval shall not be required and the related covenants shall be deemed to have been complied with fully.

d. **Basis of Approval.** The Architectural Review Committee shall review said plans and specifications as to quality of workmanship and materials, compliance with the provisions of this Declaration, location with respect to topography and finish grade elevation, and the effect of landscaping on neighboring Lots and on the aesthetics of the neighborhood. In reviewing the application and the materials submitted and in reaching a decision thereon, the Architectural Review Committee shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically diverse design and appearance, of a quality required to maintain the Project as a first class residential development. Approval by the Architectural Review Committee shall be based, among other things, on; a) the adequacy of the Lot dimensions in relation to the Plans; b) the effects of location and use of proposed Improvements on neighboring Lots and Common Area; c) relation of

Improvements and finished ground elevations to existing topography and grades; and d) the conformity of Plans to the requirements of this Declaration.

Because the review does include judgments about aesthetics by the Architectural Review Committee and because the aesthetic considerations cannot be clearly defined in this Declaration, the decisions of the Architectural Review Committee will be subjective in nature. Each Owner, by acceptance of a deed to any lot subject to this Declaration, agrees to accept the decisions of the Architectural Review Committee as final and binding, and waives any right to challenge those decisions through legal action.

e. **Records.** Until such time as a replacement Architectural Review Committee is designated, all plans, applications and requests shall be submitted to said Architectural Review Committee at the following address:

Josephine Crossing Architectural
Review Committee
c/o Gregory J. McCall
1536 Muldowney Lane, Suite 100
Billings, Montana 59101

f. **Architectural Review Committee Liability.** Neither the Architectural Review Committee nor any member thereof shall be liable for damages to any person submitting request for approval or to any owner of any Lot by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests.

g. **Variance.** The Architectural Review Committee shall have the power and absolute discretion to authorize a variance from any of the requirements of these Covenants if it finds that the strict application thereof would, in its sole discretion and opinion, result in difficulties or undue hardship to the Lot owner or in the event the architecture of the proposed Lot improvement is such as to present in its opinion a particularly pleasing appearance compatible with the development.

h. **Successor to Architectural Review Committee.** Developer may turn over control of the Architectural Review Committee to the Members of the Association at any time, and shall turn over control when Developer no longer has any ownership interest in the Property. At such time as Developer turns over control, the Association's Board of Directors shall designate not less than three or more than five persons to serve and act as the Architectural Review Committee for all purposes hereunder.

6. **GENERAL PROVISIONS.**

a. **Severability.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and affect.

b. **Amendment.** At any time until Developer conveys all of the Lots described on Exhibit "A", Developer may modify, amend, alter and grant variances to this Declaration, and any subsequently recorded Declaration, without the consent of any Member, Owner, Occupant, Lender or any other party, including the Association. In addition, Developer may elect to make this Declaration applicable, in whole or in part, to any other Lots in Josephine Crossing, all Filings, without the consent or approval of the Association, its Board of Directors or any of its Members or their Mortgagees or any Owner or Occupant, except that no such Amendment may increase the percentage share of a Member's assessment. All Lot owners and all mortgagees of a Lot, by acceptance of a deed, mortgage or trust indenture to any Lot, shall be deemed to consent to any such amendment by Developer and to grant unto GREGORY J. McCALL or BRADLEY R. McCALL, or either of them, as representatives of Developer, an irrevocable limited power of attorney, to execute, acknowledge and record such amendments.

After conveyance by Developer and any person or entity to whom Developer, assigns its development rights for all or part of the real property described on Exhibit "A", this Declaration may be amended or revoked, or new provisions added upon affirmative vote of the owners of 75% of the Lots subject to some or all of the portions of this Declaration. No Amendment shall take effect until the language of the Amendment is signed by Developer or certified by the President and Secretary of the Association, stating that the Amendment was approved by the owners of 75% of the Lots subject to the Declaration after sale of all Lots by Developer, and until the Amendment is recorded in the office of the Clerk and Recorder of Yellowstone County, Montana.

c. **Zoning Provisions.** This Declaration is intended to supplement the Zoning Provisions and planned Development Agreement for Josephine Crossing. In the event of a conflict between the provisions hereof and the provisions of the Zoning Ordinances and Planned Development Agreement, the more restrictive provision shall control.

