

Mr. Matt Brosovich  
BCJM, LLC  
P.O. Box 20318  
Billings, MT 59104

**DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS FOR  
BITTERROOT HEIGHTS SUBDIVISION, 2<sup>nd</sup> FILING**

**THIS DECLARATION** is made this 23 day of Sept. 2014 by BCJM L.L.C., a Montana Limited Liability Corporation, with its principal office at PMB 121 at 3031 Grand Avenue, Suite 100, Billings Montana, 59102 (hereafter referred to as "Declarant").

**RECITALS:**

Declarant is the owner of all the lots in Bitterroot Heights Subdivision 2<sup>nd</sup> Filing in Billings, Montana, created by that subdivision plat on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana under Document No. 3721471 (the "Subdivision").

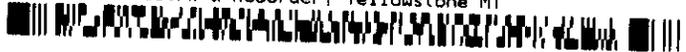
Declarant proposes that the Subdivision be developed, sold, and improved pursuant to a common plan of development, and desires to place restrictions, covenants and conditions upon the Subdivision for the benefit of the owners of the lots within the Subdivision.

**NOW, THEREFORE,** Declarant, hereby declares that all of the lots within the Subdivision shall be held, sold and conveyed subject to the following restrictions, covenants, conditions, and easements which are for the purpose of protecting the value and desirability of and which shall run with, the Subdivision property and which shall be binding on all parties having any right, title or interest in any of the lots in the Subdivision and their heirs and assigns, and shall inure to the benefit of each owner thereof.

**I.**

**DEFINITIONS**

- 1.1 "**Covenants**" shall mean this Declaration of Restrictions, Covenants, and Conditions, as it may from time to time be amended or supplemented.
- 1.2 "**Declarant**" shall mean BCJM, L.L.C. and its successors and assigns if the right, obligations and duties of such Declarant under these Covenants have been expressly assigned to such successors or assigns in writing, and shall not mean a buyer or successor Owner of any lot in the Subdivision sold or conveyed by Declarant unless accompanied by said express written assignment.
- 1.3 "**Owner**" shall mean any person or entity which is the recorded owner of fee simple title of any lot in the Subdivision, including a buyer under a contract for deed, but excluding any entity or person who holds such interest as security for the payment of an obligation.



1.4 **“Subdivision”** is defined in Recital paragraph A.

1.5 **“Home Occupation”** Any occupational use customarily conducted entirely within a dwelling unit by the inhabitants thereof, which is clearly incidental and necessary to the use of the dwelling unit as living quarters and in connection with which there are: no commercial manufacturing of good or products on the premises, no on-site employment of persons other than the residents of the dwelling unit; no generation of pedestrian or vehicle traffic beyond that customary and incidental to residential use of the dwelling unit; no use of commercial vehicles for deliveries to or from the dwelling unit other than mail and package delivery services; no signs or structures advertising the occupation; and no excessive or unsightly storage of materials or supplies. For guidance, the following uses are examples of home occupations: making clothing; giving music lessons; a sole practitioner for professional practice, such as accounting. The operation of a bed and breakfast inn or establishment is not a home occupation.

## II.

### PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS

2.1 All persons, corporations, partnerships, associations or other entities who shall hereafter acquire any interest in and to the Bitterroot Heights Subdivision 2<sup>nd</sup> Filing or any part thereof, shall be taken and held to agree and covenant with the Owners of the lots and with their heirs, devisees, trustees and assigns, to conform and observe the following covenants and restrictions as to the use thereof, and the construction of residences and improvements thereon.

## III.

### REAL ESTATE TO WHICH COVENANTS APPLY

3.1 These Covenants shall apply to the Subdivision which includes the following described lots and blocks within the Subdivision:

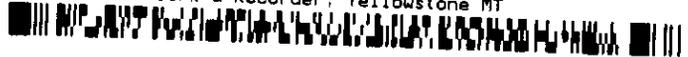
All Blocks of and Lots within the Bitterroot Heights Subdivision, 2<sup>nd</sup> Filing

## IV.

### BUILDING USE AND RESTRICTIONS

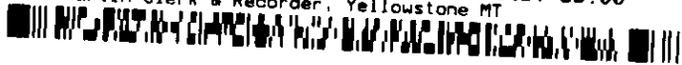
4.1 **Lot Purpose.** Each lot in the Subdivision, shall be known and described as a residential lot. None of the lots may be used or improved for other than private residential purposes, and no structure shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling with a private attached or semi-attached, or detached garage. Total garage or workshop space shall not exceed 50% of the total size of the dwelling unit.

