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DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WALTON HOMESTEAD SUBDIVISION P.U.D.

April 9, 2004



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COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WALTON HOMESTEAD SUBDIVISION

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DECLARATION
of
COVENANTS, CONDITIONS AND RESTRICTIONS
for
WALTON HOMESTEAD SUBDIVISION P.U.D.

THIS DECLARATION of Covenants, Conditions and Restrictions ("Covenants") regulating and controlling the use and development of the property as hereinafter described is made, published, adopted, imposed and declared on the property herein described by **DURSTON DEVELOPMENT CORP.**, a Montana Corporation of 2066 Stadium Drive, Suite 202B, Bozeman, Montana, hereinafter referred to as "Declarant", the Owner of the lots and lands within Walton Homestead Subdivision P.U.D., hereinafter referred to as the "Property", or the "Subdivision".

Walton Homestead Subdivision P.U.D. is a Planned Unit Development (PUD) located within the City of Bozeman and is subject to the Bozeman City Ordinances, including Zoning Ordinances. The Subdivision consists of a residential area, an apartment area and a commercial area with above office apartments and other commercial uses as are allowed under the zoning and PUD regulations and the approval of the PUD.

NOW THEREFORE, Declarant, hereby declares that all of the Property shall be owned, held, sold, conveyed, encumbered, leased, used, occupied and developed subject to the following Covenants, Conditions and Restrictions (Covenants). The Covenants are established for the purpose of protecting the value and desirability of the Property, the aesthetic nature of the Property and promoting the quality, appearance and compatibility of design of the dwellings, buildings, lawns, landscaping and other improvements located thereon and for the orderly development of the Property and the administration thereof. The Covenants shall run with the Property and be binding on all parties having a right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any part thereof.

ARTICLE I
DEFINITIONS

Section 1:

"Architectural Design" shall mean the structures and landscape design standards set forth in the Architectural Guidelines for dwellings, buildings, landscaping and other structures within the Subdivision.

Section 2:

"Architectural Review Committee" ("ARC") shall mean the committee appointed by the Declarant or Board of Directors of each Association consisting of one or more persons responsible for the review of the architectural design of all dwellings, buildings, landscaping and other structures and improvements in the Subdivision pursuant to the Architectural Guidelines, these Covenants, the City of Bozeman Zoning Regulations and the PUD requirements.



Section 3:

"Associations" shall mean and refer to the three Owners Associations, that is, Walton Homestead Residential Owners Association, (WHROA), Walton Homestead Apartment Owners Association (WHAOA) and Walton Homestead Commercial Owners Association (WHCOA) established to administer and enforce the terms and conditions of this Declaration as set forth herein and in the Bylaws adopted by the Associations.

Section 4:

"Board" shall mean the elected or appointed Board of Directors of each Association, that the non-profit corporations established to administer and enforce the terms and conditions of these Covenants as set forth herein.

Section 5:

"Building Footprint" shall mean that portion of each Lot within the set backs and within which the structures are allowed to be located. Structures shall include dwelling houses, commercial buildings, apartments/condominiums, townhouses, decks, storage buildings, porches and garages. Improvements, such as utilities, parking, recreational facilities, landscaping and site access may be located outside of the Building Envelope. Building footprints delineated on the preliminary PUD plan submittal are conceptual in terms of approval. Final approval is contingent upon individual site plan review by the WHARC and by the City of Bozeman Building Department, during the building permit stage.

Section 6:

"Bylaws" shall mean the Bylaws for the operation of the Association(s) adopted by the Members of the Association(s), or by its Board of Directors, and as amended from time to time.

Section 7:

"Common Easement(s)" shall mean the easement(s) reserved herein, or on the plat or by other recorded document, unto the Declarant and/or the Association, utility companies or the City of Bozeman in, on and under the Lots, common open space, common areas, pocket parks, public park, open channel areas and common parking areas for the construction, installation, repair and maintenance of common facilities and landscaping for the benefit of the Subdivision and the Owners Associations, including, but not limited to, easements for common landscaping, lighting, pathways, walk ways, sidewalks, boulevards, parking, drainage areas, water and sewer facilities, fire protection facilities, utilities and lines, communication systems, irrigation sprinkler systems, storm water facilities, mail boxes, signage, parkland improvements, playground equipment and other improvements, equipment, or amenities installed or services rendered to the Lot and Unit Owners or the Associations for the common use and enjoyment of all Lot and Unit Owners, residents, their guests, invitees and the general public.



Section 8:

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“Common Areas” shall mean the common easements, common trails and pathways, walkways, sidewalks, streets, access, parking and landscaping areas, drainage easements retention/detention storm water facilities, common lighting, common open space, and other common areas within the Subdivision delineated on the plat or described in these Covenants in which an easement, right or ownership is reserved unto the Developer for installation and in the Association(s) for the purposes of repairs, replacement or maintenance thereof.

“Common Open Space” shall mean those common areas designated on the plat as common open space and the underground storm and drainage detention facilities located in, on and under the common open space owned and maintained by the Association(s) and which are for the enjoyment and use of the Lot and Unit Owners, residents, their guests, invitees or the general public or for the functionality of the Subdivision. The term “common open space” does not include the public park.

