



Return To:
McCall Development
2751 Enterprise Ave #2
Billings, MT 59102
3-91004

WARRANTY DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledge on this 4th day of October, 2005, the undersigned, THE ROMAN CATHOLIC BISHOP OF GREAT FALLS, a corporation sole of Great Falls, Montana, of PO Box 1399, Great Falls, Montana 59403, hereby grants unto McCALL DEVELOPMENT, INC., a Montana corporation, of 2751 Enterprise Ave. #2, Billings, Montana 59102, and to its successors and assigns forever, the hereinafter described real estate situated in Yellowstone, County, Montana, to-wit:

TOWNSHIP 1 SOUTH, RANGE 26 EAST OF THE PRINCIPAL MONTANA MERIDIAN, IN YELLOWSTONE COUNTY, MONTANA

Section 20: NW $\frac{1}{4}$ NW $\frac{1}{4}$
Government Lots 3 and 4

EXCEPTING therefrom the following 3 tracts of land:

1. Certificate of Survey No. 3223
2. Certificate of Survey No. 3223 Tract 1 Amended
3. That part conveyed to the Suburban Ditch Company, a corporation by Warranty Deed recorded June 26, 1896, in Book J, Page 406, records of Yellowstone County, Montana

TO HAVE AND TO HOLD unto the Grantee and to its successors and assigns forever, subject, however, to:

- (a) All reservations, covenants, restrictions and exceptions in recorded conveyances or other recorded documents pertaining to said real estate, or any part thereof;
- (b) All visible easements and vested rights for easements and rights of way, all waivers or agreements given to or entered into with governmental entities, and zoning ordinances;



- (c) Taxes, charges and assessments of any type imposed upon said real estate for the year 2005 and subsequent years;
- (d) All prior conveyances, leases or transfers of any interest in minerals, mineral rights, metals, stone, methane, oil, gas, coal and other hydrocarbons, or easement rights or other matters relating thereto whether expressed or implied;
- (e) All claim arising from the difference in the mean low water line of the Yellowstone River and the meander line as shown by the Original Government Survey;
- (f) Right, title and interest of the State of Montana within the natural bed of the Yellowstone River below the ordinary low water line, and also excepting any artificial accretions waterward of said ordinary high water line;
- (g) Public right and easements for commerce, recreation, navigation and fishery.

FURTHER, subject to the following restrictive covenants which the Grantor and Grantee do hereby agree, attach to and run with the land in title and shall be binding upon the Grantee, the successors of Grantee, its assigns, or anyone claiming through them:

- (h) There shall be no commercial development of any kind allowed on the granted premises within five hundred feet (500') of the easterly boundary of the adjoining property being retained by the Grantor as more particularly described on Certificate of Survey No. 3223 and Certificate of Survey No. 3223 Tract 1 Amended which property has been excepted from this transfer as noted above. Said excluded commercial development shall include, but not limited to, the following:
 - (i) No tavern, bar, lounge, or similar establishment allowing for the sale or manufacture of any alcoholic beverages;
 - (ii) No casino or similar type establishment providing for or allowing gambling type activities;
 - (iii) No business associated with or otherwise involved in any sex oriented entertainment business or any business calling for the sale or distribution of any sex oriented or pornographic materials;



- (iv) No business associated with or otherwise involved in or in any way pertaining to the promotion, counseling, referral, education, advocacy or providing of any services or procedures related in any way to human abortion, euthanasia, sterilization, artificial insemination, abortifacient drugs and/or contraception (other than natural family planning);
- (v) No business establishment calling for the use of storage, manufacturing, or selling or any environmentally hazardous materials or substances.

The above and foregoing restrictions are separate. In the event that any of the above separate and distinct restrictions are adjudged invalid or unenforceable, such adjudication shall in no matter affect the other restrictions which shall remain in full and effect as if the portion(s) so adjudged invalid or unenforceable were not originally a part thereof.

- (i) the remainder of the Property sold above may be used for commercial purposes shown on the attached Exhibit "A"; no other commercial uses shall be permitted without consent of Grantor
- (j) Any type of single or multi-family use shall be permitted anywhere upon the Property sold above, together with the incidental uses found in residential neighborhoods, such as streets, parks and in-home offices (but only so long as the in-house offices are not engaged in the activities noted in paragraph h above).

EXCEPT with reference to items referred to in paragraphs (a) through (j) above, this Deed is given with the usual covenants expressed in Section 30-11-110, Montana code Annotated.

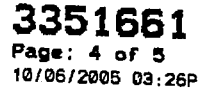
IN WITNESS WHEREOF, the Grantor has executed this instrument the day and year first above written.

ROMAN CATHOLIC BISHOP OF GREAT
FALLS, MONTANA, a corporation sole

By Anthony M. Milone
ANTHONY M. MILONE
INCUMBENT BISHOP

: SS

)



Joan O. Drewecky
(Printed Name) Joan O. Drewecky
Notary Public for the State of Montana
Residing at Great Falls
My commission expires: August 12, 2007



EXHIBIT "A"

Lodging:

Inn (up to 12 rooms)
Inn (up to 5 rooms)

Office:

Office Building
Live-Work Unit

Retail:

Open-Market Building
Retail Building
Display Gallery
Restaurant
Kiosk

Civic:

Bus Shelter
Fountain or Public Art
Library
Playground
Religious Assembly

Civil Support:

Fire Station
Police Station
Funeral Home

Other: Education:

Elementary School
Childcare Center

Greg McCall
2751 Enterprise Ave, Ste 2
Billings MT 59102



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Development Agreement

PLANNED DEVELOPMENT AGREEMENT
FOR



By and Between:



McCALL
DEVELOPMENT

and

THE CITY OF BILLINGS, MONTANA



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**PLANNED DEVELOPMENT AGREEMENT
FOR
Josephine Crossing
PD #8**

THIS AGREEMENT made and entered into this 12th day of June, 2006 by and between **McCall Development, Inc.**, of 2751 Enterprise Ave, Suite 2, Billings, Montana 59102 (hereinafter referred to as the "owner") and the **City of Billings** (the "City"), of 210 North 27th Street, Billings, MT 59101.

RECITALS

NOW WHEREAS:

A. The undersigned is the Owner of all portions of approximately eighty-eight (88) acres of real property in Billings, Montana, more particularly described as: Township 1 South, Range 26 East of the Principal Montana Meridian, in Yellowstone County, Montana in Section 20 the NW1/4NW1/4 Government Lots 3 and 4 EXCEPTING there from the following three (3) tracts of land:

1. Certificate of Survey No. 3223
2. Certificate of Survey No. 3223 Tract 1 Amended
3. That part conveyed to the Suburban Ditch Company, a corporation, by warranty deed recorded June 26, 1896, in Book J, Page 406, records of Yellowstone County, Montana.

B. The Owner and the City have placed building and use restrictions on the above described premises, and desire to amend and restate the building and use restrictions adopted as provided in this agreement.

C. The Owner intends to develop the aforementioned property for multiple use purposes including residential and commercial uses in a pedestrian-oriented development. This property is hereinafter referred to as "Josephine Crossing".

D. Josephine Crossing will be a Traditional Neighborhood Development (TND) in keeping with the tenants of Smart Growth and New Urbanism.

E. The Owner desires to place certain building and use restriction on the property within Josephine Crossing, specify certain permitted land uses and regulations and create a pattern of development which promotes sustainability, diversity, community, health and safety.

F. The City adopted a Neighborhood Plan for the West Billings Neighborhood to establish development guidelines in West Billings, specifically to meet the community-shared vision of the future of West Billings, enabling it to thrive on growth and change through innovative, aesthetic land use, and responsible development.

G. The Owner intends to utilize smart growth principals with respect to the overlying form of Josephine Crossing.

H. The Owner intends to utilize applicable section of the SmartCode© 6.5 & 7.0 as a comprehensive form-based planning regulation, suited to describing the underlying zoning for Josephine Crossing.



I. The Owner enters into this Agreement with the City to ensure that Josephine Crossing will be developed and maintained as a first class development.

NOW THEREFORE, in consideration of the premises the undersigned hereby establishes a Planned Development Agreement for Josephine Crossing to declare the following plan for Josephine Crossing, including such restrictions as set forth herein, which shall be applicable to all of the above described real estate and shall bind all of the present and future property owners to such real estate and shall run with the land.



AGREEMENT

PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporations or other entities who shall hereafter acquire any interest in and to the above described real estate shall be held to agree to conform to and observe the following building and zoning restrictions. These restrictions and stipulations as to the use of the property may be amended from time to time through the zone change process as described in the Unified Zoning Regulations of the City Of Billings and Yellowstone County.

BUILDING AND USE RESTRICTIONS

A. This Planned Development (PD) is created to provide for Josephine Crossing a mixed use Traditional Neighborhood Design (TND) that embraces the tenants of Smart Growth and New Urbanism. A human-scale, pedestrian-oriented design will be essence of the neighborhood's character. The emphasis of Josephine Crossing will be on the people and their living space instead of their cars. Josephine Crossing will emphasize and make feasible other modes of transportation that will enhance social interaction. Large front porches in residential areas and walking paths throughout will knit the fabric of the neighborhood together. The intent is not to create another subdivision but to build a neighborhood. Garage doors will be placed to the rear of homes and boulevards will separate the sidewalk from the street to create a more secure path for pedestrians. The neighborhood may feature a central store with just the necessities. Many homes will have parks for their front yards. The Yellowstone River to the south will provide the perfect setting for the village.

B. This PD shall permit maximum flexibility to meet the demands of the residential and commercial markets as they change over time.

C. This PD will use the SmartCode© as a comprehensive planning tool to define the areas for development within Josephine Crossing. This PD will fall under the category of transect 4 (T4) and transect 5 (T5) and all details to the structure and intent of mixed use will be defined by the geographic cross-sections of T4 and T5.

