

*Date Rindlesbacher.  
2785 W. 9000 S.  
West Jordan, UT 84088*

7-7-04

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
OF THE HUNTER'S RIDGE SUBDIVISION**

THIS DECLARATION is made this 15<sup>th</sup> day of July, 2004 by Bach Builders & Developers, L.L.C., 2785 West 9000 South, West Jordan, Utah 84088, hereinafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property (hereinafter referred to as the "Lot(s)") in Billings, Yellowstone County, State of Montana, more particularly described as follows:

Block 1 Lots 1-8, Block 2 Lot 14, Block 3 Lots 1-8, and Block 4 Lots 1-8 of the Hunter's Ridge Subdivision (hereafter "Subdivision") according to the official plat thereof filed with the Yellowstone County Clerk and Recorder in Billings, Montana. (A copy of the plat is attached hereto as Exhibit 1).

WHEREAS, the Lots of the Subdivision are located within the boundary of Summer Ridge Subdivision and are and shall remain subject to the Declaration of Covenants, Conditions & Restrictions of the Summer Ridge Subdivision filed with the Yellowstone County Clerk and Recorder as Document No. 3283454 and attached hereto as Exhibit 2.

WHEREAS, Declarant intends that the Lots, and each of them, together with the common easements as specified herein, shall hereafter be subject to these additional covenants, conditions, restrictions, reservations, assessments, charges and liens herein set forth.

WHEREAS, THEREFORE, Declarant hereby declares, for the purpose of protecting the value and desirability of the Lots, that all of the Lots shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the Lots, and be binding on all parties having any right, title and interest in the Lots or any part thereof, their heirs, successors and assigns (collectively "Owner"), and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
SUMMER RIDGE SUBDIVISION COVENANTS**

**SECTION 1.1. Summer Ridge Subdivision.**



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The official plat of Summer Ridge Subdivision was filed with the Yellowstone County Clerk and Recorder on April 15, 2004 as Document No. 3283451. Declarant subsequently subdivided Lot 3 of Summer Ridge Subdivision to create Hunter's Ridge Subdivision.

### **SECTION 1.2. Summer Ridge Subdivision Covenants and Restrictions.**

The Declaration of Covenants, Conditions & Restrictions of Summer Ridge Subdivision ("Summer Ridge Covenants") are on file with the Yellowstone County Clerk and Recorder as Document No. 3283454. The Summer Ridge Covenants contain land use restrictions, building requirements, and other rules that run with the land and are binding upon Declarant and any person who acquires any right, title or interest in any part of the original Lot 3 as Declarant's heir, successor or assign. The Summer Ridge Covenants and any amendments thereto are therefore binding upon any person who acquires a right, title or interest in any Lot of Hunter's Ridge Subdivision. The Summer Ridge Covenants are also hereby incorporated into this Declaration and made a part hereof by this reference.

### **SECTION 1.3. Coordination of Summer Ridge Covenants and this Declaration.**

This Declaration supplements the Summer Ridge Covenants and should be construed to complement and not conflict with those covenants to the greatest extent reasonably possible. If any provision of the Summer Ridge Covenants cannot be harmonized with this Declaration, the provision of the Summer Ridge Covenants shall prevail. Thus, in the event that the Summer Ridge Covenants impose a land use restriction, building requirement or other rule that is stricter and more protective of the interests of Summer Ridge Subdivision property owners than a conflicting rule contained in this Declaration, the rule of the Summer Ridge Covenants shall prevail and shall be binding upon all Lots of Hunter's Ridge Subdivision. However, in the event that this Declaration imposes a land use restriction, building requirement or other rule that is stricter than a comparable rule contained in the Summer Ridge Covenants and would not adversely affect the interests of Summer Ridge Subdivision property owners, the rule contained in this Declaration shall prevail and shall be binding upon all Lots in Hunter's Ridge Subdivision.

## **ARTICLE II ARCHITECTURAL CONTROL**

### **SECTION 2.1. Architectural Control Committee.**

An Architectural Control Committee ("Committee") is hereby created and shall be composed of the architectural control staff of Bach Builders & Developers, L.L.C. or such other person or persons as may be hereafter designated by Declarant. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members of the committee shall have full authority to select a successor. Neither members of the committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this section. Nothing in this section shall prevent the Committee from retaining the services



of accountants, attorneys, architects or other professionals and compensating such persons for their services.

## **SECTION 2.2. Committee Review Required.**

The Committee's approval or disapproval as required in these covenants shall be in writing. Any property owner wishing to construct a building, fence, or other structure shall submit to the Committee for review before commencing construction a set of formal building plans, specifications, a site plan, and such other information as the Committee may reasonably require. Such documents shall include sufficient information to permit the Committee to determine whether the proposed improvements will comply with this Declaration. The Committee's approval or disapproval shall be determined based on a majority vote of the Committee. The Committee may grant variances from these restrictions provided that the owner obtains written consent to the variance from a majority of owners of all Lots located within 100 feet from the perimeter of the Lot that is requesting the variance. In the event the Committee or its designated representative fails to issue its approval or disapproval in writing within 30 days after a complete set of plans and specifications have been submitted to it, further review or approval shall not be required and this section shall be deemed to be fully satisfied.

## **SECTION 2.3. Non-liability and Waiver.**

The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping, as well as any violation of any governmental ordinance, are the sole responsibility of the owner and the owner's architect, contractor, or agents. The Committee does not represent, warranty, or guarantee in any way the accuracy, safety, legality, or sufficiency of any plans that it reviews or approves. Neither the Committee, Declarant, or their agents shall be liable to any owner or other person for any loss, damage, or injury arising out of or in any way connected with the adoption, implementation, or enforcement of this Declaration, and all owners of Lots hereby waive and release the Committee, Declarant, and their agents from any liability arising out of or in any way connected with adoption, implementation or enforcement of this Declaration and any amendment hereto.

# **ARTICLE III HUNTER'S RIDGE RESIDENTIAL COVENANTS**

## **SECTION 3.1. Construction Standards.**

No structure shall be erected, altered, or maintained except in conformity with applicable state and local laws, rules, zoning and land-use regulations, and this Declaration. Buildings shall not exceed two (2) stories in height above ground surface and in any event shall not exceed 30 feet from ground surface to the highest point of any building. Brick, rock, cultured stone, stucco, hardy plank, vinyl or aluminum siding, or other materials specifically approved by the Architectural Control Committee shall be used for the



finish system on the front building facade and the remaining non-roof exterior of all buildings. However, at least 25% of the surface area of the front facade of any dwelling shall consist of brick, rock, cultured stone or, if specifically approved by the Architectural Approval Committee, of other accent building material. All construction shall be comprised of new materials, except that used brick may be used with prior written approval of the Architectural Control Committee. All residences, buildings and structures erected on said property shall be of new construction, and no old buildings or parts of buildings shall be moved upon any lot. Newly constructed modular homes, manufactured homes, factory-built residences, or other buildings constructed off-site are prohibited in Hunter's Ridge Subdivision. No construction equipment or materials of any nature shall be moved onto a Lot more than thirty (30) days before the start of construction, and any structure started on any lot shall have its exterior completed within one year from commencement of construction.