Section 9:

“Common Elements” shall mean common easements, facilities, improvements, street lighting, signage and equipment in the Subdivision placed or installed in, on or under the common areas and the public park including storm water facilities, irrigation systems, landscaping, playground equipment, detention/retention storm water facilities, paving, sidewalks, pathways, curbs, gutters or other infrastructure designated or reserved for the use, benefit or enjoyment of the Association, Lot and Unit Owners, guests, residents and for the general public or for the functionality of the Subdivision and which are to be maintained, replaced and repaired by the Association(s).

Section 10:

"Common Services" shall mean services provided by the Association(s), public entities, or other authorized provider, to the Association, Lot and Unit Owners and residents of the Lots, and to the common areas, and common elements and for the purposes set forth herein, and such other and further services provided as shall benefit the owners and residents of the Lots and Units and Association within the Subdivision and the common areas and common elements within the Subdivision.

Section 11:

"Declarant" or "Developer" shall mean the developer of the Property, Durston Development, Corp. or its successors and assigns. The original developer may assign its rights to develop the Property or any part thereof to another person or entity, which shall have the rights of Declarant set forth herein, with respect to such Property.

Section 12:

“Architectural Guidelines” shall mean those guidelines established and adopted by the Declarant and/or the Board of Directors of the Association(s) to establish the architectural and



landscape design standards for dwellings, buildings, structures, improvements and landscaping and to control the development of residential and townhouse units, apartments, multiple family units and commercial units on the Lots within the Property.

The Architectural Guidelines shall contain minimum standards for the architectural design and construction of all structures within the Property, the landscaping of all Lots within the Property, fencing and other guidelines as the Declarant or the Board, in its judgment, deems appropriate. The Architectural Guidelines may vary from phase to phase within the Subdivision and may vary from the type of structure. The Architectural Guidelines, initially adopted by the Declarant, are attached to these Covenants and are incorporated herein by this reference.

Section 13:

“Storm Water Retention/Detention Facilities” shall mean ground level depressions or subsurface pipe structures designed to limit the storm water runoff from the development. Storm water drainage plans, including storm water retention/detention facilities, shall be designed in accordance with the City of Bozeman design standards. Design, location, shape, etc. of storm water retention/detention facilities shall also conform to the landscape guidelines of the Walton Homestead Subdivision P.U.D.

Section 14:

"Development" shall mean any alterations and improvement of the natural land surface and subsurface, including streets, sidewalks, lighting, common areas, common open space, common elements and facilities, residential units, apartments, condominiums, commercial buildings, structures, water system, sewer system, landscaping and other improvements placed on the Property to accommodate the use of the Lots or service the Subdivision.

Section 15:

"Internal Trails" shall be those trails pathways, and walkways set forth as delineated on the Final Plat and Final Plan, or any relocation thereof, for Walton Homestead Subdivision P.U.D., for non-motorized use of the Lot and Unit Owners, their families, tenants, guests and invitees and the general public.

Section 16:

"Lot or Lots" shall mean and refer to any of the Lots which are shown upon the recorded subdivision plat of the Property filed by the Declarant in the Office of the Gallatin County Clerk and Recorder.

Section 17:

“Public Park” shall mean that 1.1 acre park designated on the final plat which land, playground equipment and other improvements installed thereon may be used by the general public. The Public Park, playground equipment will be initially installed by the Developer



including, landscaping, playground equipment, pathways, irrigation system and the sidewalk surrounding the park and will be maintained by the Association(s), until such time as the City of Bozeman establishes a City-wide Parks Maintenance District and takes over public park maintenance. The public park land is dedicated to the public.

Section 18:

"Owner" or "Unit Owner" shall mean and refer to the record Owner of a Lot or a Unit, whether one or more persons or entities, including contract buyers and Owners of a beneficial interest, but excluding those having such interest merely as security under a Mortgage, Deed of Trust or Trust Indenture, for the performance of an obligation on a loan.

Section 19:

"Plat" shall mean the final subdivision plat of Walton Homestead Subdivision P.U.D. filed of record with the Clerk and Recorder of Gallatin County Montana.

Section 20:

"Property" shall mean the Walton Homestead Subdivision P.U.D. and all real property and improvements included therein, or appurtenant thereto.

Section 21:

"Unit" shall mean a single house, a building, or portion of a building, on a Lot, which may be separately owned, or separately rented, including a condominium unit in a building, and intended for independent residential use or commercial use. A house on a single Lot would be one (1) Unit. A townhouse or duplex on two Lots would be two (2) Units. A townhouse or four-plex on four Lots would be four (4) Units. An office building on a commercial Lot with four condominium Units would be four (4) Units. An apartment building with eight apartments would be eight (8) Units. A condominium with ten (10) separate residences, or ten (10) separate office suites, would be ten (10) Units.

Section 22:

"Structure" shall mean anything built or placed on, or above, ground level excluding ground level features such as streets, off street parking areas, driveways, sidewalks, pathways or low profile patio or entrance slabs contiguous to structures.

ARTICLE II
PROPERTY RIGHTS

Section 1 - Owners' Easements of Enjoyment:

Each Owner of a Lot or Unit, his or her family, guests and invitees shall have a right and easement of enjoyment in and to the common areas, common open space and common elements



located in the Subdivision which shall be appurtenant to and shall pass with title to every Lot and Unit, subject to the following provisions:

(a) The right of the Association(s) to charge Owners reasonable assessments for the repair, maintenance and replacement of the common open space, common areas and common elements.

(b) The right of the Association(s) to establish and publish rules and regulations, including speed limits, for the use of the common streets, common open space, common areas and common elements and to impose reasonable sanctions for violations of published rules and regulations.