D. Josephine Crossing is divided into two main sections (See Exhibit A). The Residential Neighborhood is a T4 in all respects. Heritage Corner is T5 in all respects. (See Table 1).

E. The Residential Neighborhood will permit only the residential uses allowed by right as shown in Table 1. No other uses commercial or otherwise will be allowed in the Residential Neighborhood.

F. Heritage Corner will permit all uses allowed in the Residential Neighborhood as well as those shown in Table 1.

G. The following uses are prohibited throughout Josephine Crossing:

1. No establishment that sells or manufactures alcoholic beverages.
2. No casino or similar type establishment that provides for gambling activities.



TRANSECT 4 (T4) has a denser and primarily residential urban fabric. Mixed-use is usually confined to certain corner locations. This zone has a wide range of building types including single family, sideyard and row houses. Setbacks and street tree settings are variable. Street typically define medium sized blocks.

Land Uses: Medium density residential and home occupations; limited commercial and lodging.

Buildings: Houses and outbuildings, sideyard houses, townhouses, live/work units, corner stores and inns.

Private frontages: Porches and fences.

Public frontages: Raised curbs, narrow sidewalks, bike lanes, continuous planters, street trees in allee.

Thoroughfares: Streets and rear lanes (alleys).

Open Spaces: Squares and playgrounds.

TRANSECT 5 (T5) is the equivalent of the main street area. This zone includes mixed-use building types that accommodate retail, offices and dwellings, including row houses and apartments. This zone is a tight network of streets and blocks with wide sidewalks, steady street tree planting and buildings set close to the frontages.

Land Uses: Medium intensity residential and commercial: retail, offices, lodging, civic buildings.

Buildings: Townhouses, apartment houses, live/work units, shopfront buildings and office buildings, hotels, churches, schools.

Private frontages: Stoops, dooryards, forecourts, shopfronts and galleries.

Public frontages: Raised curbs, wide sidewalks, bike routes, continuous or discontinuous planters, street trees in allee.

Thoroughfares: Boulevards, avenues, couplets, main streets, streets and rear lanes (alleys).

Open Spaces: Squares, plaza and playgrounds.

GENERAL REQUIREMENTS FOR ALL ZONES

A. There is no minimum lot area required in Josephine Crossing. A maximum residential density is set forth in Table 1 and is based on the gross acres of Josephine Crossing not on subdivided lots and blocks. Minimum lot width and maximum lot width shall be as set forth in Table 1.

B. Each lot is allowed one principal building and one accessory building as shown in Table 1. Allowable uses and uses allowed by special review approval in each zone are as shown in the Table 1.

C. Setbacks and access for buildings are as shown in Table 1. Lot coverage by building shall not exceed the maximum shown in Table 1.

D. Building facades shall be built parallel to the principal lot frontage or parallel to the tangent of a curved principal frontage line.

E. Rear setbacks for accessory buildings shall be a minimum of twelve (12) feet measured from the center of the alley or rear lane easement. If there is no alley or rear lane easement, the setback shall be as shown in Table 1.

F. Projections into the required building setback are allowed for awnings, stoops, open porches, balconies and bay windows. Awnings may encroach over the public sidewalk in the designated T5 zone. Stoops in the T4 and T5 zones may encroach up to 100% of the setback. Open porches and awnings in the T4 zone may encroach up to 50% of the setback. Balconies and bay windows in the T4 and T5 zones may encroach up to 25% of the setback.

G. Loading docks, service areas and parking in front or side yards in the T5 zone may only be allowed by variance.

H. Sight Triangles are as follows: 25 feet by 35 feet at uncontrolled tee intersections, where 25 feet is from the stem and 35 feet is on the through portion of the intersection. Uncontrolled four-way intersections are standard 110 feet by 110 feet. (see Table 4 section e.)

GENERAL PARKING STANDARDS

A. Parking shall be provided as shown in Table 2.

B. On-street parking available along the frontage lines that correspond to each lot shall be counted toward the parking requirement of the building on the lot.

C. Off-street parking shall be accessed by the alley or rear lane where it is provided.

D. Parking may be provided within one-quarter (1/4) mile of the site that it serves with special review approval.

E. Access driveways from the front of lots may provide access to rear lot parking.

F. Parking areas in the T5 zone shall be screened from the street frontage by a building line or in combination with a screen wall between 3.5 feet and 8 feet in height and constructed of a material to match the principal building façade. Screen walls over 4 feet in height shall be at 30% permeable or articulated to prevent a blank wall space.

G. One bicycle rack shall be provided in the Public or Private Frontage area for every ten (10) off-street parking spaces.



GENERAL ARCHITECTURAL STANDARDS

A. Street screens for parking areas and fences, walls, hedges may be located in side and rear yards but not in required front yards. Street screens and fences, walls and hedges may be up to 8 feet in height from finished grade.

B. All openings, including porches, galleries, arcades and windows, with the exception of storefronts, shall be square or vertical.

C. All openings above the first story shall not exceed 50% of the total building wall area. Each façade shall be calculated separately.

D. The facades of Retail buildings shall be detailed as storefronts and glazed no less than 70% of the sidewalk level story.

E. Doors and windows that operate as horizontal sliders are not permitted along front-ages.

F. Pitches roofs, if provided, shall be symmetrically sloped no less than 5:12. Porches and attached accessory structures may be no less than 2:12.

G. Flat roofs must be enclosed by parapet walls of no less than 42 inches or as required to conceal roof-top mechanical equipment.

GENERAL LANDSCAPE AND SIGN STANDARDS

A. A minimum of one (1) street tree shall be planted within the private frontage of each lot for each 30 lineal feet of frontage line.

B. Street tree species shall not include evergreen species, Carolina poplar, Canadian poplar, elms, Lombardy poplar, silver leaf poplar, weeping willow, and box elder trees or any street tree species otherwise prohibited by the City of Billings Montana Municipal Code (BMCC).

C. In the T5 zone, the private frontage shall be landscaped or paved to match the public frontage (See Exhibit B).

D. One address number no more than six (6) inches in vertical height shall be attached to the building in proximity to the principal entrance or at a mailbox.

E. One blade sign for each business may be permanently installed perpendicular to the building façade. Blade signs in the T4 zone shall not exceed four (4) square feet. Blade signs in the T5 zone shall not exceed six (6) square feet for each separate business entrance.

F. Signage may be externally lit.

G. In the T5 zone, a single wall sign may be attached to the façade of the building providing that such sign does not exceed three (3) feet in height by any length.



GENERAL ENVIRONMENTAL STANDARDS

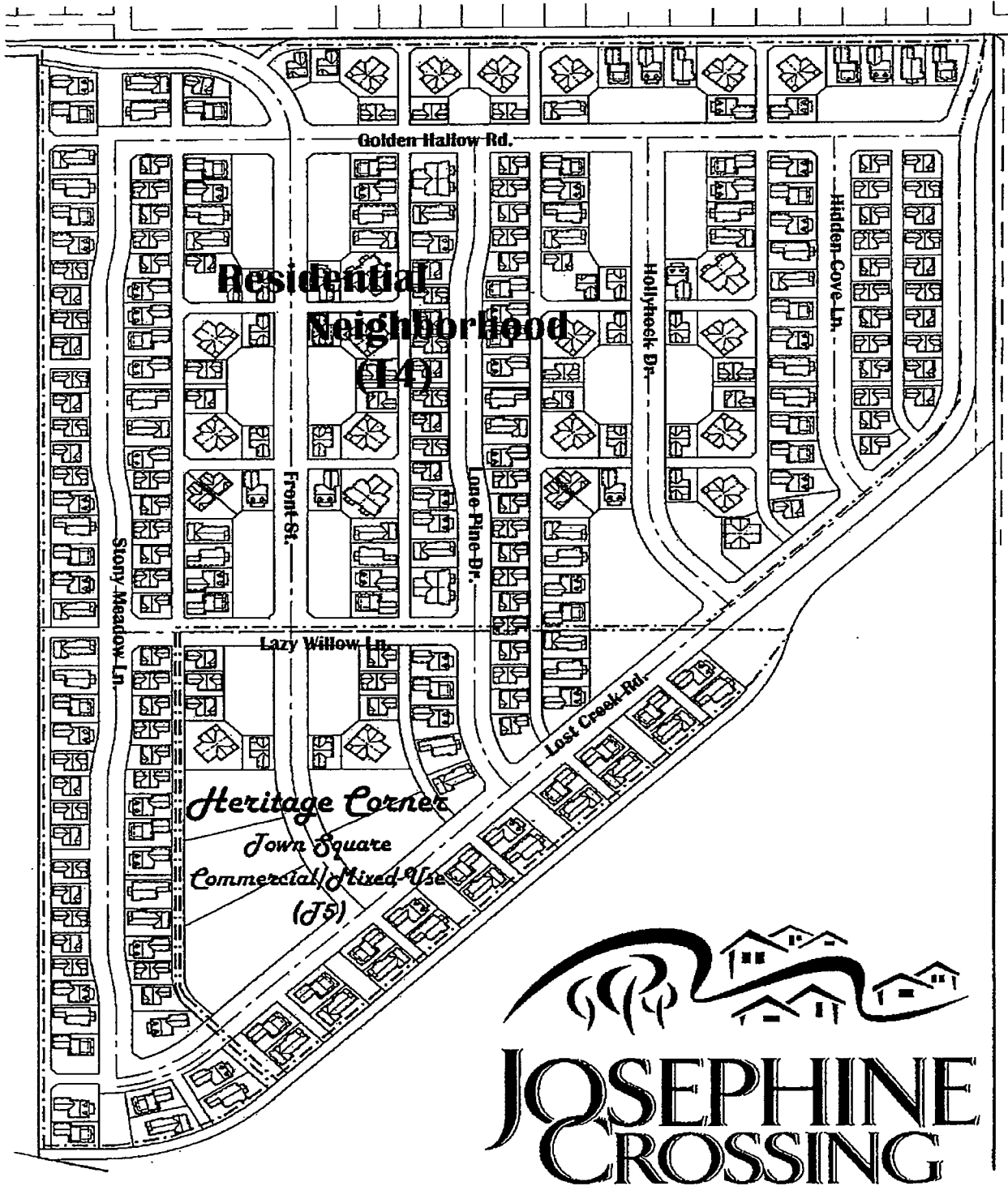
A. In the T4 zone sound levels shall not exceed 65 decibels between 7 am and 7 pm and 55 decibels between 7 pm and 7 am. Sound levels shall be measured at any exterior property line.