4.2 **Subdivision.** No single family lot shall be subdivided, re-subdivided, split, altered or reduced to smaller than 7500 square feet. Only one dwelling with its associated garage will be permitted per



lot. The foregoing shall not prohibit an adjustment or relocation of common boundary lines between two or more of said lots.

- 4.3 **Purpose of Buildings.** None of the lots in the Subdivision or any buildings erected thereon shall at any time be used for the purposes of any trade or for any commercial, professional or manufacturing business of any description, except a home occupation, and no noxious or offensive activities shall be carried on, nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood.
- 4.4 **Recreational Vehicles and Equipment.** No pickup camper, camping trailer, snowmobile, boat, trailer, motor home, or any type of vehicle or similar item used for recreational purposes shall be used for habitation, and such vehicle shall not be placed upon a lot or driveway for a period of longer than 30 days in a calendar year unless it is placed in an enclosed structure or it is not visible from other properties, sidewalks, or streets. Enclosed structure shall be defined by minimum of a 6 foot privacy fence completely surrounding the vehicle or equipment.
- 4.5 **Pets and/or animals.** No dogs or pets shall be raised, kept or cared for on a commercial basis, no animals defined as livestock (not including chickens), shall be permitted upon any lot in the Subdivision. Any person who shall keep, feed, harbor, suffer or allow to stay about the premises occupied or controlled by him within the subdivision a dog at large or insecurely confined is guilty of maintaining a public nuisance. No dog shall be contained on a rope or chain, but only in a kennel, garage or fenced back yard area. No dog or other animal shall be fenced or kept in the front yard.
- 4.6 **Signs.** No signs, billboards, poster or advertising devices of any kind or character shall be erected or displayed upon any of the lots except (i) signs displayed to identify the occupants of a dwelling, (ii) resale signs with shall not exceed twelve (12) square feet in area, or (iii) temporary campaign or ballot initiative posters.\
- 4.7 **Parking and Vehicles.** Off street parking shall be provided on each lot for all automobiles kept upon the premises. No street or other open areas shall be used for the purpose of dismantling or repair of vehicles. Only motor driven vehicles capable of being moved under their own power may be parked upon the streets in the Subdivision for reasonable periods of time. Unregistered or inoperable vehicles shall not be kept on the premises or within the Subdivision.
- 4.8 **Residence.** No structure on any lot may be used for dwelling purposes until after its area, as defined by the foundation, shall have been completely enclosed according to plan, and until it has been substantially completed and until sanitary facilities and utilities shall have been permanently installed.
- 4.9 **Excavation.** No excavations, except such as are necessary for the construction of improvements, shall be permitted on any lot until such time as the actual construction of the house is to begin, except that the owners may set the supply of the water under said and may drill and excavate for those purposes, as well as testing of subsoil conditions, or conducting landscaping irrigation, planting of trees and shrubs.
- 4.10 **Waste.** All garbage containers shall be hidden from view by keeping such containers in garages or an enclosure.
- 4.11 **Utilities.** Any and all utilities, which shall serve the said lands or lots, as now located or to be located thereon, shall be underground, extending to and including the distribution systems,



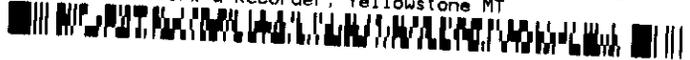
connecting the residence and any and all service connections, including connections between house and garage or shed.