### **SECTION 3.2. Residential Use Only. No Resubdivision.**

No lot shall be used except in conformity with applicable state and local laws, rules, zoning and land-use regulations, and this Declaration. No lot shall be used except for residential purposes. All lots shall be used only for single-family residential purposes except to the extent multi-family residential use is also permitted under applicable zoning and other government regulations. No lot shall be used for professional, business or commercial use; provided, however, that nothing in this Declaration shall be construed to prohibit Declarant from marketing lots in the Subdivision or to prohibit any owner from (a) keeping personal, business or professional records or accounts on site; (b) handling personal, business, or professional telephone calls or correspondence on site; or (c) maintaining a personal, business or professional office that does not generate vehicle traffic from customers, clients, employees, vendors, or delivery personnel except on a rare and irregular basis. Construction or operation of any bar, casino, gambling facility, adult bookstore, or sexually oriented type of business is strictly prohibited. Lot sizes, as described on the recorded plat of the Subdivision, shall be considered minimum lot sizes, and no person shall further subdivide any lot of the Subdivision.

### **SECTION 3.3. Building Size.**

Any dwelling built on a Lot shall conform to the following size requirements:

Single-level rancher:	950 square feet minimum ground level fully finished
Two-level (w/ basement):	950 square feet minimum ground level fully finished
Two story above grade:	1000 total square feet minimum fully finished above grade, with a minimum of 500 square feet on the ground level

Each dwelling shall have an attached garage for a minimum of two (2) vehicles. All of the above dwelling-size requirements are exclusive of garages and open porches, decks and patios. No detached storage buildings shall exceed six hundred (600) square feet, and all



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such structures must be of the same construction and finish as the principal structure erected on the Lot.

#### **SECTION 3.4. Fencing.**

Plans for fences shall be submitted to the Architectural Control Committee. There shall be no fencing permitted in the front yard or front side yards of any Lot unless approved by the Architectural Control Committee. Front fencing may be allowed for decorative and landscaping purposes in the discretion of the Architectural Control Committee if it is no more than three (3) feet in height. Under no circumstances may any fence exceed six (6) feet in height. Fencing material shall consist of wood, vinyl, brick, decorative cinder block or other materials specifically approved by the Architectural Control Committee on an individual basis.

#### **Section 3.5. Local Ordinances.**

Improvements on each Lot, amenities, sheds, pools, and all other structures shall be constructed and maintained, and all activities on each Lot shall be undertaken, in conformity with all laws and ordinances of the City of Billings, Yellowstone County, and the State of Montana which may apply, including without limiting the generality of the foregoing, all zoning and land use ordinances.

#### **SECTION 3.6 Easements.**

Easements for installation and maintenance of utilities, drainage facilities, and other services are reserved as shown on the recorded plat. No structure, planting or other material shall be placed or permitted to remain within these easements which may damage or interfere with the installation, maintenance, or replacement of utilities; change the direction of flow of any drainage channel or obstruct or retard the flow of water through any drainage easement; or otherwise interfere with the use or function of any such easement. A temporary easement for access in making repairs upon adjoining lots and structures is hereby granted for the benefit of each Lot. This easement is limited as follows: (a) any damages caused by such entry shall be repaired at the expense of the owner whose property was the beneficiary of the repair work, and (b) any such entry shall be made only at reasonable times and with as little inconvenience as possible to the owner of the entered Lot.

#### **SECTION 3.7. Nuisances.**

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may reasonably become an annoyance or nuisance to the neighborhood. No rubbish, debris, organic or inorganic waste of any kind shall be placed or permitted to accumulate upon any Lot, and no odors shall be permitted to arise on or emanate from any Lot that would render any Lot unsanitary or unsightly or which would be offensive or detrimental to any other Lot or to the occupants thereof. No metals, bulk materials, scrap, refuse, trash or non-operable vehicles shall be kept, stored or



allowed to accumulate on any Lot except within an enclosed structure or when appropriately screened from view. No clothes line poles, wires or devices for hanging clothes shall be erected on any Lot. No easily visible television or radio antenna shall be allowed in any front or side yards or on any roof. Small satellite dishes less than three (3) feet in diameter may be mounted on the roof or placed in the side or back yard of the property if they are inconspicuous and not easily seen from the street or another Lot. No ham or other free-standing radio antenna are allowed. All solar collectors shall be designed as an integral part of, and incorporated into, a structure and shall not substantially protrude from the structure.

### **SECTION 3.8 Temporary and Non-Residential Structures.**

No structures of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

### **SECTION 3.9. Garbage and Refuse Disposal.**

No Lot or portion of any Lot shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage or other organic or inorganic waste. Any rubbish, rubble, trash, garbage, or organic and inorganic waste produced on any Lot shall not be kept except in sanitary containers.

### **SECTION 3.10. Landscaping.**

New landscaping installed on each Lot shall conform to the Hunter's Ridge Subdivision Landscape Design Guidelines ("Landscape Guidelines") in effect at the time the landscaping is installed. A copy of the Landscape Guidelines may be obtained from Declarant. Unless stricter requirements are set out in the Landscape Guidelines, all front and side yards must be fully sprinkled using an automatic underground sprinkler system and shall be landscaped with grass and at least one (1) tree and five (5) shrubs. At a minimum the rear yard must be landscaped with grass. These landscaping features shall be installed within one (1) year of occupation of the dwelling. The park strip of each lot located between the sidewalk and the street shall be planted in grass and shall include canopy trees of the same type. The trees shall be planted 25' - 30' apart in the park strip and shall be either a Linden or Seedless Green Ash (Patmore type). Each tree planted in the park strip shall be at least one and one-half inch (1 ½") caliper in size and shall be purchased, planted and cared for by the owner. The location of each tree planted in the park strip shall be approved by the Architectural Control Committee. All landscaping shall be maintained in good condition by the owner at all times. In the event that any landscaping dies or is damaged it shall be restored so that it meets or exceeds the minimum landscape requirements described above.

### **SECTION 3.11. RVs, Boats and other Vehicles.**



Boats, watercraft, recreational or utility trailers, ATVs, motorcycles, RVs, campers, or similar items or vehicles (hereafter "Recreational Vehicles") shall be parked only within the Lot of the person who owns the Recreational Vehicle and not on any street in the Subdivision. When parked within a Lot, such Recreational Vehicles shall be kept in an enclosed structure or screened from view from the street and other Lots. Nothing in this Declaration shall prevent a Recreational Vehicle from being parked or situated on a Lot in plain view on a temporary basis. If the Recreational Vehicle is parked or situated on a Lot not enclosed in a structure or screened from view for more than fourteen (14) days in any calendar year, whether continuously or cumulatively, such use shall not be considered temporary.

