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Olmsted County, Minnesota

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OHLY LAW OFFICE

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DECLARATION OF
COMMON WATER SUPPLY SYSTEM
AND
WATER EASEMENT
FOR
BOULDER CREEK

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**DECLARATION OF
COMMON WATER SUPPLY SYSTEM
AND
WATER EASEMENT
FOR BOULDER CREEK**

THIS DECLARATION made this 4th day of March, ²⁰⁰⁴2003, by Boulder Creek, LLC, a Minnesota Limited Company, (the "Declarant").

Witnesseth:

Whereas, Declarant is the fee owner of real property on described and platted as Boulder Creek, hereinafter "Boulder Creek":

Whereas, Declarant shall provide a water well with a pump and watermain distribution system (the "System") to supply water for the use and benefit of the owners of the Lots in Boulder Creek, hereinafter the "Owner"; and

Whereas, Declarant intends that the Boulder Creek Association, of Rochester Township, Inc., a Minnesota Non-Profit Corporation (the "Association") shall be the Owner of the water well, pump and distribution system;

NOW, THEREFORE, in order to insure the proper use and supply of water, and the maintenance of the well, watermain and pumping and distribution system to all Lot, Declarant hereby imposes upon and subjects all of the Lots to the following terms, conditions, reservations, covenants, easements, and restrictions:

1. Construction of System. Declarant shall, at Declarant's sole cost and expense, drill construct and install the System sufficient to provide water for residential purposes to the Lots, in accordance with the plans and specification prepared by McGhie & Betts, Inc., and as approved by the Rochester Township. The well shall be drilled and located in the sixty (60') feet by sixty (60') utility easement as depicted on the plat of Boulder Creek (the Well Site") and shall serve the Lots identified herein at paragraph 6. Watermains shall be located in the utility easements or in the public roadways as indicated on the plans. Declarant shall install, at its expense, a separate meter to measure the quantity of electricity required to operate a pump. The System shall comply in all respects with the specifications of the Minnesota Department of Health and the Olmsted County Public Health Department.
2. Installation, Repair and Maintenance of Pipeline Service. The Lot Owner shall be solely responsible for the installation, maintenance, and repair of the pipeline servicing their Lot. Each Owner shall install and maintain, at their expense, an underground service line from the main service line of the System running on their Lot to their dwelling. Each Owner shall repair any and all damage done to

the System as a result of the installation, operation, maintenance, repair or replacements of pipelines from the main service line of the System to Owner's dwelling.

3. System Limit. Declarant desires to provide for the establishment, use, operation, maintenance, repair and replacement of a common water supply system for the use and benefit of the Owners. A maximum of eleven (11) Lots shall be used for the System. Upon the connection of the water pipes to the dwelling on the Lot, the then Owner of said Lot shall be vested with a prorate share of the expenses of the System as set forth herein at paragraph 6.
4. Boulder Creek Association of Rochester Township, Inc. Declarant has cause to be incorporated Boulder Creek Association of Rochester Township, Inc., a Minnesota nonprofit corporation (the "Association") whose members consist of the Declarant and all of the Owners. Declarant shall assign to the Association the power and duties of owning, maintaining, and administering the System and enforcing the covenants, restrictions, easements and collecting and disbursing the assessment and charges hereinafter created.
5. Reservation of Easement. Declarant reserves easements to include the right of ingress and egress for the purposes of installing, locating, operating, maintaining, repairing and replacing of the wells and pumping system under, over and across the Well Site located on the sixty (60) feet by sixty (60) feet utility easements on the Boulder Creek Plat. Declarant further reserves the right in the easement for the location, operation, maintenance, repair and replacement of watermains and related equipment under, over and across the utility easements and roads indicated on the plat of Boulder Creek. The easements within each given Lot will be appurtenant to each other Lot subject to this Declaration. Lot Owners agree that no permanent structures nor costly extraordinary improvement shall be erected on the surface nor over near such easements. Any service disturbance in the use of any aforesaid easement for the said purposes must be reasonably repaired and restored promptly by and at the expense of the Lot Owner causing such disturbance.
6. Maintenance, Repair and Replacement of System. Upon an Owner connecting to the pipeline from the System to their dwelling, the Owner shall share in the cost of repair, maintenance, operation and improvement and replacement, if necessary (collectively hereinafter the "Costs") and the Association shall assess a Lot a monthly fee for any Costs incurred relative to the System. Such Costs shall be allocated as follows:

<u>WELL LOCATION</u>	<u>LOTS</u>	<u>BLOCK</u>
Lot 2	1-11	1

Each of the foregoing lots shall be responsible for an undivided one-eleventh (1/11) share of the Costs attributable to the Well.