B. In the T5 zone sound levels shall not exceed 70 decibels between 6 am and midnight and 55 decibels between midnight and 6 am. Sound levels shall be measured at any exterior property line.

C. Average lighting levels measured in foot-candles shall not exceed 2.0 fc at the building frontage in the T4 zone. Average lighting levels measured in foot-candles shall not exceed 5.0 fc at the building frontage in the T5 zone.

D. Outdoor storage shall be screened from view from any frontage by a street screen or solid fence.

Exhibit "A"





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TABLE 1
JOSEPHINE CROSSING - USES & BUILDING SETBACKS

A= Allowed
SR = Special Review

TYPE OF USE	TRANSECT 4 (T4)	TRANSECT 5 (T5)
Apartment Building	A	A
Row House	A	A
Duplex House	A	A
Sidyard House	A	A
Cottage	A	A
House	A	A
Accessory Unit	A	A
Temporary Tent	SR	SR
Live/Work Unit	A	A
Inn up to 12 rooms		A
Inn up to 5 rooms		A
S.R.O. Hostel		SR
School Dormitory		A
Office Building		A
Open-market Building		A
Retail Building		A
Display Gallery		A
Restaurant		A
Kiosk		A
Bus Shelter		A
Fountain or Public Art		A
Library		A
Playground		A
Surface Parking Lot (not associated with principal building)		SR
Kennel		SR
Fire Station		A
Police Station		A
Cemetery		SR
Funeral Home		A
Medical Clinic		SR
High School		SR
Elementary School		A
Other- Childcare Center		A
Electric Substation		SR
MAXIMUM RESIDENTIAL DENSITY	6 units/gross acre	10 units/gross acre
MAXIMUM BLOCK PERIMETER	3000 lineal feet	2400 lineal feet



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TABLE 1, continued
JOSEPHINE CROSSING

LOT WIDTH	18 feet min. 96 ft max.	18 ft min. 180 ft max.
LOT COVERAGE	70% maximum	80% maximum
BUILDING SETBACK FRONT	5 feet min. 18 feet max.	0 feet min. 12 feet max.
BUILDING SETBACK SIDE	0 feet min.	0 feet min. 24 feet max.
BUILDING SETBACK REAR	3 feet min. OR 12 feet min. from center of alley	3 feet min. OR 12 feet min. from center of alley
MAXIMUM BUILDING HEIGHT	Principal Building = 4 stories Accessory Building = 2 stories	Principal Building = 6 stories Accessory Building = 2 stories

Uses not specifically listed as allowed or allowed by special review are prohibited.

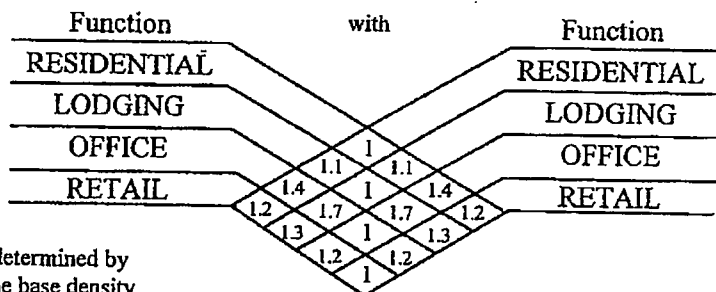
TABLE 2
JOSEPHINE CROSSING
REQUIRED PARKING

REQUIRED PARKING		
TYPE OF USE	TRANSECT 4 (T4)	TRANSECT 5 (T5)
Residential	1.5/dwelling unit	1.0/dwelling unit
Lodging	1.0/bedroom	1.0/bedroom
Office	3.0/1,000 square feet	2.0/1,000 square feet
Retail	4.0/1,000 square feet	3.0/1,000 square feet
Civic	As determined by Planning Director	As determined by Planning Director
Other Uses	As determined by Planning Director	As determined by Planning Director
Sharing Factors	See Table 3	See Table 3

TABLE 3 SHARING FACTOR

The Required Parking TABLE 2 can be used in conjunction with the Sharing Factor TABLE 3 to establish either the

1. ADJUSTED DENSITY or
2. EFFECTIVE PARKING

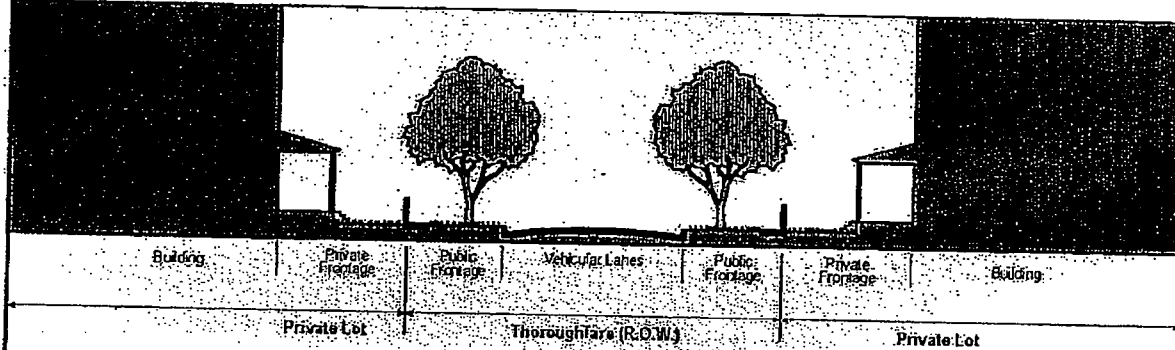


- The **ADJUSTED DENSITY** may be determined by the amount of parking provided, and the base density can be adjusted upward. By *adding the actual parking available for each of two functions and the sum then multiplied by the corresponding Sharing Factor*.
 - **For Example:** Ten actual parking spaces are available for a residential building site and ten actual spaces are provided for an office building site.
 - $(10+10=20 \times 1.4=28)$ 28 Effective parking spaces divided equally between the two uses is 14 spaces. Thus the *Adjusted Density* of the residential building can be increased from 10 to 14 units, likewise the office building can be adjusted from 5,000 to 7,000 square feet.
-
- The **EFFECTIVE PARKING** required for any two functions whose density is already determined is *the sum of the Required Parking divided by the Sharing Factor*. Round up to nearest parking space.
 - **For Example:** A residential building with ten units has ten Required Parking spaces, and a neighboring 5,000 square foot office building also has ten Required Parking spaces.
 - $(10+10=20/1.4=14.29)$ Round up to nearest parking space equals an *Effective Parking* requirement of 15 parking spaces.

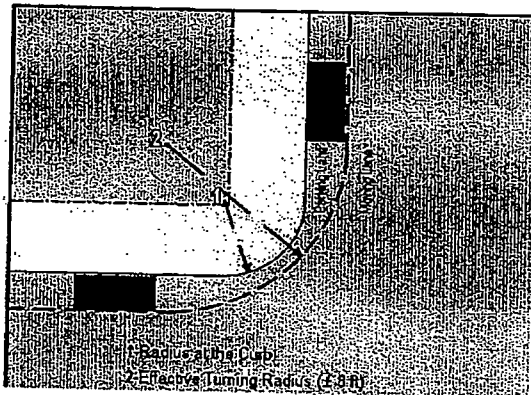


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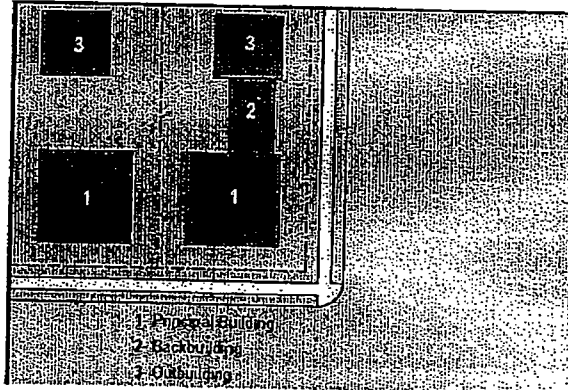
a. THOROUGHFARE & FRONTAGES



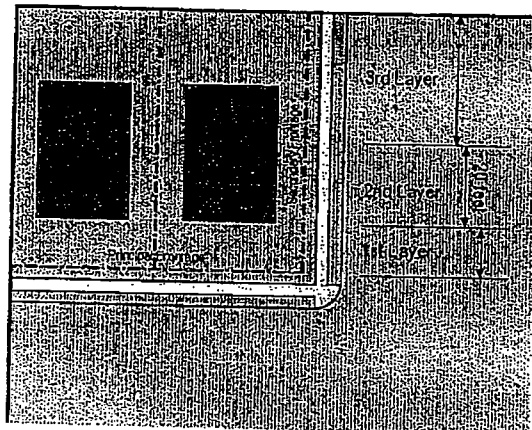
b. TURNING RADIUS



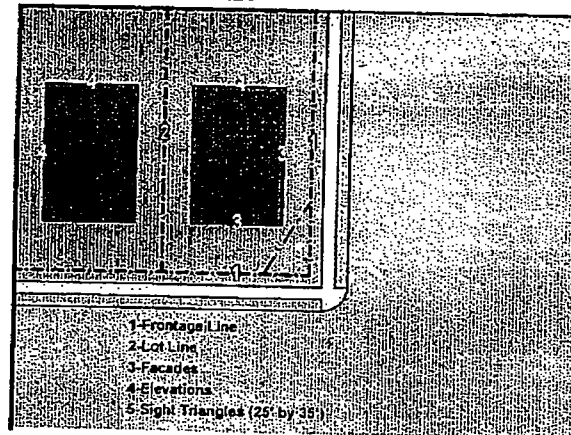
c. BUILDING DISPOSITION



d. LOT LAYERS



e. FRONTAGE & LOT LINES





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DEFINITION OF TERMS

The terms herein defined are in addition to those contained within the Unified Zoning Regulations of the City of Billings and Yellowstone County. Where terms or phrases are not defined, they shall have the plain meaning of the word or words as found in the most recent edition of the Merriam-Webster Dictionary of the English Language.