### **SECTION 3.12. Animals.**

No animals other than small domestic pets (dogs, cats, rabbits, birds, hamster, fish, etc.) shall be kept or allowed on any Lot. Dog kennels, runs, and pet houses shall be restricted to the rear yards of all houses. Such animals as are permitted shall be strictly controlled and kept in accordance with all applicable laws. Whenever a permitted animal is allowed to leave a Lot it shall be either on a leash or in a cage. No animal may be kept, bred, or maintained on any Lot for any commercial purpose. For the purpose of this Declaration, "domestic pets" shall not include domesticated pigs.

### **SECTION 3.13. Weed Control.**

After a Lot is initially sold, each Lot owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Lot so as to minimize fire and other hazards to surrounding Lots, dwellings, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, and regulations pertaining to the removal and/or control of noxious weeds.

### **SECTION 3.14. Setbacks.**

All residential buildings, including attached garages, shall be set back from the property lines as follows: at least twenty (20) feet from the front property line; five (5) feet from the side property line; ten (10) feet from any side property line that is adjacent to a street; and at least twenty (20) feet from the rear property line. In addition, all property owners shall comply with any zoning ordinance or other regulation that requires setbacks greater than those required in this section.

### **SECTION 3.15. Signs.**

No signs, billboards, posters or advertising devices of any kind or character shall be erected or displayed upon any Lot, excepting subdivision promotion signs, seasonal political signs, occasional garage sale signs, signs displayed to identify occupants of the dwelling, real estate for-sale signs, and contractor's signs. Contractor's signs shall be displayed only during construction.



## **ARTICLE IV GENERAL PROVISIONS**

### **SECTION 4.1. Enforcement.**

Any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. This right includes the right to prevent or stop any violation of this Declaration by injunction or other lawful means. Failure by any owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any action of any kind for the enforcement of these restrictions, the prevailing party shall be entitled to collect its reasonable attorney fees and other necessary costs incurred in bringing or defending the action.

### **SECTION 4.2. Severability.**

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

### **SECTION 4.3. Binding Nature and Term of Declaration.**

The covenants and restrictions of this Declaration shall run with the land and shall bind the present owners, their heirs, devisees, trustees, successors, assigns, and all parties claiming by or through the foregoing. This Declaration shall be binding for a term of forty (40) years from the date this Declaration is recorded, after which the Declaration shall be deemed to be automatically extended for successive periods of ten (10) years unless amended. If this Declaration is amended, the amended Declaration shall continue in effect for forty (40) years from the date of the amendment, followed by automatic extensions in accordance with the previous sentence.

### **SECTION 4.4. Amendment.**

This Declaration may be amended or terminated by an affirmative vote of at least eighty percent (80%) of the owners of all Lots, which vote shall be taken at a duly called and noticed meeting to be held in Yellowstone County, Montana. Each Lot shall be entitled to one vote. Lot owners may vote by written proxy signed by all persons holding a legal interest in the Lot. Written notice of any meeting at which a vote is taken to amend or terminate this Declaration shall be sent to each owner or, if a Lot is owned by more than one person to at least one co-owner of each such Lot, at least ten (10) calendar days before the meeting. The notice shall identify the date, time and location of the meeting and describe its purpose and the general terms of the amendment or action being proposed. Any Lot owner may notice a meeting of other Lot owners. Any amendment approved shall be reduced to writing, signed by the requisite majority of Lot owners, and recorded with the Yellowstone County Clerk and Recorder.





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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 15<sup>th</sup> day of July, 2004.

DECLARANT:

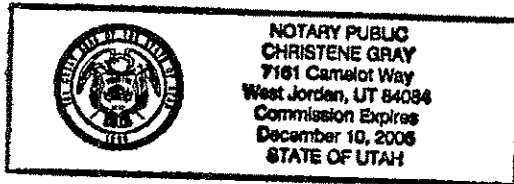
BACH BUILDERS & DEVELOPERS, L.L.C.

*Dale L. Rindlisbacher M.M.*

By: Dale L. Rindlisbacher, Managing Member

STATE OF UTAH )  
 ) :ss.  
County of Salt Lake )

This instrument was acknowledged before me on the 15<sup>th</sup> day of July, 2004, by Dale Rindlisbacher as M.M. of Bach Realty, L.L.C.