(c) The right of the Board of Directors of the Association(s) to dedicate or transfer all, or any part, of the Common Open Space to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors, subject to the written approval of the Declarant, if the Declarant owns 10% or more of the total Lots in the Subdivision.

(d) An easement (common easement(s)) is reserved, to the Declarant, in the Subdivision over, under and in the utility easements, common areas, common open space and common elements for installation of the streets, sewer and water system, storm drainage system, landscaping and other common elements. An easement is reserved unto the Association for the maintenance, repair and replacement of the common elements, common facilities in, on and under the common areas, common open spaces and public park.

(e) In the event a lot owner improves a parking lot installs landscaping or storm drainage facilities in, on or under a lot or common area, as required by the City or the WHARC and later on an adjacent lot owner constructs a building and benefits from the first lot owner's improvements, such as parking, storm drainage or landscaping, the second lot owner shall reimburse the first lot owner for his prorata share of such benefit.

ARTICLE III
ASSOCIATIONS, MEMBERSHIP AND VOTING RIGHTS

Section 1 - Associations, Management Operation and Administration:

Three separate Associations are hereby created to govern, manage, operate, enforce and administer the Covenants and By-laws in each of the three separate areas of use of properties in the Walton Homestead Subdivision P.U.D.: Lots 1 - 25 of Block 1, Lots 1-11 of Block 2, Lots 1-12 of Block 4, Lots 1-24 of Block 5 and Lots 1-34 of Block 6 are within the area and authority of the Walton Homestead Residential Owners Association (WHROA); Lot 1 and Lot 2 of Block 3, Lots 13 - 17 of Block 7 and Lot 22 of Block 7 are within the area and authority of the Walton Homestead Apartment Owners Association (WHAOA); and Lots 3 and 4 of Block 3 and Lots 19-21 of Block 7 are within the area and authority of the Walton Homestead Commercial Owners Association (WHCOA). The boundaries of each Association include the common open spaces and common areas adjacent to the lots within each Association. If the boundaries of an



Association are adjacent to a common area which is also adjacent to and shared by another Association, the two Associations shall share, on an equitable basis, the use and cost of the maintenance, repair and replacement of such common areas and the common elements located in, on or under the common areas.

Each Association shall be managed, operated and administered by a Board of Directors initially comprised of the appointments of Declarant and after the first annual meeting composed of three (3) to seven (7) members, or members representatives, elected by a majority of the votes of the Lot and Unit Owners in accordance with the procedures set forth in the Bylaws of the Association(s), subject to Declarant's right to appoint a majority of the persons on the Board until 90% of the Lots and Units in each area of use are sold or transferred to third parties. Each Association and its Board of Directors shall have the same powers as herein set forth as to an Association and its Board of Directors, except that assessments may be collected only from its Members, except as otherwise set forth herein. The terms herein set forth referring to "the Association" or "Association" shall apply to each separate Association and the reference to a Member or Owner shall refer to a Member or Owner in his, her, or its respective Association. The Bylaws for the Association(s) are attached hereto and incorporated herein. Each Association shall separately administer the Bylaws for such Association.

Section 2 - Association Membership:

Every Owner of a Lot or a Unit shall be a Member of his, her or its respective Association. Membership is mandatory and appurtenant to, and may not be separated from ownership of a Lot.

Section 3 - Voting Rights:

Each Owner of a Lot or Unit in WHROA, WHAOA, or WHCOA shall have one vote per membership interest as defined in the Bylaws of each Association.

Each Association shall have one class of voting Membership. The Members shall be all Owners of Lots and Units within the authority of each such Association. When more than one person holds an interest in any Lot or Unit, all such persons shall be Members provided that the number of votes per Lot or Unit shall not be increased in such multiple ownership. The vote(s) for such Lot or Unit shall be exercised as they, among the owners, shall determine. In the case of a condominium on a Lot or Lots, the Unit Owners may delegate all, or a portion, of their voting rights to the Board of Directors of the Unit Owners Association or to the manager.

Section 4 - Purpose of Associations:

The purpose of each Association is to govern, promote, manage, administer, maintain and operate the Property and the common areas, common open space, common elements, common easements, common equipment, common facilities, common services and public parks through its Board of Directors who shall also have the authority to enforce these Covenants and the Bylaws of the Association and perform the powers, duties and responsibilities (express or implied) imposed upon the Association by these Covenants and the Bylaws and regulations of

the State of Montana and ordinances of the City of Bozeman and for the purpose of establishing a budget and assessing the Owners for the costs, fees and expenses of the Association. The Board of Directors shall have the powers and duties necessary to enforce and carry out the Association's functions as set forth in these Covenants, Montana law and as set forth in the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, and any amendments thereto.

In connection with expenses, management, maintenance, repair, replacement and operation of and administration of common areas, common open space, common elements, and common services shared with the other Associations, the Board of Directors of each Association shall have the authority and responsibility to meet with each other and make determinations as to the responsibility and costs of each Association for any shared items based upon the principles set forth in these Covenants and the use and benefit of the Members of each Association in the shared common items. In making decisions regarding common interests and services, each Association shall have one vote and a majority vote of the three (3) Associations shall control the decision making.