Accessory Building: An Accessory Building, usually located towards the rear of the same lot as a Principal Building. Accessory Buildings shall not exceed 600 square feet of habitable space, excluding parking areas.

Block – A block is the aggregate of private lots, passages, rear lanes and alleys, circumscribed by public streets.

Building Height: The height of a building is the vertical extent of a building measured in stories, not including a raised basement or a habitable attic. Height limits do not apply to belfries, clock towers, chimney flues, water tanks, elevator bulkheads and similar structures. Building Height shall be measured from the average grade of the frontage street.

Civic: A term used to define non-profit organizations dedicated to the arts, culture, education, recreation, government, transit and municipal services.

Commercial: A term used to collectively define workplace, office and retail functions.

Density: The number of dwelling units within a standard measure of land area usually given as units per acre.

Driveway: A vehicular lane within a lot usually leading to a garage. A Driveway that enters a lot from a street frontage may be no more than 18 feet in width.

Edgeyard Building: A building that occupies the center of its lot with setbacks on all sides.

Façade: The exterior wall of a building that is set along a Frontage Line.

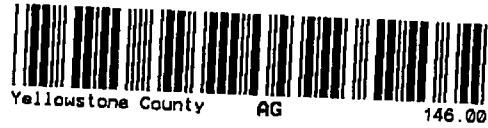
Frontage Line: Those lot lines that coincide with a public frontage.

Live-Work Unit: A dwelling unit that contains, to a limited extent, a commercial component. A live-Work Unit is a fee simple unit on its own lot with the commercial component limited on the ground level.

Lodging: A premises available for daily and weekly renting of bedrooms. The area allocated for food service shall be calculated and provided with parking according to retail use.

Lot Width: The length of the principal Frontage Line of a lot.

Office: A premises available for the transaction of general business but excluding retail, artisans and manufacturing uses.



Principal Building: The main building on a lot usually located towards the frontage.

Rear Alley: A vehicular driveway located to the rear of lots providing access to service areas and parking and containing utility easements.

Rearyard Building: A building that occupies the full frontage line leaving the rear of the lot as the sole yard. A Rearyard Building provides a continuous façade along the Frontage Line. When used for residential purposes this defines a row house.

Residential: Premises available for long-term housing.

Retail: Premises available for the sale of merchandise and food service.

Setback: The area of a lot measured from the lot line to a building façade or elevation. This area must be maintained clear of permanent structures with the exception of fences, porches, stoops, balconies, bay windows and other permitted encroachments.

Sideward Building: A building that occupies one side of the lot with a setback to the other side.

Story: A habitable level within a building of no more than 14 feet in height from finished floor to finished ceiling. Attics and raised basements are not considered stories for the purposed of determining building height.

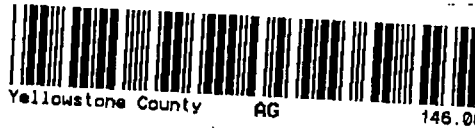
Streetscreen: A free-standing wall built along the frontage line or coplanar with the building façade, often for the purpose of masking a parking lot from the public street.

Transect: A system of ordering human habitats in a range from the most natural to the most urban. The SmartCode © is based upon six Transect Zones which describe the physical character of place at any scale, according to the density and intensity of land use and urbanism.

Transect Zone: Transect Zones are administratively similar to the land use zones in conventional zoning codes except that in addition to the usual building use, density, height and setback requirements, other elements of the intended habitat are integrated.

CONDITIONS OF USE

- The text and diagrams appearing in this document are the property of Duany Plater-Zyberk & Company (DPZ). Their reproduction and use are permitted with "Credit: Duany Plater-Zyberk & Company" in print.
- The complete SmartCode in printed form will be available from MuniCode.com.
- The complete SmartCode in electronic, editable format is available at DPZ.com.
- A SmartCode Users Manual will be available from wright@balch.com.
- Information on implementation seminars and consultants is available from placemakers.com.



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PLANNED DEVELOPMENT AGREEMENT AMENDMENTS OR CHANGES

Any modification of the approved development plan requested by the developer shall be processed using the same procedures for a new application, as set forth in above Unified Zoning Regulations Sections 27-1304 through 27-1309. However, minor modifications may be approved by the zoning coordinator if he/she makes the following findings:

- (1) No change in the overall character of the development;
- (2) No increase in the number of residential units greater than two (2) percent;
- (3) No additional allowed uses;
- (4) No reduction in open space greater than two (2) percent; and
- (5) No change in the approved minimum setbacks, maximum lot coverage or maximum allowed height.

VARIANCE PROCEDURES

The procedure to vary from the absolute standards for building height, setback, landscaping, lighting, vehicle access, signage, fencing and minimum lot area shall follow the process in the Unified Zoning Regulations of Yellowstone County. In no case shall a variance be granted for a use not listed within this agreement or for uses prohibited within the Unified Zoning Regulations of Yellowstone County.

EFFECT OF THIS AGREEMENT

The provision of the Planned Development Agreement shall remain in full force and effect as to Owner and any and all persons becoming an owner of all or any portion of the property and all of such Owner's heirs, personal representatives, successors and assigns.

RIGHT TO ENFORCE

The provisions of the Planned Development shall be enforced as provided for in the Unified Zoning Regulations of the City of Billings and Yellowstone County in effect at the time of enforcement.

DATED this 12th day of June, 2006

BY: 

McCall Development, Inc., owner

Gregory J. McCall, Vice President



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ATTEST:

STATE OF MONTANA)

: SS

County of Yellowstone)

On this 28 day of June, 2006 before me a Notary Public for the State of Montana personally appeared Gregory J. McCall known to me to be the Vice-President of McCall Development, Inc. and acknowledged to me that he executed the within instrument on behalf of said corporation, having first been authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first hereinabove written.



Wynnette J. Maddox
Printed Name Wynnette J. Maddox
Notary Public for the State of Montana
Residing at Billings, Montana Shepherd
My commission expires: 9.16.2006

PASSED by the City Council on first reading May 22, 2006.

PASSED, ADOPTED AND APPROVED on second reading June 12, 2006.



CITY OF BILLINGS:

BY: Ron Tussing
Ron Tussing, Mayor

ATTEST:

BY: Marita Herold
Marita Herold, CMC/AAE, City Clerk

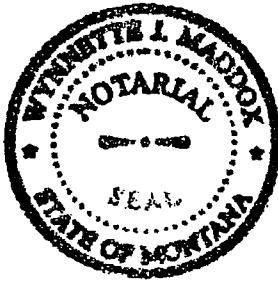


ACKNOWLEDGEMENT

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this 12th day of June, 2006, before me, a Notary Public for the State of Montana, personally appeared RON TUSSING and MARITA HEROLD, known to me to be the Mayor and City Clerk respectively of the City of Billings, and whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Wynnette J. Maddox
Printed Name: Wynnette J. Maddox
Notary Public for the State of Montana
Residing at Billings, Montana Shepherd
My Commission Expires: 9-16-2006



Yellowstone County

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**SUBDIVISION IMPROVEMENTS AGREEMENT
JOSEPHINE CROSSING SUBDIVISION
CITY OF BILLINGS
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Return to:
Engineering, Inc.
1300 North Transtech Way
Billings, MT 59102

SUBDIVISION IMPROVEMENTS AGREEMENT

JOSEPHINE CROSSING SUBDIVISION

This agreement is made and entered into this 27th day of NOV., 2006, by and between **MCCALL DEVELOPMENT, INC.**, whose address for the purpose of this agreement is 101 South 24th Street West, Billings, Montana 59102, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on the 25th day of April, 2006, the Board of Planning recommended conditional approval of a preliminary plat of Josephine Crossing Subdivision; and

WHEREAS, at a regular meeting conducted on the 22nd day of May, 2006, the City Council conditionally approved a preliminary plat of Josephine Crossing Subdivision; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to Josephine Crossing Subdivision upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.



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THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

- A. 23-601(k) to allow a 56-foot right-of-way width in lieu of a 60-foot right-of-way width for local access residential streets.
- B. 23-601(k) to allow a 34-foot back-to-back street width in lieu of a 37-foot back-to-back street width for local access residential streets.

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development.
- B. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- C. Lot owners should be aware that this Subdivision is built with a "traditional neighborhood" design. The single-family dwellings will have the garage set in the rear of the lots. The access will be provided to the garages by means of a paved alley. Parking will not be permitted in the alley or in the driveway between the alley and garage.
- D. Lot owners should be aware that this Subdivision is zoned "Public Development" (PD). Special zoning regulations regarding lot development will be enforced in accordance to the Planned Development Agreement recorded at the Yellowstone County Clerk and Records Office under Document No. 3383147.
- E. Lot owners should be aware that this Subdivision is adjacent to wildlife habitat. Consequently, owners are advised that wildlife indigenous to the area is found on the property, and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also



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experience problems with damage to landscaped shrubs, flowers, and gardens. Any impacts associated with wildlife and any damage arising therefrom is the responsibility of the lot owners.