7. **NOTICE TO OWNERS.** The following information is being put of record in order to give record notice to all Owners, mortgagees and other persons and entities having an interest in the Property:

Some of the Lots in Josephine Crossing will be used for multi-family apartments or condominiums, for commercial/residential use, for commercial-retail use and for commercial-offices. Multi-family and commercial Lots are not presently subject to the provisions of this Declaration. By acceptance of a deed to a Lot, Owners hereby accept such uses and waive any objections to such uses.

8. **ENFORCEMENT.**

The Association, the Architectural Review Committee, Developer, and each and every one of the owners of the Lots subject to this Declaration shall have the right to enforce these restrictions and the covenants herein and any and all amendments thereto by civil action, including the right to injunctive relief and for damages, it being presumed that some damage would occasioned, by reason of the failure of any lot owner or owners to comply with these restrictions and the covenants herein contained.

The Architectural Review Committee and the Board shall also have the right to assess and collect from a violating party, as a Special Assessment, a fine for such violation equal to the greater of (i) the actual damages suffered on account of the violation, or (ii) the sum of \$100.00 per day for each day the violation remains outstanding plus (iii) all costs of collection and enforcement, including actual attorney fees.

In addition, any of the Owners of a Lot described on Exhibit "A", whether or not a member of the Association, shall have the right to enforce the Covenants and Restrictions herein if the Covenant or Restriction is intended to maintain the overall appearance of Josephine Crossing, all Filings.

In addition to an action for damages, any party entitled to enforce this Declaration shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach or enforce the observance of the Covenants and Restrictions set forth above or hereafter imposed. The failure of any Owner or the Association, the ARC, or Developer to enforce these Covenants and Restrictions at the time of any violation thereof shall not be construed as a waiver of the right to do so at a later time.

The Association shall also have the enforcement rights set forth in Section 3 above.

The losing party in any action, lawsuit, or arbitration proceeding brought to enforce this Declaration shall be obligated to pay the reasonable attorney fees incurred by the prevailing party, together with costs incurred in the action, lawsuit, or arbitration proceeding. Costs and attorney fees shall be a lien on the property



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Yellowstone County

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of the violating Owner and may be foreclosed in the same manner as the lien for common expenses.

DATED this 20 day of march 2007.

McCALL DEVELOPMENT, INC.

BY: [Signature]
Its: Vice-President

STATE OF MONTANA

County of Yellowstone

)
: ss.
)

This instrument was acknowledged before me on march 20, 2007 by Gregory J. McCall, as Vice president of McCALL DEVELOPMENT, INC.

[Signature]
(print in black ink or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires _____, 20__

(SEAL)



TAMMY SHOVAR
NOTARY PUBLIC MONTANA
Residing in Laurel, Montana
MY COMM. EXPIRES AUG. 8, 20__ 08



Block 1: Lots 1 through 24, inclusive,

Block 2: Lots 1 through 4, inclusive,

Park

Park 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11,

Block 3: Lots 1 through 40, inclusive,

Block 4: Lots 1 through 40, inclusive,

Block 5: Lots 1 through 19, inclusive,

all in Josephine Crossing Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3402833.

Developer expects to further subdivide Lot 19, Block 5 described above; Lots 1, 2, 3 and 4, Block 2 are presently designated for multi-family residential use.