Each Association shall be responsible for the costs of the maintenance, repairs and replacement of the common areas, common open space and common elements located in their area. If a common area or common element is adjacent to the property within the boundaries of an Association, and/or is used by more than one Association, the cost of maintenance, repairs and replacements thereof shall be shared equitably by both Associations. The separate Associations shall share the cost of administration, maintenance, repairs and other expenses of the public park and adjacent sidewalks as follows: WHROA: 50%; WHAOA: 25%; WHCOA 25%.

Section 5 - Association's Power to Assess:

Each Association, through its Board of Directors, shall have the authority to assess and levy such charges and assessments, as provided in the Covenants, to the Members for the costs of governing, management, administration, operating and maintaining the common areas, common open space, common easements, common elements, common services and other common expenses and amenities and as are reasonably necessary to carry out its responsibilities and duties including the expenses for administering and enforcement of these Covenants, including prosecuting and defending claims and lawsuits and the cost and fees of hiring professional assistance such as architects, accountants and attorneys. The Bylaws may elaborate the purpose and use of assessments and methods of procedurally establishing and collecting assessments.

Section 6 - Special Powers and Duties of the Declarant and Board of Directors of the Associations:

The Declarant or the Board of Directors of an Association, by a majority vote, may approve boundary line adjustments or changes in the location of roads, paths and utility easements, subject to any required approval of regulatory authorities, including the City of Bozeman, and subject to compliance with these Covenants and applicable laws and regulations.



In addition to the powers and duties set forth in these Covenants or by Montana law, the Board shall have such powers and duties as are set forth in the Bylaws which are attached hereto and, by this reference, are incorporated herein.

ARTICLE IV
OBLIGATION AND LIEN FOR ASSESSMENTS

Section 1 - Creation of the Lien and Personal Obligation of Assessments:

Each Owner of any Lot or a Unit by acceptance of a deed, purchase or contract consents to the creation of a lien against the Owner's real property to the extent of non-payment of any assessment for maintenance or otherwise levied by the Association(s), therefore, whether or not it shall be so expressed in such deed, is deemed to have consented to be subject to these Covenants and assessments and agrees to pay to the Association(s) the Owner's share of :

- (a) Operating, maintenance, repair and replacement assessments or charges; and
- (b) Capital assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and
- (c) Other budget items established by the Board and as authorized in these Covenants or the Bylaws.

All assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, shall be the personal obligation of the entity or person(s) who was the Owner of such Lot(s) or Unit(s) at the time when the assessment fell due, and shall be a continuing lien upon the Property against which each such assessment is made, even though ownership, budget items and assessments change.

ARTICLE V
ADDITIONAL COVENANTS
MEETINGS/CONDOMINIUMS/Common Areas/Open Space

Section 1- Meetings :

Each Association shall hold meetings of its Members and Board of Directors at such frequency, time, date and place as shall be reasonable and necessary to carry out each Association's functions, duties and responsibilities.

Section 2 - Maintenance of Common Areas, Common Open Spaces and Facilities:

Each Association shall be responsible for the operation, maintenance, upkeep, repair and replacement of all common areas, common open spaces and common elements in each respective Association's area of responsibility.



Section 3 - Trails Pathways and Walkways:

Trails, pathways and walkways shown and set forth on the Final Plat are for the passive enjoyment of the Owners, their tenants, guests, invitees and the general public. The Declarant or the Association(s) may install, maintain and repair Internal Pedestrian Trails for walking, biking, hiking, jogging, cross country skiing, and similar non-motorized vehicular activities by Owners. Except for construction and maintenance equipment, no motorized equipment or vehicles shall be permitted on the trails. Either the Declarant or the Association, with the written consent of the Declarant, may link or combine the trail system with other trail systems in the area and may grant non-exclusive easements to other entities, or to the public, to use the trail system. The Association, through its Board of Directors, with the approval of the City of Bozeman, may establish rules for the use of such trail system.

Section 4 - Use of Public Parks :

Those areas designated on the plat as "Public Park" may be used for passive and active recreation. The Declarant shall plant or install trees, landscaping and recreational facilities such as picnic tables and playground equipment in the public park and the Association(s) shall maintain and repair the same in accordance with City of Bozeman standards and City of Bozeman oversight. The Association(s) may establish rules for the use of the Parks consistent with these Covenants and Bylaws and subject to the approval of the City of Bozeman.

Section 5 - Common Open Space and Common Areas:

The Common Open Space and Common Areas within the Property, as designated on the Final Plat are granted to, and shall be owned, held and maintained by the Association which has the Common Open Space and Common Areas within its boundaries, and jointly by the Associations when the Common Open Space and Common Areas are within the boundaries of 2 or more Associations, in perpetuity. The Association(s) shall have the duty and authority to care for the Common Open Space and Common Areas, make rules and regulations for the use thereon and shall establish assessments for any taxes, insurance, improvement and maintenance of the Common Open Space and Common Areas.

Each Association shall be responsible for acquisition of liability insurance, payment of real estate taxes and the assessments and the maintenance of recreation and other facilities in the common areas and facilities as well as the common trails located in their respective areas on the Property. The assessments levied by the Board for the maintenance, upkeep, repair and operation of Common Open Space and Common Areas shall, like all other assessments, become a lien upon a Lot if the assessment is not timely paid. The Board may, in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community.

The Board shall be aware of, and all Lot and Unit Owners are advised that, the real property taxing authorities may satisfy real property tax claims against the Common Open Areas and Common Open Space owned by the Association by proceeding against the individual Lot Owners, as well as the Association, the Lots, Units and other improvements on the individual



Lot Owners' Lots, as well as the improvements, if there are any, in the Common Open Areas and Common Open Space. Therefore, it shall be the responsibility of the Association to pay all real property taxes and assessments on all the Common Open Areas by the Association in a timely manner and assess the Owner therefore.