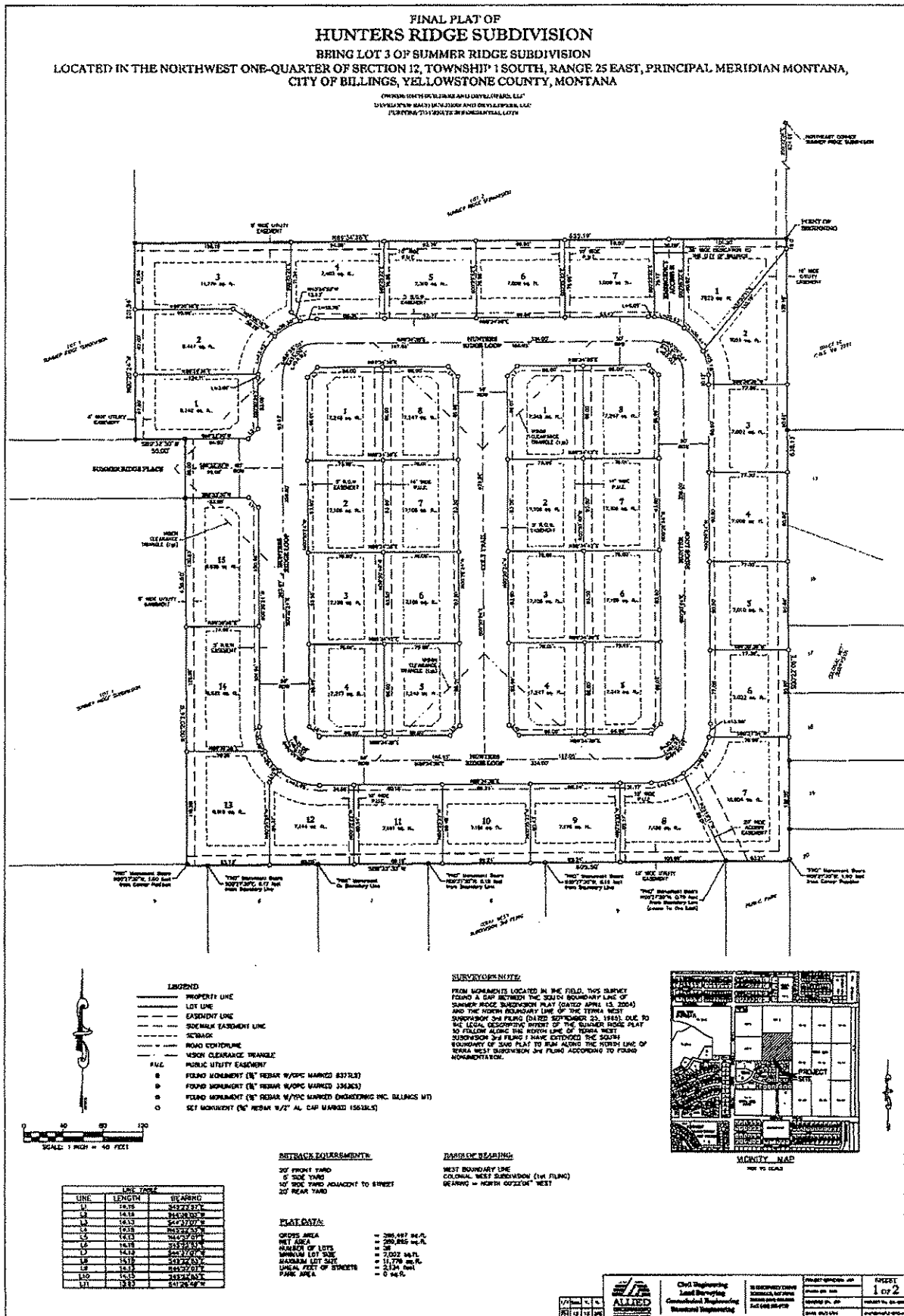


*Christene Gray*  
(signature)  
Christene Gray  
(typed/printed name)  
Notary Public for the State of Utah  
Residing at 7161 Camelot Way, Utah  
My Commission Expires: 12/10/06, 2006

# Exhibit 1

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## Exhibit 2

Return to:  
Jennifer D. Bernechea  
Talon Group  
150 East Second Hall Ave.  
Suite 520  
Smith Lake City, UT 84111



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### DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS OF THE SUMMER RIDGE SUBDIVISION

THIS DECLARATION is made this 9<sup>th</sup> day of April, 2004 by Bach Builders & Developers L.L.C. ("Bach"), hereinafter referred to as "Declarant".

#### WITNESSETH:

WHEREAS, Declarant is the owner of certain property (hereinafter referred to as the "Lot(s)") in Billings, Yellowstone County, State of Montana, more particularly described as follows:

All of Lots 1-4 of Summer Ridge Subdivision according to the official plat thereof filed with the Yellowstone County Clerk and Recorder in Billings, Montana, recorded under Document # 3283451.

WHEREAS, Declarant intends that the Lots, and each of them, together with the Common Easements as specified herein, shall hereafter be subject to the covenants, conditions, restrictions, and reservations herein set forth.

WHEREAS, immediately subsequent to the recording of this Declaration the Declarant intends to transfer Lot 1 to The Faith Evangelical Church of North America ("Faith Evangelical") and Lot 4 to Billings Retirement, L.L.C. ("Billings Retirement").

WHEREAS, THEREFORE, Declarant, with the cooperation and agreement of Faith Evangelical and Billings Retirement, hereby declares, for the purpose of protecting the value and desirability of the Lots, that all of the Lots and any part of said Lots shall be held, sold, subdivided and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the Lots and be binding on all parties having any right, title and interest in the Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I ARCHITECTURAL CONTROL

**SECTION 1.** The Architectural Control Committee shall be composed of one representative of each of Lots 1, 2, and 4. In the event that Lot 3 is subsequently sold by Bach in its entirety to a person or entity not affiliated with Bach, a representative of the new owner of Lot 3 shall be added to the committee. In the event that Lot 3 is subsequently subdivided by Bach, a representative of the former Lot 3 shall be added to the committee at such time as a majority of the former Lot 3, measured either by the number of lots in the new subdivision or the total surface area of the new subdivision (whichever is more favorable to additional representation), shall come to be owned by persons or entities not

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affiliated with Bach. A majority of the committee may designate a representative to act for it. Neither members of the committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant.

**SECTION 2.** The Committee's approval or disapproval as required in these covenants shall be in writing. Any property owner wishing to construct a building, fence, or other structure on its lot shall first obtain the approval of the Committee and shall submit a set of formal plans, specifications, and site plan to the Committee before the review process can commence. In the event the Committee or its designated representative fails to approve or disapprove in writing within 30 days after plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

## **ARTICLE II AREA COVENANTS**

### **SECTION 1. Construction Quality.**

Buildings may not exceed four stories in height. At least 20% of the exterior walls of any structure with a surface footprint in excess of 2,000 square feet shall consist of brick, rock, cultured stone or, if specifically approved by the Architectural Approval Committee, of other accent building material. The requirement in the previous sentence shall not apply to single-family homes or duplexes. Vinyl or aluminum siding, hardy wood plank or stucco, or other materials specifically approved by the Architectural Control Committee shall be used to cover the remaining non-roof exterior of the buildings. All construction shall be comprised of new materials, except that used brick may be used with prior written approval of the Architectural Control Committee. All buildings and structures erected on each of the above-described Lots shall incorporate the same exterior design elements and shall have a consistent design and color scheme. All buildings and structures shall be of new construction, and no old buildings shall be moved upon any lot. Newly constructed modular or factory built residences or other buildings are prohibited in the Summer Ridge Subdivision.

### **SECTION 2. Fencing.**

Except as otherwise permitted in this paragraph, there shall be no fencing permitted in the front yard or the front portion of any side yard of any Lot, unless approved by the Architectural Control Committee. For purposes of the preceding sentence, "front yard" is defined as the portion of any lot that adjoins Central Avenue, South 32<sup>nd</sup> Street West, the interior street the forms the boundary between Lot 1 and Lot 4, or any other public street located in or adjacent to Summer Ridge Subdivision. Front fencing may be allowed for decorative and landscaping purposes but must be approved by the Architectural Control Committee. Except as provided below, fencing material shall consist of wood, vinyl, brick, decorative cinder block or other material is specifically approved by the Architectural

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Control Committee. Notwithstanding the forgoing requirements and restrictions, nothing in this paragraph or Declaration shall prevent Faith Evangelical from constructing a fence, including a fence made of chain link fencing material, to fully or partially enclose a baseball field, soccer field, or other play area on Lot 1 so long as such fence is constructed of new materials and maintained to a standard that is reasonable in comparison to nearby development.

### **SECTION 3. Lighting.**

Lighting for each project on each lot will be non-obtrusive to neighboring lots and shall be directed downward using shielded "cut-off" fixtures rather than exposed-bulb fixtures

### **SECTION 4. Signage.**

Pole signs shall not be installed on any Lot. Monument signs and signage attached to buildings shall be allowed.

### **SECTION 5. City Ordinances.**

All improvements on each Lot, amenities, sheds, pools, courtyards, ball fields and other structures, shall be constructed and maintained to a professional standard, and all activities on each Lot shall be undertaken in conformity with all laws and ordinances of the City of Billings and the State of Montana which may apply, including, without limiting the generality of the foregoing, all zoning and land use ordinances.

### **SECTION 6. Permitted Uses.**

All uses permitted under city zoning rules, ordinances, and state law are acceptable uses for the subdivision, except for the following which are strictly prohibited:

- Construction or operation of any bar, casino, gambling facility, adult bookstore, or sexually oriented type of businesses is prohibited.
- Except as provided below no building on Lot 1 may be used for multi-family residential rental housing, including retirement, low-income, or any multiplex larger than a duplex.  
Nothing in these Declarations shall prohibit Faith Evangelical or its successors from using Lot 1 for a church, church-related housing (including parsonage or employee/missionary housing), school, commercial development, professional offices, single family housing, owner-occupied housing (including patio homes, condominiums and other attached structures) or residential duplexes for rent to the extent such duplexes are permitted by applicable zoning regulations. If for any reason Faith Evangelical or its successor applies to change the zoning of all or any part of Lot 1 from R9600 to R7000, the other lot owners agree not to oppose such an application or zone

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change. Lot 1 may be used for retirement or elderly rental housing for persons over the age of 55 if Lot 4 ceases to be used for that purpose or if the owner of Lot 4 grants permission for such a use.