- F. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- G. Lot owners should be aware they will be required to participate in park maintenance districts for the Josephine Crossing Subdivision Maintenance District. In addition, lots adjacent to the interior parks will be required to participate in other maintenance districts to maintain various common areas.
- H. Soils in the area consist of predominately silty clays; which, with the high water, have a potential for flooding, shrinking or swelling. The movement of these layers can cause shifting in footings and structural damage to foundations if not properly designed. A geotechnical study may be required with building permit submittals.

III. TRANSPORTATION

A. Streets

1. All internal access roads and site improvements within the Subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, International Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All streets within the Subdivision shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. Elysian Road street width along the north frontage of the Holy Cross Cemetery will be 28-foot back-to-back of curb except at the Mullowney Lane intersection where the width will be wider to provide an entry island. The 28-foot width area will be signed to restrict parking on both sides. All other remaining roads within the Josephine Crossing Subdivision will be built to provide a 34-foot back-to-back curb street width. The design cross sections of said streets shall be submitted to, and approved by, the City of Billings Public Works Department.

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3. A traffic accessibility study has been completed for the Subdivision. All required improvements and permits identified therein shall be completed by the developer at the developer's expense. These are more specifically identified as follows.

Mullowney Lane shall be widened and the lanes shall be modified as required, to provide a southbound left turn lane. Lane configuration and widths shall be reviewed and approved by the city traffic engineer.

B. Alleys

All alleys within the Subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. Alley pavement widths shall be 12 feet. The design cross sections of said alleys shall be submitted to, and approved by, the City of Billings Public Works Department.

C. Sidewalks

Subdivider shall install handicap access ramps where necessary during street construction. Construction of sidewalks along frontage of the lots shall be installed by the lot owner at the time of lot development. Sidewalks along the frontage and within the interior parks will be constructed at the time of park development. Sidewalks along the street frontage shall be 5 feet wide and separated with a boulevard of width not less than 5 feet except at locations where transitions are required when connecting to existing sidewalk with no boulevard. The Subdivider shall also install a 5-foot wide curbside on the south side of Front Street, north of the Holy Cross Cemetery. The Subdivider may construct the proposed multi-use path north of the Suburban Ditch in lieu of said 5-foot walk north of the Holy Cross Cemetery.

D. Street Lighting

Street lighting is not required for this Subdivision but is included in the Waiver.

E. Traffic Control Devices

1. Street name signs for streets within the Subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.



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2. A stop sign shall be placed on the east leg of the Elysian Road and Muldowney Lane intersection. All other stop signs required within the Subdivision will be installed as recommended in the traffic accessibility study. Stop signs will not be installed at the interior local street "T" intersections. Clear vision triangles shall be provided within the lots adjacent to the "T" intersections. Said triangles shall be 35 feet measured from the property line in the direction of the through street, and 25 feet measured in the direction perpendicular to the through street.
3. No traffic signals are required within this Subdivision.
4. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

F. Access

Access to the Subdivision will be provided off the Muldowney Lane and Elysian Road intersection and at South 12th Street West at the northeast corner of the Subdivision. All right-of-way accesses shall be as shown on the plat.

G. Heritage Trail Plan

The Heritage Trail Non-Motorized Trail System Plan recommends a multi-use trail along the southern boundary of the Subdivision. The Subdivider shall provide a park dedication on the upper bench area north of the Yellowstone River interface. Said park width shall not be less than 20 feet measured perpendicular to the proposed path alignment. The Subdivider is not required to build said path.

H. Public Transit

This Subdivision does not require improvements to ensure public transit service.

IV. EMERGENCY SERVICE

Emergency service will be provided by the City.



V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division. The storm drainage system consists of a curb and gutter surface collection and curb inlets that drain into storm drainage piping. The storm drain piping will discharge into a temporary open channel that drains to the existing irrigation ditch discharge located at the southeast corner of the Subdivision. All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Distribution and Collection Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications. The appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the first paragraph above.

The Developer/Owner acknowledges that the Subdivision shall be subject to the applicable system development fees in effect at the time new water and/or sanitary sewer service connections are made.

It is acknowledged that all fees stated above are subject to the franchise fee in effect at the time of payment.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of, and as approved by the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.



A. Water

The Josephine Crossing Subdivision water system consists of a series of looped water mains located in each of the local access streets. The new water system will connect to the existing 16-inch water main in Sacagawea Drive via the Heritage Trail dedicated right-of-way along the southern boundary of Riverfront Pointe Subdivision and the 12-inch water main within South 12th Street West at the northeast corner of the Subdivision.

B. Sanitary Sewer

The Josephine Crossing Subdivision sanitary sewer system consists of gravity sewer piping that shall discharge into the existing sanitary sewer system located in the Riverfront Pointe Subdivision park area at the north end of Josephine Crossing Subdivision. The easterly portion of Block 2 and the easterly future development shall discharge to the existing sanitary sewer system in South 12th Street West at the northeast corner of the Subdivision. The City may elect to extend the 24-inch sanitary sewer trunk from the Riverfront Pointe Subdivision park at the north end of Josephine Crossing Subdivision to Mallowney Lane along the proposed street right-of-way. All costs associated with construction of said 24-inch sanitary sewer shall be paid for by McCall Development, Inc. at the time of construction. At such time the City is able to budget funds into the Capital Improvements Plan (CIP), McCall Development, Inc. would be compensated for these local sewer improvements. If the City elects not to install the said 24-inch to Mallowney Lane at the time of the Subdivision construction, then McCall Development Inc., will not be required to construct or fund construction of the 24-inch sanitary sewer in the future.

C. Power, Telephone, Gas, and Cable Television

Private utility facilities currently exist to serve the Subdivision. Said utilities will serve each lot at the rear of the lot. The private utility facilities will be installed within the alley right-of-way. Easements shall be included on the plat as requested by the utility companies to provide routes to the alleys.

VII. PARKS/OPEN SPACE

Section 76-3-621 of the Montana Subdivision and Platting Act requires a park dedication of 11 percent of the land proposed to be subdivided into parcels of one-half acre or smaller. These requirements shall be met by dedication of park to provide the proposed Heritage Trail along the southern boundary of the

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Subdivision and by dedication of park adjacent to the existing Heritage Trail Park at the south boundary of Riverfront Point Subdivision. 4.58 acres is being provided. A Park Maintenance District will be set up for maintenance of said parks as a condition of the final plat. In addition, the Subdivider will dedicate to the public, interior local parks. These parks will not be accepted to meet the parkland dedication requirements stated in Section 76-3-621 of the Montana Subdivision and Platting Act. The interior local parks will be maintained through a Homeowner's Association with an underlying Park Maintenance District. The Subdivider shall construct the interior local parks. Park construction shall coincide with the development of the last lot adjacent to the park to be constructed.

VIII. IRRIGATION

Irrigation waste ditches exist within the Subdivision boundary at the time of development. These ditches shall be relocated by the Subdivider.

IX. POSTAL DELIVERY

The subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study has been performed on the Subdivision.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be installed as approved by the city engineer and utility department manager.



XII. LEGAL PROVISIONS

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B.** The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.
- C.** The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties.
- D.** In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
- E.** Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
- F.** Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.



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Yellowstone County

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IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER"

MCCALL DEVELOPMENT, INC.

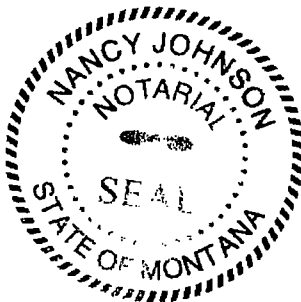
By: [Signature]Its: Vice-President

STATE OF MONTANA)

: ss

County of Yellowstone)

On this 24th day of October, 2006, before me, a Notary Public in and for the State of Montana, personally appeared Gregory J. McCall, known to me to be the Vice President of **MCCALL DEVELOPMENT, INC.** who executed the foregoing instrument and acknowledged to me that he/she executed the same.



[Signature]
Notary Public in and for the State of Montana
Printed Name: NANCY JOHNSON
Residing at: Belling MT
My commission expires: 5 Sep 2008



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Yellowstone County

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This agreement is hereby approved and accepted by the City of Billings, this 27th day of Nov., 2006.

"CITY"
CITY OF BILLINGS
MONTANA



By: _____

Mayor

Attest: _____

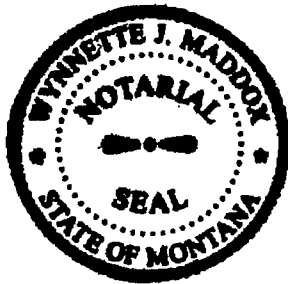
City Clerk

STATE OF MONTANA)

: ss

County of Yellowstone)

On this 27th day of November, 2006, before me, a Notary Public in and for the State of Montana, personally appeared Ron Tussing and Marita Herold, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.



Wynnette J. Maddox
Notary Public in and for the State of Montana
Printed Name: Wynnette J. Maddox
Residing at: Shepherd
My commission expires: 9.16.2010



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12/05/2006 02:01P

Yellowstone County

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WAIVER

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, does hereby waive the right to protest the formation of one or more special improvement districts for street light construction, sidewalks, parks, curbs and gutters, street light maintenance, and energy, driveway approaches, traffic lights, and traffic control devices, streets, water lines, sanitary sewer, storm drain (to provide drainage for runoff water within or from outside of the Subdivision), park maintenance, and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other Agreements and is supported by sufficient independent consideration to which the undersigned are parties and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows, to-wit:

Josephine Crossing Subdivision

"SUBDIVIDER"

MCCALL DEVELOPMENT, INC.