Section 6 - Mandatory City of Bozeman Covenants:

Notwithstanding anything to the contrary in this Declaration, the governing body of the City of Bozeman, City Commissioners, has imposed, through the preliminary plat approval, the following mandatory covenants, none of which shall be amended, modified or changed without the express written approval of the Commissioners, including the following covenants:

- (a) All structures shall be constructed by each Lot owner in compliance with the current applicable International Building Code and International Residential code (2000 edition)**
- (b) The Association(s) shall be responsible for the control of noxious weeds within the Common Open Space, Common Areas and Public Park.**
- (c) Membership in the Association(s) shall be mandatory for each owner of a Lot and Unit, who shall be required to pay assessments to their respective Association for taxes, insurance, maintenance, repair and replacement of common areas and Common Open Space and common elements.**
- (d) The Association shall be responsible for the administration, operation and maintenance of all interior common open areas , common areas and common elements.**
- (e) Pets shall be controlled and maintained on a leash or under the good control of each owner and not allowed to roam freely within the Subdivision and the Owner shall comply with the City of Bozeman ordinances in regard to pets.**
- (f) A Parkland Implementation Plan outlining installation of landscaping improvements, trail/bike paths and the maintenance and upkeep of the Public Park and trails was prepared and approved by the City of Bozeman through the Superintendent of Facilities and Lands and such plan, and the approval, shall be incorporated herein by this reference.**
- (g) The Developer has submitted a formal development plan signed by a certified landscape architect for the design of all dedicated parklands and Common Open Spaces and Common Areas within said subdivision and the plan has been approved by the City of Bozeman through the Superintendent of Facilities and Lands and the Recreation and Parks Advisory Board. Details of plantings, species, topography, irrigation system and any permanent park features, including playground equipment, was shown on**

and discussed with the plan. Construction of the parkland improvements will be to City standards and must be completed with City oversight. Improvements shall be installed within all dedicated parklands according to the Implementation Plan and schedule approved by the Superintendent of Facilities and Lands and the Recreation and Parks Advisory Board. The plan is incorporated herein by this reference.

(h) See also Article V § 2-5, 7 and 8; and Article VI § 5(c), 12, 14, 15, and 16.

Section 7 - Lawn Care and Weed Control:

The Lot owners shall be responsible for the installation and care of the lawns, sprinkler systems and landscaping on their Lot and adjacent boulevards and for the care, maintenance and replacement of trees and shrubbery located on their Lot. However, if a Lot owner fails to adequately water, control weeds, fertilize or mow the grass, the Association may do so and charge the cost thereof to the Lot Owner. The Board of Directors of an Association may elect to take over the care and maintenance of the front yard areas and/or boulevards such as mowing, fertilizing and the like with the request and approval of 75 % of the votes of the Lot Owners in the Association. When a residence, apartment, condominium or commercial building is constructed on a Lot, the lawn and landscaping shall be installed by the Lot Owner no later than the next planting season after the receipt of a certificate of occupancy for a residence.

Unimproved Lots shall be kept free of weeds and mowed on a regular basis. If a Lot must be cleared of weeds and if the Owner fails to do so after notice from the Association, the weeds may be cleared and controlled by the Association and the cost and expense associated with such weed maintenance shall be assessed to the Lot owner and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.

Weeds and grass shall be controlled and mowed in the parks, common open space and common areas by the respective Associations.

The control of noxious weeds by the Associations on those areas for which the Association is responsible and the control by individual Owners on their respective Lots shall be as set forth and specified under the Montana Noxious Weed Control Act, §7-22-2101, et seq., MCA and the rules and regulations of the Gallatin County Weed Control District Subdivision Noxious Weed Planning Requirements as the same exist from time to time.

Section 8 - Noxious, Offensive, or Hazardous Activities, Lighting and Sound:

No noxious, offensive or hazardous activities shall be permitted upon any portion of the Property nor shall anything be done on or placed upon any portion of the Property which is, or may become, a nuisance to others.

All Subdivision lighting provided shall conform to Section 18.50.035 "Glare and Lighting" of the Bozeman zone code. Details and specifications (cut sheets), including bulb type and size, and locations shall be set forth in the Architectural Guidelines.



In addition to current City standards, all outdoor lighting, residential, commercial or otherwise, shall be free of glare and shall be fully shielded or shall be indirect lighting. No direct lighting shall be emitted beyond a property's lot line. No ranch lights or unshielded lights shall be permitted. No mercury vapor lights shall be permitted. Alley lights shall be fully shielded lights. For the purposes of this paragraph, the following definitions shall apply:

- (a) Fully shielded lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test expert;
- (b) Indirect light: Direct light that has been reflected or has scattered off of other surfaces;
- (c) Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness; and
- (d) Outdoor lighting: The nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

No sound shall be allowed on any Lot or other portion of the Property which is unreasonably loud or annoying, including, but not limited to, speakers, loud parties, barking dogs, horns, whistles bells or any activity which disturbs the peace and quiet of the neighborhood except as shall be necessary for construction of the buildings and improvements and maintenance of the Lots.

Section 9 -Preservation of Common Areas, and Facilities:

The Owners of all Lots, and Units, their guests, invitees or employees shall at all times conduct their use and activities in a manner that will preserve the peace and quiet and integrity of the Subdivision, common areas and facilities.