- No building on Lot 4 may be used for multi-family residential housing other than for retirement and elderly rental housing for persons over the age of 55. Lot 4 may be used for multi-family residential housing if Lot 2 ceases to be used for that purpose or if the owner of Lot 2 grants permission for such a use.

#### **SECTION 7. Easements.**

Easements for all installations and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements

#### **SECTION 8. Nuisances.**

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is an annoyance or nuisance to the neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot, and no odors shall be permitted to arise therefrom so as to render any part of the property unsanitary or unsightly or which would be offensive or detrimental to any other Lot or to the occupants thereof. No metals, bulk materials, scrap, refuse, trash or non-operable vehicles shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure, when appropriately screened from view, or on temporary basis during construction activities. No construction equipment or materials of any nature shall be moved onto a Lot more than thirty (30) days before the start of construction, and any structure started on any Lot shall have its exterior completed within eighteen months from commencement of construction. No clothes line poles, wires or devices for hanging clothes shall be erected on any lot. No detached storage buildings shall exceed two thousand (2000) square feet, and all such structures must be of the same construction and finish as the principal structure erected on the lot. No easily visible television or radio antenna shall be allowed in any front or side yards or on any roof. Small satellite dishes may be mounted on the roof or placed in the side or back yard of the property or in any other inconspicuous location. Any such satellite dish should be strategically placed so as to limit the visibility of the dish to the public. No ham or other radio antenna will be allowed. All solar collectors shall be designed as part of and incorporated into a structure and shall not be later added onto such structure.



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## **SECTION 9. Temporary Structures.**

No structures of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

## **SECTION 10. Garbage and Refuse Disposal.**

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All garbage containers shall be enclosed on at least three sides with a site-obscuring wall. Any such wall that is not part of another structure shall be made of brick, cinder block, or other material (other than chain link or wood) if specifically approved by the Architectural Control Committee.

## **SECTION 11. Landscaping.**

Unless paved or otherwise developed, the immediate area around any structure must be fully professionally sprinkled and landscaped with grass, trees or shrubs within 12 months of occupancy. All park strips located between sidewalks and public streets in the subdivision must be planted in grass and uniform trees. The trees shall be planted 35' to 40' apart or closer if required by city ordinance and shall be a variety permitted under city ordinances, currently believed to include Honeylocust, Seedless Green Ash, Seedless Black Ash, Little Leaf Linden, American Linden, Norway Maple, Hackberry, or Bur Oak. The trees shall be of 1 ½ inch caliber in size or larger. Trees shall be purchased, planted and cared for by the owner, and their placement shall be approved by the Architectural Control Committee prior to planting. Owners shall replace any tree that becomes diseased or dies. Each owner shall maintain any undeveloped portion of its Lot by regularly mowing native vegetation and, if necessary, controlling dust.

## **SECTION 12. Recreational Vehicles.**

Recreational vehicles are allowed to be stored on the property if they are stored in an enclosed or screened facility that keeps the recreational vehicles out of sight from the public and/or any street.

## **SECTION 13. Animals.**

No animals other than small household pets (dogs, cats, birds, hamster, fish, etc.) shall be kept or allowed on any Lot. Dog kennels, runs, and houses shall be restricted to the rear yards of all houses or other structures. Whenever a permitted animal is allowed to leave a Lot it shall be either on a leash or in a cage.



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#### **SECTION 14. Weed Control.**

Each Lot owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Lot so as to minimize fire and other hazards to surrounding Lots, living units, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, and regulations pertaining to the removal and/or control of noxious weeds.

#### **SECTION 15. Setbacks.**

All residences or other structures, including attached garages, shall be set back from the property lines as follows: at least twenty (20) feet from the front property line; at least five (5) feet from the side property line;; and at least five (5) feet from the rear property line. In addition, all property owners shall comply with any local zoning requirement or other ordinance requiring setbacks greater than those required in this paragraph.

### **ARTICLE III GENERAL PROVISIONS**

#### **SECTION 1. Enforcement.**

Any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, or reservations now or hereafter imposed by the provisions of this Declaration. Failure by any owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### **SECTION 2. Severability.**

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

#### **SECTION 3. Amendment.**

The covenants and restrictions contained in this Declaration shall run with the land and shall be binding upon the successors and assigns of the undersigned parties. Except as hereafter provided, this Declaration may be amended or terminated by a unanimous vote of the owners of Lots 1, 2, 3 and 4 with each Lot having a single vote. Any such vote shall be taken at a duly noticed and called meeting. Any amendment approved shall be reduced to writing, signed, and recorded so as to be binding upon the Lots. In the event that any Lot is subsequently subdivided, the owners of the newly created lots shall designate a representative to exercise the vote previously granted to the Lot that was





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subdivided. In the event that Lot 3 is subdivided, a vote of 75% of Lots 1-4 (3 of 4) shall be sufficient to amend or terminate this Declaration at such time as Bach or persons or entities affiliated with Bach fail to own or otherwise control a majority of the lots that may in the future come to be located within the current boundary of Lot 3.

#### **SECTION 4. Facsimiles and Counterparts.**

This Declaration may be signed in counterparts, including notarized facsimile counterparts without the necessity of original signatures. Identical agreements with individual signatures, including facsimile signatures, on separate signature pages shall be binding and enforceable.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant identified above,  
has hereunto set its hand this 9<sup>th</sup> day of April, 2004.

**DECLARANT:**

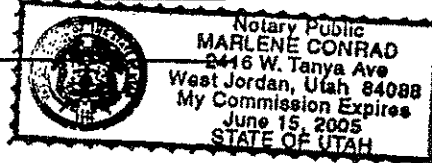
**Bach Builders & Developers, L.L.C.**

By: Dale L. Rindlisbacher  
Dale L. Rindlisbacher, Managing Member

State of Utah )  
 ) ss  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April, 2004 by Dale L. Rindlisbacher representing Bach Builders + Developers LLC in capacity of Managing Member.

Marlene Lomax  
Notary





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## SUBDIVISION IMPROVEMENTS AGREEMENT HUNTER'S RIDGE SUBDIVISION

THIS AGREEMENT is made and entered into this 9<sup>th</sup> day of August, 2004, by and between **Bach Builders & Developers, LLC**, whose address for the purpose of this Agreement is 2785 West 9000 South West Jordan, Utah 84088, hereinafter referred to as "Subdivider," and **THE CITY OF BILLINGS**, hereinafter referred to as "City."