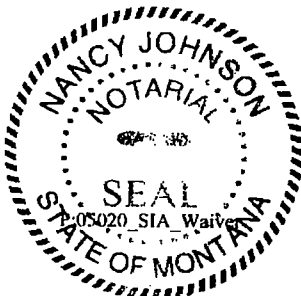
By: *Gregory J. McCall*

Its: Vice-President

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 24th day of October, 2004, before me, a Notary Public in and for the State of Montana, personally appeared Gregory J. McCall, known to me to be the Vice President of **MCCALL DEVELOPMENT, INC.**, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year hereinabove written.



Nancy Johnson
Notary Public in and for the State of Montana
Printed name: NANCY JOHNSON
Residing at Billings, Montana
My commission expires: 5 Sep 2008

WAIVER-1

(03/23/06) dml



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



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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 Mallowney 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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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 COM. EXPIRES AUG. 9, 2008



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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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"

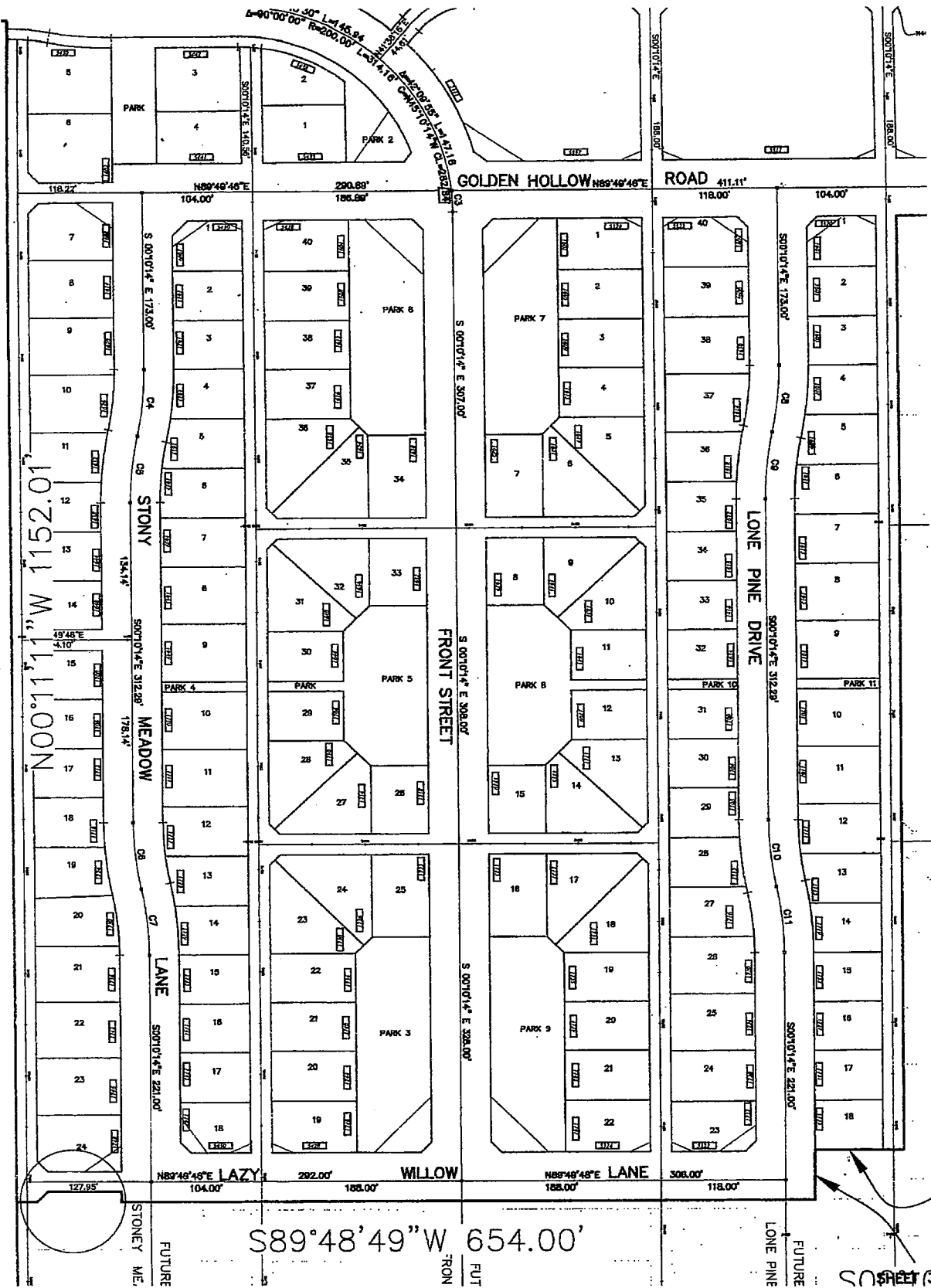


EXHIBIT "C"



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Yellowstone County

RES

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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 Mallowney 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"

File No. 34143-A



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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



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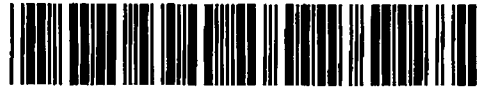
Single Family Lot Members shall elect all Directors. The Directors shall serve without compensation.

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)
County of Yellowstone) : ss.

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



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Page: 1 of 3
05/01/2007 11:57A

Return To:
Pedersen & Hardy, P.C.
1001 South 24th St. W., Suite 110
Billings, MT 59102
34143-B

DECLARATION OF TEMPORARY EASEMENT

McCALL DEVELOPMENT, INC., owner of all of the real property described on Exhibit A, attached hereto, hereby declares, grants and reserves the following easements upon that property:

Each lot described on Exhibit A shall be subject to a temporary easement for ingress and egress to the lots adjoining that lot (the adjoining lots) by construction workers and supervisors and their equipment, and for construction of homes, garages and other improvements on the adjoining lots, subject to the requirement that any damage caused by McCALL DEVELOPMENT, INC., or its employees, contractors or subcontractors, shall be repaired at the expense of the party causing the damage. The easement is for the benefit of McCALL DEVELOPMENT, INC., its employees, and its contractors or subcontractors, and their employees. The easement on each lot shall terminate at the time construction of improvements on the adjoining lots is completed.

These easements shall run with the land, for the benefit of McCALL DEVELOPMENT, INC., its employees, and its contractors, subcontractors and their employees, until terminated, as provided above.

The fact that the dominant and servient tenements are now owned by the same parties shall not extinguish or defeat the easements set forth herein, nor shall the easements be extinguished by subsequent merging of ownership of the dominant and servient tenements.

IN WITNESS WHEREOF, the Declarant has set his hand and official seal on the date first above written.

McCALL DEVELOPMENT, INC.

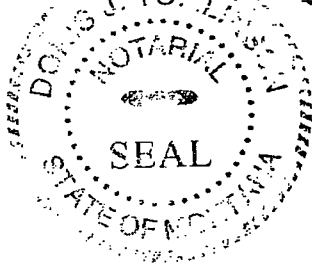
By: 
GREGORY J. McCALL, Its Vice-President
"DECLARANT"



3420668
Page: 2 of 3
05/01/2007 11:57A

STATE OF MONTANA)
County of Yellowstone) : ss.

This instrument was acknowledged before me on April 26, 2007, by
GREGORY J. McCALL, as Vice-President of McCALL DEVELOPMENT,
INC.



(SEAL)

Doris J. Tomlinson
Doris J. Tomlinson
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires July 30, 2008

ROCKY MOUNTAIN BANK

By: [Signature]
Its VP

STATE OF MONTANA)
County of Yellowstone) : ss.

This instrument was acknowledged before me on April 26,
2007, by Troy Nearypas, as Vice President of
ROCKY MOUNTAIN BANK.



Joni C. Cabrera
Joni C. Cabrera
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires 4/7, 2008



Block 1: Lots 1 through 24, inclusive.

Block 2: Lots 1 through 4, inclusive.

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.



Return To:
Pedersen & Hardy, P.C.
1001 South 24th St. W., Suite 110
Billings, MT 59102
34143-B

**DECLARATION OF EASEMENTS,
COVENANTS AND RESTRICTIONS**

McCALL DEVELOPMENT, INC., owner of all of the real property described below hereby declares and grants the following easements and establishes the following covenants and restrictions pertaining to these easements, on the servient lots described below.

1. Easements.

(a) Each of the following servient lots shall have an easement approximately five feet in width, parallel to and adjoining the entire northerly boundary of each servient lot, running from the northerly boundary of the lot to a line parallel to and adjoining the northerly foundation wall of the home on the servient lot.

Lots 8, 9, 10, 11, 12, 13 and 14, Block 1, and Lots 2, 3, 4, 5, 6, 7, 8, 39, 38, 37, and 36, Block 3, Josephine Crossing Subdivision, in the City of Billings, Yellowstone County, Montana, according to the plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3402833.

Each easement is for the benefit of the lot adjoining and immediately north of the easement.

(b) Lot 35, Block 3, of Josephine Crossing Subdivision, in the City of Billings, Yellowstone County, Montana, (the servient lot), shall have an easement approximately five feet in width, parallel to and adjoining the entire northwest boundary of the servient lot, running from the northwest boundary of the lot to a line parallel to and adjoining the northwest foundation wall of the home on the servient lot, for the benefit of the adjoining Lot 36, Block 3, described above.

(c) Lot 34, Block 3, of Josephine Crossing Subdivision, in the City of Billings, Yellowstone County, Montana, (the servient lot), shall have an easement approximately five feet in width, parallel to and adjoining the entire westerly boundary of the servient lot, running from the westerly boundary of the lot to a line parallel to and adjoining the westerly foundation wall of the home on the servient lot,

for the benefit of the adjoining Lot 35, Block 3, described above.

(d) Each of the easements described above are for preservation of recreational and aesthetic values, by extending the yard area of the benefitted lot adjoining the easement. Each easement is perpetual and is subject to the obligations and restrictions described below.