- 4.12 **Pools.** Above ground swimming pools will not be permitted with the exception of pools located behind a full privacy screen no less than 6 feet in height.
- 4.13 **Communications Towers.** Television, satellite, or communications towers shall not extend in excess of three (3) feet above the building roofline. Satellite dishes shall not exceed 42 inches in width and 36 inches in height.
- 4.14 **Nuisances.** No illegal, noxious or offensive activities shall be carried on, nor shall anything be done on any lot which may become an annoyance or nuisance to other Owners in the Subdivision.
- 4.15 **Exterior Maintenance.** Each Owner shall provide exterior maintenance upon the Owner's lot and any structures thereon, including painting and repairing the structures and maintaining the grounds to preclude weeds, underbrush, and other unsightly or unnatural growths. No Owner shall permit refuse piles or other unsightly objects to accumulate or remain on the Owner's lot. In providing exterior maintenance, the Owner shall utilize color and landscaping schemes that are harmonious with the surrounding area and consistent with generally accepted concepts for desirable residential developments. No bright or shiny colors on exterior siding shall be allowed. For example, bright oranges, royal blues, pinks, purple and like bright colors are not allowed.
- 4.16 **Landscaping.** In all areas, yards must be planted in lawn or xeriscape or otherwise permanently landscaped within twelve months after occupancy. All owners shall plant and maintain at least two (2) trees or shrubs within the front yard area and shall maintain or have maintained all (100%) of the front and rear yard area. Snow removal is required of any adjacent, sidewalk areas within 24 hours of receipt of 3 inches of snow or more. Owners shall mow, irrigate, control noxious weeds, and otherwise maintain their lot so that the landscaping does not detract from the general appearance of the subdivision.
- 4.17 **Mail Delivery.** United States Postal Service mail delivery will be made to a centralized or otherwise pre-determined delivery location as specified on the preliminary plat.

## V.

### DESIGN STANDARDS

- 5.1 **Outbuildings.** Any outbuildings, i.e., attached or unattached garage or storage shed shall be constructed of the same materials and of the same color including siding and roofing as the dwelling on the lot. Outbuildings when added to the square footage of the garage may not exceed a total of 60% of the size of the dwelling unit.
- 5.2 **Design.** The ground floor, or defined main floor minimum living area of all dwellings erected on the lots, exclusive of open porches, breezeways, and garages, shall contain not less than 1100 square feet. The design shall complement/be in harmony with the rest of the community. The design must go through the **ARCHITECTURAL REVIEW COMMITTEE (ARC)** process. The review process shall consist of submission relevant documents listed in Section 6.5 below submitted to **Jay Doucette**, of Metro Realtors. Plans must be clearly defined and professionally



completed. Jay may be contacted at 670-6097. Review shall be completed inside of 15 business days of physical receipt by Jay or another member of the Design Review Committee.

**5.3 Height.** The height of any and all buildings constructed or erected upon the lots shall not exceed the following:

One story structure	32 feet
Two story Structure	34 feet
Split-level and split entry structure	40 feet
Separate garage and accessory buildings	24 feet

The height shall be measured or determined by projecting a perpendicular line from the centerline of the fronting street

**5.4 Location.** No buildings or other structures shall be located on any lot less than 20 feet from the front lot line nor shall any building or other structures be located less than 5 feet from the side lot line or less 20 feet from rear lot line, but the side lot line shall be considered the outer property line when the structure encompasses more than one lot.

**5.5 Exterior.** The dwelling unit must consist of a minimum of two exterior colors. There shall be not vinyl siding or 4 foot by 8 foot sheet goods siding on any structure, including any residence, garage or storage shed. All houses shall be sided with horizontal lap hard board siding, wood siding, logs, dri-vit (or its equivalent), or masonry. Color must harmonize with the community.

**5.6 Roof.** . Roofs must use architectural or traditional asphalt shingles any other roofing product is subject to architectural review. No dwelling or out-building shall have a roof pitch of less than 4 \*12 pitch.

**5.7 Porches.** Each dwelling shall have a porch covered by roofing of the same construction and material as the dwelling roof.

**5.8 Mailboxes.** All mailboxes not attached to the dwelling shall be of the standard rectangular shape with rounded tops not longer than two (2) feet or wider than ten (10) inches mounted on a 4x4 post and painted to match the trim or body of the dwelling on the lot.

**5.9 Fences. Fencing.** All fencing must consist of wood or vinyl fencing no taller than 6 feet no shorter than 3 feet. Fencing must be placed inside the owners property line unless written authorization is made between property owners to share the cost and maintenance of said fence on shared property line

## VIII DESIGN REVIEW

**6.1 Architectural Review Committee.** For the purposes of assuring the development of the Project as an area of high standards, so long as BCJM LLC owns any of the above-described units, it shall have the sole authority to appoint and remove members of an Architectural Review Committee (ARC), to consider and review any and all Plans for building and other improvements to units, for



approval or disapproval, based on the Design Standards and the restrictions set forth in these Covenants and Restrictions.