Section 10 - Lot Owner's Responsibility for Taxes, Insurance, Security and Interior Maintenance:

Each owner is responsible for all real estate taxes and assessments on their Lot or Unit and for all maintenance, repairs, replacement, security and insurance for fire, all risk, theft, perils and liability insurance on their Unit structures, improvements.

Section 11 - Exterior Maintenance - Common Walls and Roofs - Easements:

The Lot or Unit Owners shall be responsible for proper exterior maintenance, repairs and cleanliness of their own buildings, structures, planting areas, decks and patio areas including roof, paint, siding, garages, window trim, driveway, drainage, weeds, debris and landscaping including lawns and trees. If there is a common roof over the structures or a common wall between structures, the owners of the structures thereof shall be jointly responsible for the repair, maintenance and replacement of the common roofs and common walls. If there is a garage wall on the Lot line, the owner of the wall shall have the responsibility and right to maintain the wall.



The Owner of a garage on a lot line shall also have an easement on the adjoining property as is reasonable and necessary to maintain, repair or replace the garage and for any roof encroachment. An easement is reserved to each Lot and Unit Owner and the Association to repair, maintain and replace structures and improvements for which the Owner or Association has the ownership of or responsibility therefore. If a Lot owner or Unit Owner fails to satisfactorily maintain and repair the exterior of their structure (including paint), and patio areas and garages, trees or shrubbery, then, after thirty (30) days notice to the Lot Owner to correct the deficiencies, the Association may, at its discretion, provide maintenance, cleaning and repairs as are reasonable to bring the exterior into compliance with the standard of maintenance and repair of the other Lots and improvements in the Subdivision and the Board shall separately assess the Lot Owner(s) for the costs therefore which costs shall be the personal obligation of the Lot or Unit Owner and a lien on the Lot.

Section 12 - Condominiums:

Condominiums are allowed to be created on the townhouse, apartment, multi-dwelling and commercial lots, provided the condominium shall be subject to these Covenants, Bylaws and the requirements for the City of Bozeman.

**ARTICLE VI
GENERAL PROVISIONS**

Section 1 - Condemnation of Common Open Space or Common Areas:

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

Section 2 - Recreational Facilities:

The Declarant and Association shall have the right to construct such recreational facilities on the common open space or common areas that may be approved by the City of Bozeman, if required, and a majority vote of the Directors of the Association, within which the same are located, voting at any regular or special meeting called in accordance with the provisions of these Covenants and Bylaws subject to any limitations or restrictions contained in these Covenants or laws and regulations, zoning ordinances and land use restrictions.



Section 3 - Access; Certain Additional Improvements:

The Associations are granted and shall have the irrevocable right and easement for access to each Lot within its boundaries from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of the common area and common open space facilities and easements, for inspection to insure compliance with these Covenants, for making repairs necessary to prevent damage to the common facilities or easements or to a Lot and for exterior maintenance or repairs to the improvements or landscaping.

The Declarant and Association(s) reserve full rights, but not the obligation, to conduct landscaping activities in, on and under the common areas and common open space and to construct or implement additional improvements (including, without limitation, fencing, pathways, signs, outdoor lighting and recreational and facility maintenance sheds) on the Common Open Space or Common Areas. After any such improvements are installed, the Association(s) shall maintain the same.

Section 4 - On-Site Burning:

In an effort to protect and preserve the Property and the investments of the Property Owners, on-site burning is prohibited. This prohibition includes, but is not limited to the burning of trash, debris, garbage, waste of any type or nature, grass clippings, leaves and the like, in containers or in open areas. This prohibition is not intended to nor does it prohibit the outdoor use of outdoor barbecues and other appropriate containers for cooking food.

Section 5 - Creation of Volunteer Committees and Architectural Review Committee:

(a) Volunteer Committees:

The Board of each Association, by a majority vote, shall be authorized, in its discretion, to create such volunteer committees as the Board, in its judgment, deems appropriate and in the best interests of the Property Owners. The Members of the committee shall serve at the pleasure and direction of the Board and shall have such authority and duties as shall be prescribed by the Board.

(b) WHARC

The Boards of Directors shall each appoint an Architectural Review Committee known as Walton Homestead Architectural Review Committee (WHARC), which Committee shall be composed of one (1) or more persons (who need not be Members) who shall have the authority and be responsible for the review and approval of the construction of all structures, landscaping and improvements pursuant to the Architectural Guidelines and these Covenants. The Boards may appoint one or more Board Members to the WHARC (subject to the approval of the Declarant as long as the Declarant owns ten percent (10%) or more of the lots within the boundaries of such Association.) The three Boards may appoint a joint



WHARC with the agreement of all three Boards. The Board of each Association shall engage or appoint an architect, to be on the Committee.

The WHARC shall act by a majority vote (if more than one).