2. Right to Access Easement by Owner of Servient Lot. The owners of each servient Lot shall have the right to use the Easement on that Lot for construction, maintenance and repair of the home adjoining the easement and for emergency services. In the event of an emergency, and during construction, the owners of the servient Lot shall have the right to enter onto the Easement without prior notice. After construction of the home is completed, if no emergency exists, the owner of the servient Lots agree and covenant to give the owner of the adjoining benefitted lot 48 hours notice before using the Easement.

3. Rights and Obligations of Lots Owners. The owners of each benefitted Lot may construct a fence upon the easement boundary and must plant and install landscaping upon the Easement. No landscaping shall be placed upon the easement until construction of the home, garage and driveway on the servient lot has been completed. If a benefitted Lot owner elects to construct a fence, a gate no narrower than 30 inches and no wider than 48 inches must be included and be designed in such a way as to allow the owner of the servient Lot convenient access to the Easement. Fences must be constructed in compliance with all provisions found in the Declaration of Conditions, Covenants and Restrictions For Josephine Crossing and Bylaws of Josephine Crossing Owners' Association. The owner of each benefitted Lot shall maintain the Easement serving that lot and shall pay for all improvements to and maintenance of the Easement. The owner of the benefitted Lot shall maintain public liability insurance on the Easement Area naming the owner(s) of the benefitted Lot as an additional insured. Damage to the easement or any improvements on it caused by the owner of either the benefitted or the servient Lot, or by the tenants, guests or family of the owner shall be repaired by that owner at the sole expense of the owner responsible for the damage.

4. Use Restrictions. The owners of each benefitted and servient Lot agree and covenant not to act in any way that would infringe upon the quiet enjoyment or use of the other's Lot once construction on each lot has been completed.. The owners of the benefitted Lot also agree and covenant not to perform or undertake any acts that would effect or impact the subjacent or lateral support of the buildings on the servient Lot, or the owner of the servient Lot's ability to perform maintenance and repairs to the owner's property and structures

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adjoining the easement, or to unreasonably impair or obstruct the view or availability of natural lighting from the sun on the servient lot.

5. Enforcement. All of the easements described above may be enforced by an action for damages, for specific performance, and for an injunction, prohibitory or mandatory by the affected lot owner. If an owner of either a benefitted or servient Lot violates any of the provisions contained herein, the non-violating lot owner shall give written notice to the violating lot owner specifying the violation and demanding prompt compliance. When applicable, the notice shall specify a reasonable remedial action. If the violating owner fails to comply and to complete remedial action within 10 days, when applicable, the non-violating owner may proceed with a court action for injunction and/or damages.

If the owner of either Lot causes damage within the Easement and refuses to repair that damage after notice, the owner of the other Lot may make the necessary repairs, and shall have a lien on the damaging owner's Lot for the cost of repair.

If any benefitted owner fails to maintain the improvements on that owner's Easement, or fails to obtain the required insurance, the owner of the servient Lot may perform the maintenance or obtain the insurance and shall have a lien on the benefitted Lot for the costs of maintenance and/or insurance.

A notice of any such lien shall be recorded in the office of the Clerk and Recorder of Yellowstone County. The lien may be enforced in the same manner as a construction lien. Such lien shall not have priority over a first mortgage or trust indenture of record. In the event of foreclosure of the lien, or an action for injunction, specific performance or damages, the prevailing party shall be entitled to an award of costs and reasonable attorney fees.

6. General Provisions.

These easements shall run with the land for the benefit of the owners of the benefitted Lots and shall be binding upon the owners of the servient Lots and their heirs and assigns forever.

All obligations of the servient Lot owners and of the benefitted Lot owners set forth in this Declaration shall be covenants running with the land and shall be binding upon the obligated owners and their heirs, successors, and assigns forever.

The fact that the dominant and servient tenements are now owned by the same parties shall not extinguish or defeat the easements, restrictions and covenants set forth herein, nor shall the easements, covenants or restrictions be extinguished by subsequent merging of ownership of the dominant and servient





tenements.

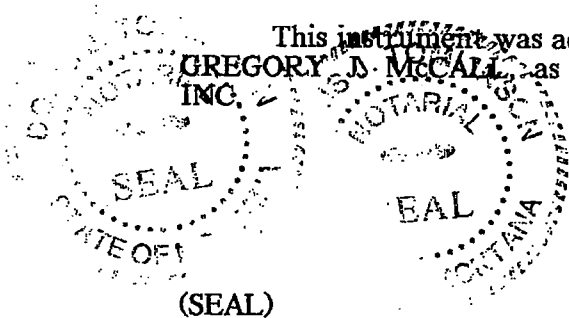
IN WITNESS WHEREOF, the Declarant has set his hand and official seal
on the date first above written.

McCALL DEVELOPMENT, INC.

By: [Signature]
GREGORY J. McCALL, Its Vice-President
"DECLARANT"

STATE OF MONTANA)
County of Yellowstone) : ss.

This instrument was acknowledged before me on April 26, 2007, by
GREGORY J. McCALL, as Vice-President of McCALL DEVELOPMENT,
INC.



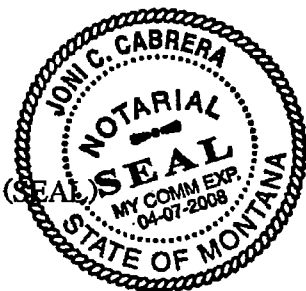
[Signature]
Doris J. Tomlinson
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires July 30, 2008

ROCKY MOUNTAIN BANK

By: [Signature]
Its [Signature]

STATE OF MONTANA)
County of Yellowstone) : ss.

This instrument was acknowledged before me on April 26,
2007, by Troy Neapass, as Vice President of
ROCKY MOUNTAIN BANK.



[Signature]
Joni C. Cabrera
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires 4/7, 2008



Yellowstone County

EASE

55.00

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Return To:
Pedersen & Hardy, P.C.
1001 South 24th St. W., Suite 110
Billings, MT 59102
34143-B

DECLARATION OF EASEMENTS,
COVENANTS AND RESTRICTIONS

McCALL DEVELOPMENT, INC., owner of all of the real property described below hereby declares and grants the following easements and establishes the following covenants and restrictions pertaining to these easements, on the servient lots described below.

1. Easements.

(a) Each of the following servient lots shall have an easement approximately five feet in width, parallel to and adjoining the entire northerly boundary of each servient lot, running from the northerly boundary of the lot to a line parallel to and adjoining the northerly foundation wall of the home on the servient lot.

Lot 9, Block 3,
Lots 2, 3, 32, 33, 34, 35, 36, 37, 38 and 39, Block 4,
Lots 2, 3, 4, 5, 6, 7, 8, and 9, Block 5, Josephine Crossing Subdivision,
in the City of Billings, Yellowstone County, Montana, according to
the plat thereof on file and of record in the office of the Clerk and
Recorder of said County, under Document No. 3402833.

Each easement is for the benefit of the lot adjoining and immediately north of the easement.

(b) Lot 7, Block 4, of Josephine Crossing Subdivision, in the City of Billings, Yellowstone County, Montana, (the servient lot), shall have an easement approximately five feet in width, parallel to and adjoining the entire easterly boundary of the servient lot, running from the easterly boundary of the lot to a line parallel to and adjoining the easterly foundation wall of the home on the servient lot, for the benefit of the adjoining Lot 6, Block 4, of Josephine Crossing Subdivision.

(c) Each of the easements described above are for preservation of recreational and aesthetic values, by extending the yard area of the benefitted lot adjoining the easement. Each easement is perpetual and is subject to the



Yellowstone County

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obligations and restrictions described below.

2. Right to Access Easement by Owner of Servient Lot. The owners of each servient Lot shall have the right to use the Easement on that Lot for construction, maintenance and repair of the home adjoining the easement and for emergency services. In the event of an emergency, and during construction, the owners of the servient Lot shall have the right to enter onto the Easement without prior notice. After construction of the home is completed, if no emergency exists, the owner of the servient Lots agree and covenant to give the owner of the adjoining benefitted lot 48 hours notice before using the Easement.

3. Rights and Obligations of Lots Owners. The owners of each benefitted Lot may construct a fence upon the easement boundary and must plant and install landscaping upon the Easement. No landscaping shall be placed upon the easement until construction of the home, garage and driveway on the servient lot has been completed. If a benefitted Lot owner elects to construct a fence, a gate no narrower than 30 inches and no wider than 48 inches must be included and be designed in such a way as to allow the owner of the servient Lot convenient access to the Easement. Fences must be constructed in compliance with all provisions found in the Declaration of Conditions, Covenants and Restrictions For Josephine Crossing and Bylaws of Josephine Crossing Owners' Association. The owner of each benefitted Lot shall maintain the Easement serving that lot and shall pay for all improvements to and maintenance of the Easement. The owner of the benefitted Lot shall maintain public liability insurance on the Easement Area naming the owner(s) of the benefitted Lot as an additional insured. Damage to the easement or any improvements on it caused by the owner of either the benefitted or the servient Lot, or by the tenants, guests or family of the owner shall be repaired by that owner at the sole expense of the owner responsible for the damage.

4. Use Restrictions. The owners of each benefitted and servient Lot agree and covenant not to act in any way that would infringe upon the quiet enjoyment or use of the other's Lot once construction on each lot has been completed.. The owners of the benefitted Lot also agree and covenant not to perform or undertake any acts that would effect or impact the subjacent or lateral support of the buildings on the servient Lot, or the owner of the servient Lot's ability to perform maintenance and repairs to the owner's property and structures adjoining the easement, or to unreasonably impair or obstruct the view or availability of natural lighting from the sun on the servient lot.

5. Enforcement. All of the easements described above may be enforced



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by an action for damages, for specific performance, and for an injunction, prohibitory or mandatory by the affected lot owner. If an owner of either a benefitted or servient Lot violates any of the provisions contained herein, the non-violating lot owner shall give written notice to the violating lot owner specifying the violation and demanding prompt compliance. When applicable, the notice shall specify a reasonable remedial action. If the violating owner fails to comply and to complete remedial action within 10 days, when applicable, the non-violating owner may proceed with a court action for injunction and/or damages.