- 6.2 The Architectural Review Committee shall have the right to make exceptions to the Design Standards as it shall deem necessary and proper, and shall have the authority to augment, amend, or otherwise modify the Design Standards from time to time, without consent of any other owner and may authorize exceptions to the Design Standards, as it sees fit. A majority of the members of the ARC must consent, in writing, to the new or modified standards.
- 6.3 New or modified Design Standards shall not be effective until they are recorded with the Yellowstone County Clerk and Recorder, and a copy given or sent to each owner.
- 6.4 The ARC shall not have the right to make exceptions to, or modify any of the provisions of these Covenants and Restrictions, except those contained in the Design Standards section. All actions of the ARC shall require approval of a majority of the ARC members.

**Required Architectural Review.** Except as otherwise provided herein, no unit owner or occupant shall erect or place any building or structure, including fences, walls, patios, decks, or any other common area or unit, or add or remove landscaping, or make any other additions or alterations to any common area, or to the exterior of a unit, including landscaping and the exterior of any building, except in accordance with plans and specifications approved by a majority of the ARC members. If plans and specifications have not been approved in writing, by the ARC within forty-five (45) days after submission, they shall be deemed disapproved.

- 6.5 **Review Application.** Before beginning the construction of any building or other improvement, any alteration of a building's exterior, or any landscaping changes, the person desiring to erect, construct, or modify the same shall submit to the ARC two sets of Plans for the proposed construction or changes. These plans shall contain the following materials as appropriate for the proposed construction or change

- a. Site Plan: A site plan showing: 1) the location of all improvements to be constructed, including buildings, fences, walls, driveways, parking areas, utilities, outbuildings, decks; and 2) other pertinent information relating to the improvements.
- b. Building Plan: A building plan which shall consist of: 1) the building dimensions; and 2) elevation drawings or sketches of the exterior of the building(s); and 3) information concerning the exterior of the building(s) which shall include samples of all exterior colors, materials and finishes to be used.
- c. Landscape Plan: A general landscape plan and/or drawings of proposed landscape features including planting areas, location of existing trees or proposed removal of such, proposed plant types and drainage plans. The landscape plan can be incorporated into the site plan.
- d. Other Information: The Board may, in its discretion, require the owner to furnish additional specifications, drawings, material samples or such other information as the ARC in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ARC, in reviewing and processing the application



- 6.6 Basis of Approval.** In Reviewing the application and the materials submitted and in reaching a decision thereon, the ARC shall use its best efforts and judgment to assure that all improvements shall produce and contribute to an orderly and aesthetically complimentary design and appearance, of a quality required to maintain Bitterroot Heights as a first class development. Approval by the ARC shall be based, among other things, on; a) the Design Standards, b) the conformity of Plans to these Covenants and Restrictions, c) conformity and harmony of the external design with neighboring improvements, d) the effects of location and use of proposed improvements on neighboring units and Common Areas, e) landscaping of the unit in relation to that of neighboring units, f) facing the main elevation with respect to adjacent units and Common Area; and g) the overall aesthetics of Bitterroot Heights.
- 6.7** Because the review does include judgments about aesthetics by the ARC and because the aesthetic considerations cannot be clearly defined in these Covenants and Restrictions, the decisions of the ARC will be subjective in nature. Each owner, by acceptance of deed to any unit subject to this Declaration, agrees to accept the aesthetic decisions of the ARC as final and binding, and waives any right to challenge those decisions through legal action
- 6.8 Review Fees.** The ARC may establish fees for its review services, and may change those fees from time to time. The fees payable to any non-member or the architect who serves on the ARC. The initial fee charged by the ARC shall be \$100.00.
- 6.9 Decision.** Unless extended by mutual consent of the owner and the ARC, the ARC shall render its decision with respect to the application within forty-five (45) days after the receipt of a complete application. If additional information is requested of the owner to complete the review, a reasonable amount of additional time shall be allowed for the ARC to consider this information prior to rendering a decision. The decision of the ARC can be in the form of an approval, a conditional approval, or denial and shall be in writing, dated and signed by two members of the ARC. A copy of the decision shall be mailed to the owner at the address shown on the application.
- 6.10 Variances.** The ARC may waive or grant variances to the Design Standards, when, in the sole discretion of the ARC, circumstances such as aesthetics or environmental considerations, or hardship may so require, or when a proposed improvement is not in strict conformance with the Design Standards, but meets the aesthetic intent of the Design Standards.
- Changes to Approved Plans.** Owners must obtain prior written approval of the ARC to any change to approved plans if those changes affect the exterior of a building or the landscaping or other exterior improvements.
- 6.11 Non Liability.** Neither the ARC nor any member thereof, or the Developer or any member, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any owner or other Person for any loss, damage or injury arising out of or connected with the performance by the Arc members of their duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. The aforementioned parties assume no responsibility for; a) the structural capacity, safety features, or building code compliance of any improvement, or b) whether or not the location of a proposed improvement is free from possible geological or natural hazards, or other possible hazards caused by conditions occurring either on or off the subject