It shall be the responsibility of the WHARC to review all plans and specifications for the construction of all structures and improvements on the Lots to ensure that all structures and improvements are to be constructed in accordance with the Covenants and Architectural Guidelines. **The WHARC shall approve, disapprove or conditionally approve of plans within seven (7) working days after submittal.**

The Board of each Association and the WHARC shall have concurrent rights to enforce the Architectural Guidelines. The WHARC shall have the right and the flexibility to grant deviations from said Architectural Guidelines when, by a majority vote of all Members of the Committee, a deviation is deemed appropriate. **Any deviation must be approved by the Board of Directors of the Association having authority over the WHARC and, if required, by the City of Bozeman through the building permit process, or other required approval process.** No structure, improvement or fence of any type or nature shall be placed, constructed, remodeled, commenced or remain on a Lot without first presenting building plans and specifications and landscape plans to the WHARC and receiving written approval from the WHARC. The approval by the WHARC means that the applicants plans comply with these Covenants and the Architectural Guidelines. The WHARC shall affix a stamp of approval to the final approved set of plans. The WHARC may impose conditions to be fulfilled prior to the final issuance of a written approval. If the conditions require the plans to be modified, the detail of the modification shall be submitted to the WHARC for final written approval and the approval stamp of the WHARC. The WHARC shall act expeditiously when a request for a written approval is submitted. The Board, in its judgment, may levy a reasonable fee to be paid with all requests for approvals, which fee shall be used to offset the costs involved. The initial fee for residential is \$300 per building and \$500 for each apartment and commercial building.

Notwithstanding anything herein to the contrary, the Declarant may appoint the majority of the WHARC until 90% of the Lots within the boundaries of a particular Association are sold to third parties.

The Board may amend the Architectural Guidelines by a majority vote. The City of Bozeman must approve any amendment. The initial Architectural Guidelines are attached hereto. A Lot Owner may appeal a decision by the WHARC to the Board. The decision of the WHARC may be changed, amended or modified only if the Board finds the WHARC decision to be arbitrary, unreasonable or not in accordance with these Covenants or the Design Review Guidelines.



Any deviation from the plans and specifications must be approved by the WHARC before construction thereof. The WHARC reserves the right to inspect the construction of buildings to insure compliance. However, the Owner and the contractors bear the duty and responsibility to construct the structures and improvements in accordance with the plans and specifications.

(c) CITY OF BOZEMAN BUILDING PERMIT REQUIRED

In addition to obtaining a written approval from the WHARC, the Owners must also make application for a building permit from the City of Bozeman and receive a signed building permit before construction of any improvements on a lot.

The WHARC's written approval of the plans and a stamp of approval on the final plans must be attached to all City of Bozeman building permit applications.

Section 6 - Domestic Pets:

The Board may adopt rules regarding pets. A limited number, as determined by rules adopted by the Board, of generally recognized domestic pets may be maintained by Owners of the Lots within the Property. However, no domestic pets shall be allowed to run at large, or off an Owner's Lot, and shall at all times be under good voice control, leashed or contained on the Lot Owner's property. This covenant shall be enforced by the Board. For violation of this covenant the Board shall have the power and authority to levy escalating fines, which fines, if not paid, shall become a personal obligation and a lien on the Lot of the Owner violating the rules or failing to pay fines. The Board may require removal of the pet for multiple offenses. Enforcement of the rules, fines and the lien imposed if a fine is not paid, may be enforced by an action filed in a Court of jurisdiction in and for the County of Gallatin, Montana. The terms and provisions of the Gallatin County Dog Control Ordinance shall be, and are, incorporated herein by reference and shall be adhered to in addition to the provisions set forth above.

Section 7 - Landscape Plan:

In addition to building plans, prior to the construction of any structure on any Lot within the Property, the Owner shall submit a landscaping plan to the WHARC. The landscaping plan shall substantially comply with those landscape requirements set forth in the Architectural Guidelines and shall be approved, in writing, by the WHARC before any plan is implemented.

The Owner of each Lot shall maintain, replace and keep in good condition repair the lawns, sidewalks, trees and other landscaping on the Owner's Lot.

Section 8 - Fences:

The location, type and material of fencing allowed is set forth in the Architectural Guidelines. Any allowed fencing shall be constructed in conformance with the Architectural Guidelines and have written approval of the WHARC.



Section 9 - Junk Vehicles, Equipment or Other Miscellaneous Paraphernalia:

No junk vehicles, equipment or other miscellaneous paraphernalia shall be allowed to accumulate on any Lot within the Property.

Section 10 - Discharge of Firearms:

The discharge of firearms for any purpose within the Property is prohibited.

Section 11 - Satellite Dishes:

No satellite dish with a diameter in excess of 36" shall be installed on a Lot or building.

Section 12 - Building Codes:

All structures shall be constructed by the Lot Owner and their contractors in compliance with International Building Code and International Residential Code (2000 Edition). Spark arrester screens shall be placed on all fireplace and wood stove chimneys. Smoke detectors shall be installed on each level of all dwelling units. The WHARC may inspect but shall not be responsible for inspections or insuring that all structures are constructed in accordance with the Codes. The Owners and their Contractors shall be solely responsible for Code construction. However, the WHARC may require the Owner to provide reasonable documentation or evidence that a structure is built in accordance with the Codes.

Section 13 - Design and Square Footage of Dwellings, Apartments, and Commercial Buildings:

The Architectural Guidelines establish the general design of the single family and multi-family dwelling, apartments, and the commercial buildings. The WHARC reserves the right to approve or disapprove the building design of any building or Unit. The Subdivision appearance is intended to incorporate traditional old style neighborhood housing with porches and a bungalow style. The WHARC has the authority to act to ensure that this intention is carried out as near as is reasonably possible.

Section 14 - Wood Burning Devices:

All wood burning devices shall meet EPA certification standards.