EXHIBIT "A"



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Yellowstone County

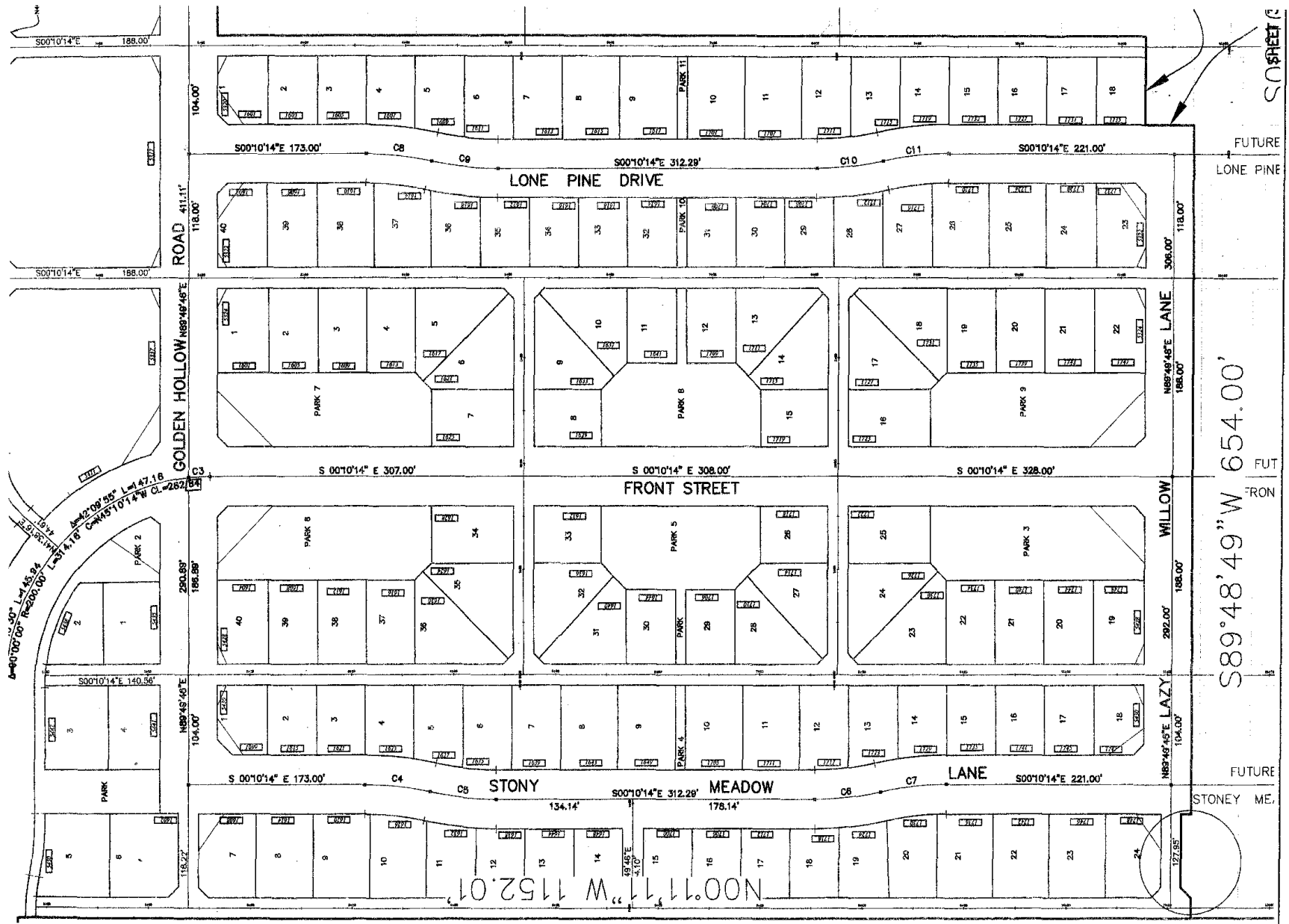
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Block 1: Lots 1 through 24, inclusive,
Block 3: Lots 1 through 40, inclusive,
Block 4: Lots 1 through 40, inclusive,
Block 5: Lots 1 through 18, inclusive,

all in Josephine Crossing Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3402833.