### WITNESSETH:

**WHEREAS**, the Yellowstone County Board of Planning recommended approval, subject to certain recommendations, of an area known as Hunter's Ridge Subdivision, (the "Subdivision"), located in the City of Billings, Yellowstone County, Montana, and recommended its approval to the City Council of the City of Billings; and

**WHEREAS**, at a regular meeting held on the 10th day of May, 2004, the City Council approved, subject to certain conditions, a preliminary plat of the Subdivision; and

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

**NOW, THEREFORE**, the parties of this Agreement, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

1. The subdivider has requested, and the City hereby grants the following variance by the City Council from strict interpretation of the City's Subdivision Regulations:
  - A. A variance from BMCC reducing the width of the right of way from the required 60-feet to 50-feet for the streets within the subdivision.
2. Subdivider hereby agrees to construct the following improvements as required and in conformance with the City of Billings Subdivision Regulations:

A. ***STREETS***

1) ***Street Improvements***

Subdivider will execute a private contract to construct public streets and curb and gutter within and adjacent to the Subdivision. The improvements will consist of 37-foot from back of curb to back of curb residential streets on Hunters Ridge Loop, Colt Trail and Sweetwater Drive.



All site improvements within or associated with the Subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, the Uniform Building Code, and the *Storm water Management Manual*.

- 2) *Traffic Control Devices.* Subdivider will furnish the necessary traffic "control devices within or adjacent to the Subdivision in conformance with City of Billings standards and shall include a "Road Closed" sign at the west end of Hunter's Drive until the streets are completed and accepted by the City of Billings.
- 3) *Street lights.* Construction or installation of street lights within the Subdivision shall not be required at this time, but street lights shall be included in the Waiver for construction of the same in the future. Said Waiver shall also include a maintenance district for street light energy and the maintenance of street lights. Conduits and pull boxes will be installed, if required, at intersections.
- 4) *Sidewalks.* Sidewalks shall be 5 foot wide curb style within the subdivision and installed at the time that housing units are constructed on the lot and shall be included in each building permit. This requirement for sidewalks shall be included in buy/sell agreements, and the construction of the same is also included in the Waiver. Sidewalks on Hunter's Drive shall be 5 foot wide boulevard curb style sidewalks and installed on both sides of the roadway when the street is constructed. Sidewalks within the proposed subdivision shall be curb walks. Transition shall be constructed between the boulevard style walk and curb style walk adjacent to Lot 1 in Block 1 and Lot 14 in Block 2. Corner intersection handicap ramps and aprons as necessary will also be constructed at the time of the street construction.

There shall be a paved pedestrian walkway constructed directly adjacent to the emergency access road on Lot 8, Block 1.

There shall be a paved pedestrian walkway constructed in the 20 foot wide access easement shown on the westerly boundary of Lot 6, Block 2 connecting this subdivision with the public park south of the property. A cross-sectional design of these pedestrian walkways shall be submitted to and approved by the City Engineer's Office prior to actual construction.

- 5) *Street Name Signs.* Street name signs for streets within the Subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City Engineer.
- 6) *Stop Signs.* Stop signs shall be installed on the tee leg at all intersections of the subdivision and for traffic entering onto South 32<sup>nd</sup> Street West.
- 7) An emergency access road shall be installed along the western property line



of Lot 8, Block 1 and shall match the emergency access road constructed on Lot 2, Summer Ridge Subdivision to the north. The emergency access road shall be constructed to meet City and State requirements. The road shall be designed to a minimum unobstructed width of not less than 20 feet and shall be constructed to adequately support a 30-ton vehicle with a surface so as to provide all weather driving capabilities. Gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read "EMERGENCY ACCESS ONLY" using red letters not less than two (2) inches wide and six (6) inches high on a white reflective background. A cross sectional design of the road including sections, surfacing, drainage and design gates and barriers shall be submitted to and approved by the Fire Department and the City Engineer's Office prior to actual construction. The storm drainage design shall account for a 10-year storm event with no encroachment of the travel way.

B. UTILITIES

- 1) *Water Main and Sanitary Sewer*
- 2) *Approval of Extensions.* The Subdivision Improvements Agreement does not constitute an approval of extension or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water and sanitary sewer to the Public Utilities Department. The extension/connection to water and sanitary sewer is subject to the approval of the applications and the conditions of approval. Applications will need to be submitted for processing prior to review of project plans and specifications and the start of any construction. The appropriate water and wastewater interior and local mains construction fees and franchise fee in effect shall be submitted with the applications.
- 3) *Standards.* The water and sewer mains and appurtenances shall be sized and installed as approved by the Public Utilities Director and shall be installed in conformance with City design standards and specifications and the rules and regulations of the City of Billings and the Montana State Department of Environmental Quality.
- 4) *Trunk and Lateral Sanitary Sewer Construction Fees/Transmission and Water Main Construction Fees.* It is acknowledged that the property is not subject to the transmission water main fees. The property is subject to the trunk sanitary sewer construction fee in effect at the time service extension is requested. Water mains and lateral sanitary sewers shall be installed by Subdivider under private contract.
- 5) *System Development Fees.* The Subdivider acknowledges that the Subdivision shall be subject to applicable system development and franchise fees in effect at the time new water and/or sewer service



connections are made.

- 6) *Franchise Fees.* All fees and billings are subject to the franchise fee in effect at the time of payment.
- 7) *Other Facilities.* All telephone, gas, electrical power, and cable television lines within the public right-of-way shall be installed prior to surface improvements. The location of all such facilities within the public right-of-way shall be subject to approval of the City Engineer.

C. *STORM DRAIN SYSTEM*

- 1) Storm drainage and surface flow shall be provided by a combination of surface drainage, curbs, and gutters, valley gutters within the subdivision. The Storm Water Design Report shall be submitted to and approved by the City Engineer's office prior to final plat approval. The design and construction of storm drainage improvements will be in compliance with the City of Billings *Stormwater Management Manual*.
- 2) The Subdivider acknowledges that the entire Subdivision may be required to participate in the costs of future area-wide storm drainage improvements and may include oversizing to accommodate off-site stormwater flows through and/or around portions of the Subdivision, which requirement is hereby acknowledged and specifically included in the Waiver attached hereto and recorded with the final plat.

D. *SURVEY MONUMENTS*

- 1) Survey monuments shall be installed in accordance with City code and the Montana Subdivision and Platting Act.

E. *PARKS*

- 1) The Subdivider shall provide a fee-in-lieu-of for the Subdivision as required by the City of Billings Code.

3. Subdivider agrees to provide for any necessary adjustment or alteration of existing improvements in order to install the improvements contemplated by this Agreement, without cost to the City.

4. *CONSTRUCTION*

- A. The improvements shall be installed in one phase. The project will not have multiple phases.
- B. Except as otherwise provided, Subdivider shall install and construct said improvements utilizing the mechanics of a private contract secured by letters of



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credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Engineer. No building permits shall be issued until a private contract has been executed and approved security guarantees are in place for construction and installation of the public improvements to serve all lots. Occupancy permits shall be issued only when the improvements are found to be substantially complete.