If the owner of either Lot causes damage within the Easement and refuses to repair that damage after notice, the owner of the other Lot may make the necessary repairs, and shall have a lien on the damaging owner's Lot for the cost of repair.

If any benefitted owner fails to maintain the improvements on that owner's Easement, or fails to obtain the required insurance, the owner of the servient Lot may perform the maintenance or obtain the insurance and shall have a lien on the benefitted Lot for the costs of maintenance and/or insurance.

A notice of any such lien shall be recorded in the office of the Clerk and Recorder of Yellowstone County. The lien may be enforced in the same manner as a construction lien. Such lien shall not have priority over a first mortgage or trust indenture of record. In the event of foreclosure of the lien, or an action for injunction, specific performance or damages, the prevailing party shall be entitled to an award of costs and reasonable attorney fees.

6. General Provisions.

These easements shall run with the land for the benefit of the owners of the benefitted Lots and shall be binding upon the owners of the servient Lots and their heirs and assigns forever.

All obligations of the servient Lot owners and of the benefitted Lot owners set forth in this Declaration shall be covenants running with the land and shall be binding upon the obligated owners and their heirs, successors, and assigns forever.

The fact that the dominant and servient tenements are now owned by the same parties shall not extinguish or defeat the easements, restrictions and covenants set forth herein, nor shall the easements, covenants or restrictions be extinguished by subsequent merging of ownership of the dominant and servient tenements.



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Page: 4 of 5
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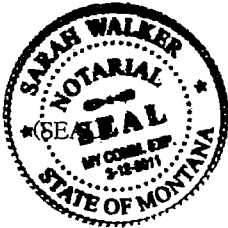
IN WITNESS WHEREOF, the Declarant has set its hand and official seal on the date first above written.

McCALL DEVELOPMENT, INC.

By: [Signature]
GREGORY J. McCALL, Its Vice President
"DECLARANT"

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on October 30, 2007, by GREGORY J. McCALL, as Vice President of McCALL DEVELOPMENT, INC.



[Signature]
Sarah Walker
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires March 12, 2011



3443981
Page: 5 of 5
10/31/2007 11:39A

ROCKY MOUNTAIN BANK

By: [Signature]
Its President

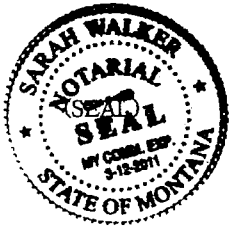
STATE OF MONTANA)

: ss.

County of Yellowstone)

This instrument was acknowledged before me on October 30
2007, by Dann Scarda, as President of
ROCKY MOUNTAIN BANK.

[Signature]
Sarah Walker
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires March 12, 2011





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Yellowstone County

EASE

35.00

Return To:
Pedersen & Hardy, P.C.
1001 S. 24th St. W., Suite 110
Billings, MT 59102
34143-B

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

McCALL DEVELOPMENT, INC., owner of all of the real property described below hereby declares and grants the following easements and establishes the following covenants and restrictions pertaining to these easements, on the servient lots described below.

1. Easements.

(a) Each of the following servient lots shall have an easement approximately five feet in width, parallel to and adjoining the entire northerly boundary of each servient lot, running from the northerly boundary of the lot to a line parallel to and adjoining the northerly foundation wall of the home on the servient lot.

Lots 16, 17, 18, 19, 20, 21, 22, 23 and 24, Block 1, and Lots 11, 12, 13, 14, 15, 16, 17, and 18, Block 3, Josephine Crossing Subdivision, in the City of Billings, Yellowstone County, Montana, according to the plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3402833.

Each easement is for the benefit of the lot adjoining and immediately north of the easement (the benefitted lot).

(b) Each of the easements described above are for preservation of recreational and aesthetic values, by extending the yard area of the benefitted lot adjoining the easement. Each easement is perpetual and is subject to the obligations and restrictions described below.

2. Right to Access Easement by Owner of Servient Lot. The owners of each servient Lot shall have the right to use the Easement on that Lot for construction, maintenance and repair of the home adjoining the easement and for emergency services. In the event of an emergency, and during construction, the owners of the servient Lot shall have the right to enter onto the Easement without prior notice. After construction of the home is completed, if no emergency exists, the owner of the servient Lot agrees and covenants to give the owner of the

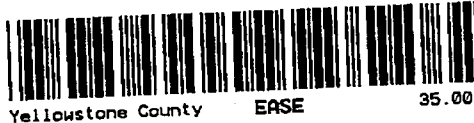


adjoining benefitted lot 48 hours notice before using the Easement.

3. Rights and Obligations of Lots Owners. The owners of each benefitted Lot may construct a fence upon the easement boundary and must plant and install landscaping upon the Easement. No landscaping shall be placed upon the easement until construction of the home, garage and driveway on the servient lot has been completed. If a benefitted Lot owner elects to construct a fence, a gate no narrower than 30 inches and no wider than 48 inches must be included and be designed in such a way as to allow the owner of the servient Lot convenient access to the Easement. Fences must be constructed in compliance with all provisions found in the Declaration of Conditions, Covenants and Restrictions For Josephine Crossing and Bylaws of Josephine Crossing Owners' Association. The owner of each benefitted Lot shall maintain the Easement serving that lot and shall pay for all improvements to and maintenance of the Easement. The owner of the benefitted Lot shall maintain public liability insurance on the Easement Area naming the owner(s) of the servient Lot as an additional insured. Damage to the easement or any improvements on it caused by the owner of either the benefitted or the servient Lot, or by the tenants, guests or family of the owner shall be repaired by that owner at the sole expense of the owner responsible for the damage.

4. Use Restrictions. The owners of each benefitted and servient Lot agree and covenant not to act in any way that would infringe upon the quiet enjoyment or use of the other's Lot once construction on each lot has been completed.. The owners of the benefitted Lot also agree and covenant not to perform or undertake any acts that would effect or impact the subjacent or lateral support of the buildings on the servient Lot, or the owner of the servient Lot's ability to perform maintenance and repairs to the owner's property and structures adjoining the easement, or to unreasonably impair or obstruct the view or availability of natural lighting from the sun on the servient lot.

5. Enforcement. All of the easements described above may be enforced by an action for damages, for specific performance, and for an injunction, prohibitory or mandatory by the affected lot owner. If an owner of either a benefitted or servient Lot violates any of the provisions contained herein, the non-violating lot owner shall give written notice to the violating lot owner specifying the violation and demanding prompt compliance. When applicable, the notice shall specify a reasonable remedial action. If the violating owner fails to comply, and to complete remedial action within 10 days, when applicable, the non-violating owner may proceed with a court action for injunction and/or



damages.

If the owner of either Lot causes damage within the Easement and refuses to repair that damage after notice, the owner of the other Lot may make the necessary repairs, and shall have a lien on the damaging owner's Lot for the cost of repair.

If any benefitted owner fails to maintain the improvements on that owner's Easement, or fails to obtain the required insurance, the owner of the servient Lot may perform the maintenance or obtain the insurance and shall have a lien on the benefitted Lot for the costs of maintenance and/or insurance.

A notice of any such lien shall be recorded in the office of the Clerk and Recorder of Yellowstone County. The lien may be enforced in the same manner as a construction lien. Such lien shall not have priority over a first mortgage or trust indenture of record. In the event of foreclosure of the lien, or an action for injunction, specific performance or damages, the prevailing party shall be entitled to an award of costs and reasonable attorney fees.

6. General Provisions.

These easements shall run with the land for the benefit of the owners of the benefitted Lots and shall be binding upon the owners of the servient Lots and their heirs and assigns forever.

All obligations of the servient Lot owners and of the benefitted Lot owners set forth in this Declaration shall be covenants running with the land and shall be binding upon the obligated owners and their heirs, successors, and assigns forever.

The fact that the dominant and servient tenements are now owned by the same parties shall not extinguish or defeat the easements, restrictions and covenants set forth herein, nor shall the easements, covenants or restrictions be extinguished by subsequent merging of ownership of the dominant and servient tenements.

IN WITNESS WHEREOF, the Declarant has set its hand and official seal on the 9th day of July, 2009.

McCALL DEVELOPMENT, INC.

By: GREGORY J. McCALL
GREGORY J. McCALL, Its Vice-President
"DECLARANT"



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Yellowstone County

EASE

35.00

STATE OF MONTANA

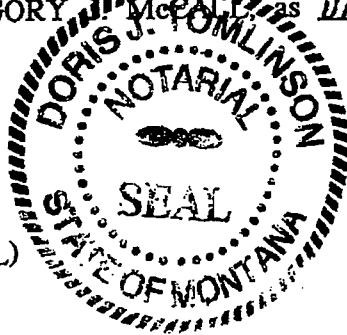
)

: SS.

County of Yellowstone

)

This instrument was acknowledged before me on July 9, 2009, by
GREGORY McCall, as Vice-President of McCALL DEVELOPMENT,
INC.



(SEAL)

Doris J. Tomlinson
Doris J. Tomlinson
(print or type name of notary)
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires July 30, 2012



3516394

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WESTERN SECURITY BANK

By: Ken R. Wright
Its VP

STATE OF MONTANA)
: ss.
County of Yellowstone)

This instrument was acknowledged before me on July 15,
2009, by Ken R. Wright, as Vice President of
WESTERN SECURITY BANK.

Lisa A. Ceaser
Lisa A. Ceaser
(print or type name of notary)
Notary Public for the State of Montana
Residing at Laurel, Montana
My Commission Expires July 23, 2012

(SEAL)



LISA A. CEASER
NOTARY PUBLIC for the
State of Montana
Residing at Laurel, Montana
My Commission Expires
July 23, 2012