EXHIBIT "B"



CONCEPT

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EXHIBIT "C"

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 Yellowstone County RES 230.00

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BYLAWS OF JOSEPHINE CROSSING
OWNERS' ASSOCIATION
(a non-profit corporation)

The initial Board of Directors of JOSEPHINE CROSSING OWNERS' ASSOCIATION, a Montana non-profit corporation, ("the Association"), hereby adopts the following Bylaws:

DEFINITIONS

In the interpretation of these Bylaws the following definitions shall apply:

"Developer" means McCall Development, Inc., or any person or entity to whom McCall Development, Inc. transfers or assigns its development rights hereunder.

"Original Declaration" means the Declaration of Conditions, Covenants and Restrictions for Josephine Crossing, to which these Bylaws are attached.

"Subdivision" is Josephine Crossing Subdivision, all filings, located in Yellowstone County, Montana.

OFFICES

1. **Principal Office.** The principal office of this Association is situated at 1536 Mullaney Lane, Suite 100, Billings, Montana 59101. The Board of Directors may change the principal office.

MEMBERS

2. **Membership.** Developer and each subsequent owner of the lots described on Exhibit "B" attached to the Original Declaration shall be a Member of the Association, together with the owners of additional Lots which are subjected to the provisions of the Original Declaration.

Co-owners, or joint owners of a Lot shall be deemed to

EXHIBIT "D"

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be one Member for the purposes of voting and assessment. If any Lot is subsequently subdivided, the owners of each subdivided Lot shall be members of the Association. Upon sale or transfer of any lot, the membership shall transfer to the new owner(s).

3. Classes of Membership and Voting Rights. The Association initially shall have two classes of membership: Single Family Lot Members, and the Developer. They are each defined as follows:

- (a) Single Family Lot Members. Single Family Lot Members shall be all owners of residential single-family lots, except the Developer if it owns any single family lots. Single Family Lot Members shall have one equal vote for each Lot owned.
- (b) Developer Member. McCall Development, Inc., or all assignees of the development rights of McCall Development, Inc., shall be the Developer Members of the Association. The Developer Members shall have one vote for each lot owned by it.

Class voting shall be required on all issues which require a vote of the Members. Resolutions must be approved by a majority of the Members in each class entitled to vote, or by 2/3 of the Members of each class present and entitled to vote at the time the vote is taken, whichever is less.

4. Annual Meeting. The annual meeting of the Members for election of Directors, approval of an annual budget, and for the transaction of such other business as may properly come before them shall be held at the principal office of this Association or at such other place that shall be set forth in the Notice of meeting. The annual meeting shall be held on the first Saturday of June, 2007, at 1:00 o'clock P.M. and on the first Saturday of June of each and every year thereafter.

5. Notice of Annual Meeting. The Secretary-Treasurer of this Association shall give written notice stating the place, day and hour of the meeting by delivering the same not less than ten (10) days prior to the date of the meeting if notice is personally delivered, or not less than thirty days,



nor more than fifty (50) days before the date of the meeting, if notice is delivered by mail, to each Member of record entitled to vote at such meeting. The notice shall be deemed delivered when deposited, postage prepaid, in the United States mail addressed to the Member at the Member's address as it appears on records of the Association.

6. **Special Meeting.** Special meetings of the Members may be called by the Board of Directors or by not less than 25% of all Members in each class entitled to vote at the meeting. Notice of said special meeting shall be given in the same manner as notice for the annual meeting as outlined in Section 5 above, except that the notice, in addition to all other requirements, must state the purpose or purposes for which the meeting is called. No business other than that specified in the Notice of Meeting shall be transacted at any such special meeting.

7. **Quorum of Members.** A majority of the Members in each class, represented in person or by proxy, shall constitute a quorum at a meeting of Members. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of Members represented at the meeting and entitled to vote on the subject matter shall be the act of the Members unless the vote of a greater number is required by the Articles of Incorporation, these Bylaws, or the Original Declaration or any amendment thereto.

If a meeting cannot be organized because a quorum is not present, those present may adjourn the meeting from time to time until a quorum is present and at which time any business may be transacted that could have been transacted at the meeting as originally called.