Section 15 - Water User Facilities:

The Walton Irrigation Ditch has been abandoned up gradient and through the Walton Homestead Subdivision property. There are no known downstream water rights on the abandoned Walton Ditch. Therefore, the development of this subdivision will not impede the flow of irrigation water to downstream properties.



Section 16 - Storm Water Maintenance Plan:

The storm drainage control facilities for the Walton Homestead Subdivision consists of overland flow of storm runoff into detention areas located throughout the site. Some of the detention areas are ground level ponds, and some are below ground level pipe systems. The final grades for the subdivision have been designed so that storm runoff will flow unrestricted to the detention areas from the streets, buildings, driveways, and landscaping. The purpose of the detention areas is to reduce the peak runoff from the development, and to remove settleable solids, silt, oils, grease, and other pollutants. The outlets of the detention areas will discharge settled storm runoff to storm sewers or drainage swales, which will ultimately discharge to the drainage ditch along the west side of the property. Some of the detention area outlets will discharge settled storm runoff directly to the drainage ditch.

The Owners' Associations will be responsible for maintenance of the storm drainage detention areas and outlet structures within the development. The Owners' Associations shall maintain and mow the landscaped areas forming the detention ponds.

The outlet structure of each detention area should be checked periodically, and cleaned if any accumulation of sediment is found. The outlet pipes should also be checked for sediment and cleaned on a routine basis. Typically, inspecting the detention systems twice a year should be sufficient. Any significant accumulation of sediment in the detention areas themselves should be removed to retain capacity.

No fill or other materials shall be placed or stored in the detention areas, as this will reduce their storage capacity

**ARTICLE VII
ENFORCEMENT, DURATION AND AMENDMENT**

Section 1 - Enforcement:

Each Association, through its Board of Directors or Declarant shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, assessments and charges now or hereafter imposed by the provisions of these Covenants or Bylaws or State law and regulations including legal actions for restraining orders, injunctions, damages, costs and reasonable attorney's fees incurred in such enforcement. Failure by the Association or the Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If the Declarant or the Association refuses to enforce a covenant or other requirement, a group of five (5) or more Lot or Unit Owners may enforce the covenant by legal proceedings. In the event the Association, Declarant or group of Owners shall elect to enforce any restriction, condition, covenant or reservation contained herein, the prevailing party shall be entitled to receive attorney's fees and costs as determined by the Court.



Section 2 - Duration of Restrictions:

All of the covenants, conditions, and restriction set forth in these Covenants shall continue and remain in full force and effect in perpetuity against said Property, Lots and the Owners thereof, subject to the right of amendment or modification provided for in these Covenants.

Section 3 - Amendment:

Except as specifically prohibited in these Covenants, by law or public regulation, this Declaration may be amended during the first twenty (20) years after these Covenants are recorded with the Clerk and Recorder of Gallatin County, Montana by the Declarant until 90% of the Lots are sold or by at least seventy-five percent (75%) of the votes of the Lot and Unit Owners, and after 20 years by the vote of not less than sixty percent (60%) of the votes of all the Lot and Unit Owners. Any amendment by Declarant, or approved by the required percentage of the Lot and Unit Owners, shall be recorded, along with an executed Certificate by Declarant or by the Chairman/President and the Secretary of the Association certifying that the amendment was adopted in accordance with these Covenants, in the Office of the Clerk and Recorder of Gallatin County, Montana. Any covenant which is included herein as a condition of the preliminary plat approval and required by the City of Bozeman shall not be amended or revoked without the mutual consent of the Owners, in accordance with the amendment procedures in the Covenants, and the approval of the Bozeman City Commission.

Section 4 - Violation Constitutes Nuisance:

Every act or omission, whereby any restriction, condition or covenant in this Declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance and may be abated by the Association, Declarant or their successors-in-interest pursuant to Montana law and these Covenants; and such remedies shall be deemed cumulative and not exclusive.

Section 5 - Construction and Validity of Restrictions:

All of said Covenants, conditions and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, the Association, the Lot or Unit Owners and their heirs, successors and assigns, shall be bound by each Article, Section, subsection, paragraph, sentence, clause and phrase of this Declaration irrespective of the fact that any Article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

Section 6 - No Waiver:

The failure of the Declarant, Association or Lot or Unit Owners to enforce, to insist, in one or more instances, upon the compliance or performance of any of the terms, covenants, conditions



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or restrictions of this Declaration in a timely manner or at all, to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment, for the future of such term, covenant, condition or restriction; or any other such term, covenant, condition or restriction and all others shall remain in full force and effect. The receipt and acceptance by the Board, or its agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Board. No failure to enforce a covenant shall be deemed a waiver of the right to enforce any other covenant.

Section 7 - Binding:

These Covenants, Conditions and Restrictions shall be binding upon the heirs, successors and assigns of the Declarant, Association and Lot and Unit Owners.

DATED AND ADOPTED this 13 day of April, 2004

DECLARANT: DURSTON DEVELOPMENT CORP., INC.

By: [Signature]
Kevin Cook Its Vice President

STATE OF MONTANA)
)
:SS
County of Gallatin)

On this 13th day of April, 2004, before me, a Notary Public for the State of Montana, personally appeared Kevin Cook known to me to be the Vice-Pres. of Durston Development Corp. and acknowledged to me that he executed the same on behalf of said Corporation

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



[Signature]
LORI A. JOHNSON
Notary Public for the State of MONTANA
Residing at: Bozeman
My Commission Expires: 2-23-2006