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ROCHESTER, MN 55906

DECLARATION OF
COMMUNITY WASTEWATER TREATMENT SYSTEM
FOR
BOULDER CREEK

BJM

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PW
3004
only

**DECLARATION OF
COMMUNITY WASTEWATER TREATMENT SYSTEM
FOR
BOULDER CREEK**

THIS DECLARATION made this 4th day of March, ~~2003~~²⁰⁰⁴, by Boulder Creek, LLC, a Minnesota Limited Company, (the "Declarant").

Witnesseth:

Whereas, Declarant is the fee owner of real property located in Olmsted County, Minnesota, described and platted as Boulder Creek, hereinafter "Boulder Creek"; and

Whereas, Declarant desires to provide for the establishment, use, operation, maintenance, repair and replacement of a community wastewater treatment system served by a common collection system for the use and benefit of the owner of the Lots in Boulder Creek, hereinafter the "Owners", and;

Whereas, Declarant intends that the Boulder Creek Association of Rochester Township, Inc., a Minnesota nonprofit corporation (the "Association") shall be the owner of the community wastewater treatment system and common sewermain collection system;

NOW, THEREFORE, Declarant hereby imposes upon and subjects all Lots to be served with a Community Wastewater Treatment System with a common collection system pursuant to the following terms, conditions, covenants, easements and restrictions:

1. Construction of Wastewater Treatment System. Declarant shall, at Declarant's sole cost and expense, initially construct the community wastewater treatment system with a common collection system, drainfield and associated sewer mains and treatment units, sufficient to provide wastewater treatment (collectively the "System") for each house, in accordance with the plan and specifications prepared by McGhie and Betts, Inc. (the "Operation and Maintenance Plan"), as approved in the Boulder Creek Special District Zoning Regulation adopted by the Rochester Township Board, and in compliance with all applicable requirements of the Minnesota Pollution Control Agency.
2. Location of Drainfield. The System drainfield shall be constructed on Outlot A as identified on the Plat of Boulder Creek. This system shall serve Lots 1-11, Block 1 of Boulder Creek.
3. Location of Sewermain. The common collection system (the "Sewermain") shall be located in the utility easements, public roads or public road right of ways.
4. Reservation of Easements. Declarant reserves easements to include the right of ingress and egress for the purpose of locating, installing, operating, maintaining, repairing and replacing the System over and across utility easements, public roads and Outlot A as indicated on the plat of Boulder Creek.

5. Access to the System. Access to the System shall be from Boulder Creek Drive SW, and/or Boulder Creek Lane SW, as platted in Boulder Creek Subdivision via service roads within the designed ingress and egress easements identified in the foregoing paragraph 4 herein.
6. Obligations of Declarant: Septic Tank and Sewer Line Installation. Declarant shall install governmentally approved and accepted septic tanks on the Community Wastewater Treatment site; and associated pump and sewer line connection from the septic tanks to the Sewermain in accordance with the specifications prepared by McGhie & Betts, Inc., and approved by Rochester Township.
7. Obligations of Lot Owner. Each Owner shall maintain, repair or replace the sewer service lines from the System to each residential dwelling on the Lot. The sewer service lines shall be the property of the Owner. Each Owner shall install low-flow/low-water use plumbing fixtures in construction of the residence as well as low-water use washers, dishwashers and water heaters. Any Owner who deposits any material or substance in the System in violation of a homeowner's manual issued by the licensed and certified operation, maintenance and repair agency (the "Agency"), or in violation of any of the rules and regulations of Declarant, shall be responsible for any costs incurred by Declarant in repairing or correcting any resulting damage to the System caused by the deposit of such material or substance. If any part of the System must be replaced due to an Owner's violation of the Operation and Maintenance Plan, or Declarant's Homeowner's Manual, the Owner shall be responsible for such replacement cost.
8. Residential Use Only. The System shall be used solely for normal residential purposes.
9. Obligations of Association/Agency. Upon completion of the initial construction of the System, Declarant shall transfer ownership of the System to the Association. The Association shall contract with an Agency (the "Agency") licensed with the State of Minnesota to operate, maintain, repair and monitor the System. In addition to the operation, maintenance, repair, the Agency shall also be responsible for the monitoring of the System, including the septic tank, pump and service connection from the septic tank to the Sewermain on each Lot or housing unit, involving the periodic pumping of each septic tank, all in accordance with the Operation and Maintenance Plan. The Association and Agency shall have the right of ingress and egress on each Lot surrounding the septic tank and the service connection line to the Sewermain pipe for the operation, maintenance, repair and replacement of the System in Boulder Creek.
10. System Property of Association. The System shall remain the property of Association for the life of the development or upon connection to another central or municipal utility system. Should the Association elect to sell, transfer or

exchange the system, the Association shall follow the following procedures:

- a. The Association shall provide to the Rochester Township Board written notice of any sale, transfer or exchange of the System to another entity at least six (6) months prior to any change of ownership closing date;
 - b. The Association shall only sell, transfer or exchange the System to a qualified entity properly licensed with the State of Minnesota. Any sale, transfer or exchange shall be reviewed by the Rochester Township Board;
 - c. An Agreement shall be executed between the Association, the Agency and the Lot Owner reflecting the responsible party for the System. This Agreement shall be kept on file with the Association.
11. Rates and Charges. The Association shall assess each Lot connected to Outlot A, a share in the cost of repair, maintenance, operation and improvement (and replacement, if necessary) (collectively, hereinafter the "Costs") as follows:

	<u>LOTS</u>	<u>BLOCK</u>
<u>OUTLOT "A"</u>	1- 11	1

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

The Association shall establish the foregoing share as a monthly assessment for the Costs. The Association shall provide each Owner a monthly statement indicating the assessment amount from that Owner for System usage during the previous month. The amount indicated in the statement shall be due and payable within 30 days of the date of such statement. In the event that such payment is not made within such 30-day period, the Association shall have the right to add a five percent (5%) late charge for that month to the Owner's next monthly bill.

12. Limitation on Liability. The Agency 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 service occasioned by necessary maintenance, repair or replacement of the System.
13. Rules and Regulations. Each Owner shall comply with all reasonable rules and regulations adopted by Association and Agency from time to time concerning the use and operation of the System.

14. Termination. This Declaration may be terminated by Declarant or Association upon the occurrence of any of the following:
 - a. the System being taken over by or sold or assigned to a governmental authority or a public utility (regulated and controlled as to rates and services by a duly constituted public regulatory body or commission) for maintenance and operation, as part of a larger public wastewater distribution system; or
 - b. the provision of other adequate wastewater treatment service by a governmental authority or public utility (regulated and controlled as to rates and services by a duly constituted public regulatory body or commission) through means other than the System.
15. 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).
16. Binding Effect. The afore described rights, duties and obligations of the Declarant and Owner 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 Declarant and Owners and their respective successors and assigns.
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 Lot 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 court order under the foregoing Paragraph 17.