- C. Subdivider agrees to notify the City Engineer and Public Works Director of the date and hour construction is anticipated to begin on the required improvements and to keep the City Engineer and Public Works Director informed of the progress of construction. If the construction is stopped for any reason other than overnight, holidays, and weekends, the Subdivider agrees to notify the City Engineer and Public Works Director of the stoppage. Further, Subdivider agrees to notify the City Engineer and Public Works Director not less than four (4) hours before construction is scheduled to resume.
5. All engineering and legal work in connection with such improvements shall be paid by the Subdivider, and shall be installed as approved by the City Engineer and Public Utilities Director
6. All improvements required under this Agreement for the interior of and adjacent to the Subdivision shall be installed by private contract. Individual building permits will not be issued until a private contract has been executed and necessary funding guarantees have been provided for the construction and installation of the public improvements.
7. There is attached hereto a Waiver waiving the right to protest the creation of a special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owners specifically agree that they are waiving valuable rights. Upon such execution of, and submittal of security guarantees for the private contract which includes any improvements, then the Waiver may be modified to eliminate those items which were constructed under the private contract and which the Subdivider has, therefore, already participated in. In the event the Subdivider fails or refuses to commence construction under a private contract, the City shall be entitled to rely on the Waiver and create the district or districts necessary to install said improvements.
8. When the improvements are constructed through private contract, the Subdivider will be held responsible for the care and maintenance of all improvements until completion and final acceptance by the City.



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9. While the improvements are being constructed hereunder, the construction site shall be kept free and clear of all unsightly accumulation of rubbish and debris, and the public shall be protected by the use and maintenance of sufficient and proper barricades, lights, and related construction items as specified in the Manual of Uniform Traffic Control Devices during the course of construction.
10. Subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by the City of Billings by a requirement in the private contract that the contractor must guarantee improvements for a period of one (1) year after final acceptance by the City.
11. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.
12. The covenants, agreements, and all statements in this Agreement shall run with the land and shall be binding on the heirs, personal representatives, successor, and assigns of the respective parties.
13. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
14. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
15. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

Bach Builders & Developers, LLC

By: Dale L. Ruckelshaus

Its: MM

STATE OF UTAH )

:ss.

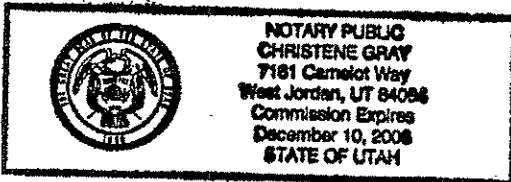
County of Salt Lake )

Hunter's Ridge Subdivision - Final



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On this 15<sup>th</sup> day of July, 2004, before me, a Notary Public for the State of Utah, personally appeared Walt Rindfleisch, known to me to be the M-M of **Bach Builders & Developers, LLC.**, the corporation that executed the written instrument and acknowledged to me that said corporation executed the same.



Christene Gray  
Notary Public for the State of Utah

Christene Gray  
Printed name:  
Residing at Salt Lake, Utah  
My commission expires: 12/10/06

**CITY OF BILLINGS, MONTANA**

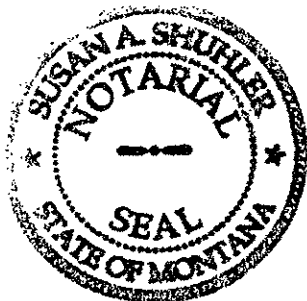
By: Charles F. Tordella  
Mayor:

By: Marita Herald  
City Clerk



STATE OF MONTANA )  
 ) ss.  
County of Yellowstone )

On this 9<sup>th</sup> day of August, 2004, before me, a Notary Public for the State of Montana, personally appeared Charles F. Tooley and Marita Herold, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the same on behalf of the City of Billings.



Susan A Shubler  
Notary Public for the State of Montana

Susan A. Shuhler  
Printed name:  
Residing at Billings, Montana  
My commission expires: 3/28/2005





## WAIVER

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

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

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

### Hunter's Ridge Subdivision

**Bach Builders & Developers, LLC**

By: Dale Rindlisbacher

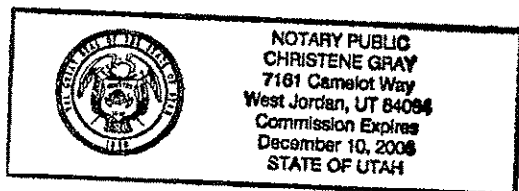
Its: M.M.

STATE OF UTAH )

:ss.

County of Salt Lake )

On this 14th day of June, 2004, before me, a Notary Public for the State of Utah, personally appeared Dale Rindlisbacher, known to me to be the Managing Member of **Bach Builders & Developers, LLC**, the corporation that executed the written instrument and acknowledged to me that said corporation executed the same.



Christene Gray  
Notary Public for the State of Utah

Christene Gray  
Printed name:  
Residing at Salt Lake, Utah  
My commission expires: 12/10/06



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PROJECT: Hunter's Ridge Subdivision, excluding Sweet Water Drive, and Sewer & Storm In HRL (North)  
LOCATION: Billings, MT

Construction Cost Estimate

DATE: 07/07/04

ITEM NO. DESCRIPTION	ESTIMATED QUAN.	UNIT	UNIT PRICE	TOTAL PRICE
<b><u>I. STREET IMPROVEMENTS</u></b>				
1. Earthwork				
a. Cut	3,452	C.Y.	\$5.00	\$ 17,260.00
b. Fill	861	C.Y.	\$5.00	\$ 3,305.00
c. Export	709	C.Y.	\$5.00	\$ 3,545.00
2. Aggregate Base				
a. 1 1/2" Base Gravel	4,130	C.Y.	\$14.00	\$ 57,820.00
3. Concrete Work				
a. PCC Roll Over Curb & Gutter	3,996	L.F.	\$9.00	\$ 35,964.00
4. AC Pavement				
a. Asphalt Concrete	1,225	TONS	\$30.00	\$ 36,750.00
5. Signage	18	EACH	\$300.00	\$ 5,400.00
6. Private Utilities				
a. Gas	1	L.S.	Lump Sum	\$ 16,000.00
b. Electricity	1	L.S.	Lump Sum	\$ 10,500.00
c. Telephone	1	L.S.	Lump Sum	\$ 5,000.00
d. Cable	1	L.S.	Lump Sum	\$ 3,800.00

SUBTOTAL STREET IMPROVEMENTS \$ 195,344.00 \$ 195,344.00

**II. STORM DRAINAGE**

1. Storm Sewer Pipe & Appurtenances				
a. 15" RCP	389	L.F.	\$34.00	\$ 13,226.00
b. 12" RCP	56	L.F.	\$29.00	\$ 1,624.00
2. Inlet Structures				
a. Combination Curb Inlets	4	EACH	\$1,350.00	\$ 5,400.00
3. Manholes				
a. 48" dia. Storm Drain Manhole	2	EACH	\$1,700.00	\$ 3,400.00