property, or c) the internal operation or functional integrity of any improvement, or d) any zoning ordinance or building code violations.

- 6.12** Every person who submits an application to the ARC for approval of plans agrees, by submission of such an application, and every owner agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the Board, members of the ARC, or the Developer or its officers, members, employees, agents, successors or assigns to recover damages as a consequence of the Architectural Review process set forth herein.
- 6.13 Enforcement.** The decisions of the ARC and the requirement to obtain approval of the ARC may be enforced by the Board, or by any owner by bringing an action for specific performance, or for an injunction, prohibitory or mandatory. Such actions shall be timely if brought within six months after the ARC issues a written notice of the violation, or within six months after it becomes apparent that an owner has not obtained the required approval or has deviated from the approved plans, whichever occurs later. In such action, the prevailing party shall be entitled to recover all costs and attorney fees incurred by it from the losing party.

## VIII.

### GENERAL PROVISIONS

- 7.1 Enforcement.** Every owner of a lot shall have a right to enforce the provisions of these Protective Covenants and to prevent or stop any violation thereof by injunction or other lawful means.
- 7.2** Every violation of the provisions of these Protective Covenants is hereby declared a nuisance.
- 7.3** Failure of any owner of a lot to enforce any covenant or restriction herein contained, shall not be deemed a waiver of the right to do so thereafter.
- 7.4** In the event any action is maintained to enforce, enjoin any violation of, or to construe the provision of these Protective Covenants, the prevailing party shall be entitled to recover from the losing party all damages and costs thereby incurred, including a reasonable attorney's fee.
- 7.5** The undersigned shall not be liable to any owner or any other person for any loss, damage, or injury arising out of or in any way connected with the adoption, implementation, or enforcement of these Protective Covenants, and all owners hereby waive, release, and forever discharge the undersigned from any liability arising out of, or in any way connected with, adoption, implementation, or enforcement of these Protective Covenants and any amendment thereto.
- 7.6 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
- 7.7 Amendment.** Any provisions herein may be amended or revoked, and additional provisions added, at any time by a written instrument recorded in the office of the Clerk and Recorder of Yellowstone County, Montana, duly signed and acknowledged by the Owners of record of not less than seventy percent (70%) of the lots subject to this Declaration; provided, however, that so long as Declarant owns any lots in the Subdivision, then the consent of Declarant shall be required before these covenants and restriction may be altered or amended.



**7.8 Term.** These Covenants shall be binding for a term of thirty (30) years form the date of these Covenants, after which time the Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of not less than sixty percent (60%) of the lots has been recorded in the real estate records of the Yellowstone County Clerk, and Recorder, agreeing to revoke or terminate these Covenants.

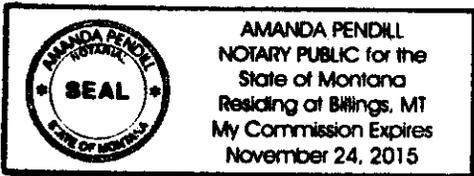
IN WITNESS WHEREOF, Declarant has executed this Declaration of Restrictions, Covenants and Conditions on the day and year first above written.

DECLARANT: BCJM, L.L.C.

By: *[Signature]*  
Name of representative, Partner  
*MATT BROSOVICH, PRESIDENT*

STATE OF MONTANA )  
County of Yellowstone )

This instrument was acknowledged before me on the 23 day of September by 2014  
\* NAME OF DECLARANT, POSITION of NAME OF COMPANY



*Amanda Pendill*  
Print Name:  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission expires \_\_\_\_\_

\* *MATT BROSOVICH, PRESIDENT OF BCJM, LLC*