7. Use. The System shall be used for residential purposes.
8. System Property of Association. At all times, the System and meters shall remain the property of the Association.
9. Rates and Charges. Beyond the Costs identified herein at paragraph 6, Association shall from time to time establish rates for the usage of water from the System. The rates shall be sufficient to adequately provide for the payment of any debt service with respect to replacing the System and to provide for the funding of an operating reserve fund and a replacement fund. The Owner of each Lot shall pay the Association a monthly assessment based upon such rates and amount of water as calculated above in paragraph 6 used in each Lot. The Association shall provide each Owner with a monthly statement including the amount due from that Owner for water used in the previous month. The amount indicated in the statement shall be due and payable within thirty (30) days of the date of such statement. In the event that such payment is not made within thirty (30) day period the Association shall have the right to add a five (5%) percent late charge to the Owner's next monthly bill and shall have the right to discontinue water service to that Lot until all past-due amounts are paid in full. The Association or any Agency that is engaged by the Association to assist in the maintenance, repair and operation of the System shall have access to the service line shut-off valve to each Lot so that the Association or Agency has the ability to shut-off such water service to Owners who fail to pay for the assessment of Agency's cost. Association may also charge each Owner a connection fee at the time that such Owner's Lot is connected to the System. Such connection fee shall be due and payable in full at the time any Lot is connected to the System.
10. Limitation of Liability. Declarant and the Association shall exercise reasonable care and diligence in the operation, maintenance, repair and replacement of the System. In no event shall Declarant nor Association be liable for any damage resulting from the curtailment, interruption or apportionment of water service occasioned by maintenance, repair or replacement of the System, threatened or water shortage, or any other causes beyond Declarants or Associations control.
11. Rules and Regulations. Each Owner shall comply with all reasonable rules and regulations adopted by Declarant or Association from time to time concerning the use and operation of the System.
12. Discontinuance of Water Service. This Declaration may be terminated by Declarant or Association upon the occurrences of any of the following:
 - (a) the System being taken over by or sold or assigned to a governmental authority or public utility for maintenance and operation is part of a larger public water distribution system;

- (b) other adequate water services provided by governmental authority or public utility through means other than the System; or
 - (c) the well shall run dry or be condemned or the use thereof prohibited by property authority.
13. New System. Any cost incidental to the improvement, maintenance, or operation of the System, including the cost of drilling a new well, whether due to the original well going dry, or being condemned and the use thereof prohibited by property authorities, shall be apportioned equally among the Owners of Lots as set forth in paragraph 6. Should any of the Owners of the Lots cause damage to the System or pipelines, said Lot Owners shall be solely responsible to repair said damage. In the event that the well runs dry or is condemned and the use thereof prohibited by the proper authorities, this Declaration shall be null and void unless each respective Owner shall pay his/her pro rata share of the cost of a new well and pumping system, in which case this Declaration shall remain in full force and effect and shall apply to such new well and pumping system.
14. Further Definition of Owner. Owner means the Owner of a Lot. Whenever a Lot has multiple owners, they are collectively the Owner of that Lot and must act as a single Owner for all purposes under this Declaration. The multiple Owners of a given Lot are jointly and severally liable for the financial obligations of the Owner of their Lot(s).
15. Binding Effect. The afore described rights, duties and obligations of the Declarant as described in this Declaration shall be appurtenant to and run with the Lots and shall be binding upon, and shall inure to the benefit of the Lot Owners and their respective heirs, personal representative, successors and assigns.
16. Discontinuance of Use. The Owner of any Lot may discontinue the use of the System upon its Lot if and when a municipal or private owner central water utility is made available to his/her herein described Lot(s). Such use shall not be discontinued however, without such Owner giving a ninety (90) day written notice to the other Lot Owners. Upon any such discontinuance, however, this Declaration shall remain in full force and effect with respect to all other Lots. Upon such discontinuance by any Lot Owner, and all of his/her ownership, contract and easement rights as well as those of his heirs, successors, and assigns shall terminate with respect to the System and easement herein described.
17. Enforcement. The Declarant or any future Owner shall have the right to enforce the provisions hereof by proceedings at law or in equity against any person or persons violating or attempting to violate any provisions of this Declaration; either to restrain violation or recover damages, or both. The prevailing party shall be awarded attorney's fees and costs in connection therewith.

18. Severability. Invalidation of any of the provisions in this Declaration by judgment or court order shall in no way affect any of the other provisions, which other provisions shall remain in full force and effect.
19. Modification or Termination. This Declaration may be amended or terminated at any time by recording an instrument duly executed by the record Owners and record Mortgagees (at such time) of at least Eighty Percent (80%) of the Owners, provided further that the Declarant must be one of the concurring parties so long as it is a record Owner of any part of Boulder Creek or as a result of the decision of any judgment or as a result of a court order under the foregoing Paragraph 17.