8. **Proxies.** Every proxy must be dated and signed by the Member and given to the Secretary-Treasurer before or at the time of the meeting. No proxy shall be valid after the



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expiration of eleven (11) months from the date of its execution. Every proxy shall be revocable by the Member executing it. Said revocation must be in writing, dated and signed by the Member and given to the Secretary-Treasurer before or at the time of the Association's next meeting.

9. **Order of Business.** The order of business at all meetings of the Members shall be as follows:

- (a) Proof of notice of meeting or waiver of notice.
- (b) Reading of minutes of preceding meeting.
- (c) Reports.
- (d) Business.

10. **Conduct of Meetings.** Meetings shall be conducted in accordance with Roberts Rules of Order.

11. **Informal Action.** Resolutions required or permitted to be approved by Members may be approved without a meeting of Members if the written resolution is signed by at least 51% of the Members in each class entitled to vote and by the Developer, as a Member of the Association, and filed with the corporate records.

BOARD OF DIRECTORS

12. **Directors.** The Association shall be governed by a Board of five persons, all of whom shall be Members of the Association and who shall be elected by majority vote of the Members present at the annual meeting. Until sale by Developer of 75% of the land area in the Subdivision, Single Family Lot Members shall elect two Directors, and the Developer Members shall elect the remaining three Directors. After sale by Developer of 75% of the land area in the Subdivision, the Single Family Lot Members shall elect three of the Directors, and the Developer Members shall elect two Directors until all land in the Subdivision is sold by Developer. When there is no longer a Developer Member, the



Single Family Lot Members shall elect all Directors. The Directors shall serve without compensation.

13. **Term.** Five Directors shall be elected at the first annual meeting of the Association. The term of the Directors elected by the Developer Member shall be fixed for one year. The term of the Directors elected by the Single-Family Lot Members shall be fixed at two years. At the expiration of the initial term of each Director, an election shall be held by the class entitled to elect a new Director; all successor Directors shall serve two-year terms. A Director may be re-elected to successive terms.

14. **Initial Directors.** Until the first annual meeting, BRADLEY R. McCALL, GREGORY J. McCALL and CAROLEE McCALL shall serve as the only Directors.

15. **Powers and Duties of Directors.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all acts and things as are not by law, by these Bylaws, by the Original Declaration, or by amendments to that Declaration directed to be exercised and done by the Members.

- (a) The Directors shall have the power to contract for improvements to and maintenance of the Common Property of Josephine Crossing Subdivision described in the original Declaration or subsequent Amendments to that Declaration, and such other maintenance as may be required by vote of a majority of the members of each class entitled to vote.
- (b) The Board shall have the power to levy and collect General and Special assessments for the purposes set forth in the original Declaration, and any amendments thereto.
- (c) The Board shall prepare an annual budget and obtain contractors' bids for insurance, and/or maintenance for which the Association is responsible.
- (d) The Board shall have the authority to take appropriate legal action to collect delinquent assessments, to file a lien against any Lot having delinquent assessments, and to levy penalties and interest in accordance with the Original Declaration and amendments thereto.



- (e) The Board shall have the power to enter into and carry out contracts as necessary to its duties herein.
- (f) The Board shall have authority to pay Members of the Architectural Review committee a reasonable fee for their services.
- (g) The Board shall have the power to establish a bank account for the Association and to keep records in accordance with common accounting procedures.
- (h) The Board shall have the power to employ and pay a Secretary-Treasurer, a management company, an accountant, an attorney and such other persons as it deems necessary or advisable. The Board may delegate its responsibilities to a management company but shall be obligated to supervise the actions of that management company.
- (i) The Board shall have the power to appoint an Architectural Review Committee for the Association subject to the requirements set forth in the Original Declaration as amended from time to time.
- (j) The Board shall file annual corporate reports with the Montana Secretary of State and pay the required fee, arrange for preparation and filing tax returns for the Association and pay any taxes due.
- (k) The Board shall have the power to enforce the provisions of the Original Declaration and any amendments to that Declaration.

16. **Removal of Directors.** At any regular or special meeting of the Association called for that purpose, any Director may be removed for good cause by a vote of a majority of the Members in the Class which elected the Director. In the event of such removal, a successor may then and there be elected to fill the vacancy thus created by the Members of the class which removed the Director.

17. **Vacancies in Board of Directors.** Vacancies in the Board of Directors caused by resignation of a Director shall be filled by a vote of the Members of the class which elected the Director who resigned. Each person so elected shall serve for the remainder of the term of the resigning Director.



18. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one such meeting shall be held during each calendar year. Notice of such regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone, e-mail, or facsimile at least three days prior to the date of such meeting.

19. **Special Meetings.** Special meetings of the Board of Directors may be called by any Director or by the President on three days' notice to each Director. Notice may be given personally, or by mail, telephone, e-mail, or facsimile and shall state the time, date, place, and purpose of the meeting.

20. **Telephone Meetings.** Directors may have telephone meetings so long as all Directors are present or are given the opportunity to be present, and so long as each Director is able to speak to and be heard by the others.

21. **Quorum.** A quorum of the Board for transaction of business at any meeting shall be a majority of the Directors.

22. **Proxies.** Only Directors will be allowed an official vote. No proxies shall be allowed under any circumstances.

23. **Conduct of Meetings.** Unless otherwise agreed by all Directors, meetings shall be conducted in accordance with Roberts Rules of Order.

OFFICERS

24. **Designation.** The Officers of this Association shall be a President, a Vice-President, and a Secretary-Treasurer.

25. **Election and Term of Officers.** The Officers shall be elected by the Board of Directors for a one-year term. Officers may be re-elected for successive terms. The President and Vice-President shall be Members of the Association; the Secretary-Treasurer need not be a Member of the Association. Directors may also serve as Officers but are not required to do so.



26. **Payment of Officers.** The President and Vice-President shall serve without salary; the Secretary-Treasurer may be paid a reasonable salary, as determined by the Board.

27. **Removal of Officers.** Any Officer may be removed at any time with or without cause by vote of a majority of the Directors then in office.

28. **Filling Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by a vote of a majority of the Board of Directors. The newly elected Officer shall serve for the unexpired portion of the term.

29. **President.** The President shall be the chief executive officer of this Association and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the affairs of this Association. The President shall preside at all meetings of the Board of Directors and of the Members.

30. **Vice-President.** In the absence or disability of the President, the Vice-President shall perform all the duties of the President, and when so acting, the Vice-President shall have all the powers of the President and shall be subject to all the restrictions upon the President.

31. **Secretary-Treasurer.** The Secretary-Treasurer shall keep the minutes of every meeting held and conduct such correspondence as the Board deems necessary. The Secretary-Treasurer shall have the care and custody of and be responsible for all funds and securities of this Association and shall deposit such funds and securities in the name of this Association in such bank or safe deposit companies as the Board of Directors may designate. The Secretary-Treasurer shall also have authority to pay all bills of the Association as directed by the President or the Board of Directors. The Secretary-Treasurer shall keep at the principal office of this Association accurate books of accounts of all its business and transactions and shall at



all reasonable hours exhibit books and accounts to any Director or Member of this Association. The Secretary-Treasurer shall render a report of the condition of the finances of this Association, at each regular meeting of the Board of Directors and regular meeting of Members and shall perform all other duties incident to the office of Secretary-Treasurer.

CONTRACTS, CHECKS, DEPOSITS AND FUNDS

32. **Contracts and Instruments.** The President or Vice-President shall sign and approve all contracts and instruments on behalf of this Association after authorization has been granted and approval obtained from a majority of the Board of Directors.

33. **Checks and Drafts.** All checks, drafts, or other orders for payment of money, notes, or other evidence of indebtedness, issued in the name of or payable to this Association, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by any two of the Officers of this Association.

34. **Depository.** All funds of this Association shall be deposited from time to time to the credit of this Association in such banks, trust companies, or other depositories as the Board of Directors may select.

DEVELOPER RIGHTS

35. Administration.

(a) Right of Developer to Disapprove Actions. The Developer shall have a unilateral right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Developer would tend to impair rights of Developer under the original Declaration or these Bylaws, or interfere with development or



construction of any portion of the Subdivision, or diminish the level of services being provided by the Association. The Developer may exercise this right to disapprove in order to block proposed action or to require reversal of actions taken in violation of this Section. The Developer may not use its unilateral right to disapprove to reduce the level of services which the Association is obligated to provide; to prevent capital repairs; or to block any action or expenditure required to comply with applicable laws and regulations.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsection (b) below have been met and either the Developer has waived its right to disapprove, in writing, or a 15-day period has expired without the Developer exercising its right to disapprove after delivery of written minutes of the meeting. Any action taken in violation of this Section or in disregard of the Developer's exercise of such right of disapproval shall be outside the scope of the Association's authority and invalid and the Developer shall be entitled to pursue any and all remedies available at law or in equity, including damages or injunctive relief, to remedy such violation of its rights hereunder. In the event of such action, the prevailing party shall be entitled to collect its costs and attorney fees incurred in the action.

(b) Notice. The Developer shall be given written notice of all meetings to be held and actually held by the Association, the Board or the committee, and all proposed actions approved or to be approved at those meetings, or by written consent in lieu of a meeting. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Developer has registered with the Secretary of the Association. The notice shall set forth with reasonable particularity the decisions made at such meeting. The Developer shall also be given minutes of

each such meeting, stating the actions approved at the meeting.

(c) Opportunity to be Heard. The Developer, as a Member of the Association, shall be given the opportunity at any meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right to disapproval set forth herein.

MISCELLANEOUS PROVISIONS

36. **Waiver of Notice.** Whenever any notice is required to be given under the provisions of law or under the provisions of the Articles of Incorporation or these Bylaws, or the Original or Supplemental Declaration, a waiver thereof in a writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

37. **Amendment of Bylaws.** Class voting shall be required for any amendment to these Bylaws. Any amendment must be approved by a majority of the members of each membership class or two-thirds of the vote cast by the Members of each class, whichever is less. In addition, any amendment to these Bylaws must be approved, in writing, by Gregory J. McCall and by Bradley R. McCall until this right is relinquished by each of them in a writing signed by each. Amendments to these Bylaws shall become effective upon recordation with the Yellowstone County Clerk and Recorder unless a later effective date is specified therein.

38. **Transfer of Membership.** One Single Family Lot Membership is attached to each of the lots subject to the Original Declaration, as amended from time to time. Single Family Lot Memberships shall not be transferable except upon transfer of a Lot. Said Membership is appurtenant to and runs with the Lot.

39. **Expulsion of Members.** Members may not be expelled

from the Association, their voting rights cannot be canceled and no Member may withdraw from the Association so long as that Member owns a Lot subject to the provisions of the Original Declaration, as amended from time to time.

40. **Reimbursement of Costs and Expenses.** All Officers and Directors shall be reimbursed their costs and expenses directly incurred in work performed in furthering the purposes of this Association.

41. **Dissolution.** The Association shall be dissolved only if improvements or maintenance required to be done by the Association is assumed by some other entity. In the event of dissolution of the Association, the funds of the Association shall be divided equally among its Members after payment of all debts of the Association.

BYLAWS DATED 3-20, 2007.

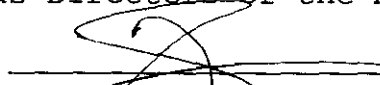

BRADLEY R. McCALL


GREGORY J. McCALL


CAROLEE McCALL

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on MARCH 20, 2007 by BRADLEY R. McCALL, GREGORY J. McCALL and CAROLEE McCALL as Directors of the Association.


(print in black ink or type name of notary)

Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires _____, 20__



TAMMY SHOVER
NOTARY PUBLIC MONTANA
Residing in Laurel, Montana
MY COMM. EXPIRES AUG. 8, 2008