SUBTOTAL STORM DRAINAGE \$ 23,650.00 \$ 23,650.00

**III. SANITARY SEWER**

1. Sanitary Sewer Pipe				
a. 8" SDR 35 PVC Sanitary Sewer Main	1274	L.F.	\$20.00	\$ 25,480.00
2. Service Laterals				
a. 4" SDR 35 PVC Sanitary Sewer Service	780	L.F.	\$16.50	\$ 12,870.00
3. Manholes				
a. 48" Eccentric RCP Manhole (5' deep)	5	EACH	\$1,550.00	\$ 7,750.00
b. 48" Diameter Additional Vertical Feet	12	V.F.	\$100.00	\$ 1,200.00

SUBTOTAL SANITARY SEWER \$ 47,300.00 \$ 47,300.00

**IV. WATER SYSTEM**

1. Pipework, in Place				
a. 8" C-900 Pipe	2,048	L.F.	\$24.00	\$ 49,152.00
2. Service Lines and Connections				
a. 1.5" Copper with Tee and Curb Stop (2)	314	L.F.	\$18.50	\$ 5,809.00
b. 1" Copper with Curb Stop	367	L.F.	\$14.00	\$ 5,138.00
3. Fire Hydrant Assembly, Complete				
a. 9.5' bury (Including 6" Gate Valve and 6" Piping)	1	EACH	\$3,000.00	\$ 3,000.00
b. 8.5' bury (Including 6" Gate Valve and 6" Piping)	2	EACH	\$2,900.00	\$ 5,800.00
c. 7.5' bury (Including 6" Gate Valve and 6" Piping)	2	EACH	\$2,800.00	\$ 5,600.00
4. Valves Complete with Valve Box				
a. 8" Gate Valve	9	EACH	\$1,000.00	\$ 9,000.00
5. Fittings				
b. 8" x 8" x 12" Tee	1	EACH	\$400.00	\$ 400.00



Yellowstone County SIA 5.00

- d. 8" x 8" x 6" Tee
- e. 8" Tee
- f. 8" - 90° Bend
- g. 8" - 45° Bend

5	EACH	\$275.00	\$	1,375.00
2	EACH	\$275.00	\$	550.00
1	EACH	\$250.00	\$	250.00
6	EACH	\$250.00	\$	1,500.00

SUBTOTAL WATER SYSTEM \$ 87,574.00 \$ 87,574.00

Total Cost of Construction Improvements \$ 353,868.00

V. Soft Costs

- 1. Engineering (7%)
- 2. Private Contract Fee (2.5%)
- 3. Construction Management & Staking (7%)
- 4. Contingency Reserve (10%)
- 5. Geotechnical Services & Testing (1.5%)

\$	24,770.76
\$	8,846.70
\$	24,770.76
\$	35,386.80
\$	5,308.02

SUBTOTAL SOFT COSTS \$ 99,083.04 \$ 99,083.04

Total Estimated Construction Improvement Costs \$ 452,951.04

Return to:  
Jennifer D. Bernier  
Talon Group  
150 East Social Hall Ave.  
Suite 545  
Salt Lake City, UT 84111



Yellowstone County

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## DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS OF THE SUMMER RIDGE SUBDIVISION

THIS DECLARATION is made this 9<sup>th</sup> day of April, 2004 by Bach Builders & Developers L.L.C. ("Bach"), hereinafter referred to as "Declarant".

### WITNESSETH:

WHEREAS, Declarant is the owner of certain property (hereinafter referred to as the "Lot(s)") in Billings, Yellowstone County, State of Montana, more particularly described as follows:

All of Lots 1-4 of Summer Ridge Subdivision according to the official plat thereof filed with the Yellowstone County Clerk and Recorder in Billings, Montana, recorded under Document # 3283451.

WHEREAS, Declarant intends that the Lots, and each of them, together with the Common Easements as specified herein, shall hereafter be subject to the covenants, conditions, restrictions, and reservations herein set forth.

WHEREAS, immediately subsequent to the recording of this Declaration the Declarant intends to transfer Lot 1 to The Faith Evangelical Church of North America ("Faith Evangelical") and Lot 4 to Billings Retirement, L.L.C. ("Billings Retirement").

WHEREAS, THEREFORE, Declarant, with the cooperation and agreement of Faith Evangelical and Billings Retirement, hereby declares, for the purpose of protecting the value and desirability of the Lots, that all of the Lots and any part of said Lots shall be held, sold, subdivided and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the Lots and be binding on all parties having any right, title and interest in the Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

### ARTICLE I ARCHITECTURAL CONTROL

**SECTION 1.** The Architectural Control Committee shall be composed of one representative of each of Lots 1, 2, and 4. In the event that Lot 3 is subsequently sold by Bach in its entirety to a person or entity not affiliated with Bach, a representative of the new owner of Lot 3 shall be added to the committee. In the event that Lot 3 is subsequently subdivided by Bach, a representative of the former Lot 3 shall be added to the committee at such time as a majority of the former Lot 3, measured either by the number of lots in the new subdivision or the total surface area of the new subdivision (whichever is more favorable to additional representation), shall come to be owned by persons or entities not



affiliated with Bach. A majority of the committee may designate a representative to act for it. Neither members of the committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant.

**SECTION 2.** The Committee's approval or disapproval as required in these covenants shall be in writing. Any property owner wishing to construct a building, fence, or other structure on its lot shall first obtain the approval of the Committee and shall submit a set of formal plans, specifications, and site plan to the Committee before the review process can commence. In the event the Committee or its designated representative fails to approve or disapprove in writing within 30 days after plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

## **ARTICLE II AREA COVENANTS**

### **SECTION 1. Construction Quality.**

Buildings may not exceed four stories in height. At least 20% of the exterior walls of any structure with a surface footprint in excess of 2,000 square feet shall consist of brick, rock, cultured stone or, if specifically approved by the Architectural Approval Committee, of other accent building material. The requirement in the previous sentence shall not apply to single-family homes or duplexes. Vinyl or aluminum siding, hardy wood plank or stucco, or other materials specifically approved by the Architectural Control Committee shall be used to cover the remaining non-roof exterior of the buildings. All construction shall be comprised of new materials, except that used brick may be used with prior written approval of the Architectural Control Committee. All buildings and structures erected on each of the above-described Lots shall incorporate the same exterior design elements and shall have a consistent design and color scheme. All buildings and structures shall be of new construction, and no old buildings shall be moved upon any lot. Newly constructed modular or factory built residences or other buildings are prohibited in the Summer Ridge Subdivision.

### **SECTION 2. Fencing.**

Except as otherwise permitted in this paragraph, there shall be no fencing permitted in the front yard or the front portion of any side yard of any Lot, unless approved by the Architectural Control Committee. For purposes of the preceding sentence, "front yard" is defined as the portion of any lot that adjoins Central Avenue, South 32<sup>nd</sup> Street West, the interior street the forms the boundary between Lot 1 and Lot 4, or any other public street located in or adjacent to Summer Ridge Subdivision. Front fencing may be allowed for decorative and landscaping purposes but must be approved by the Architectural Control Committee. Except as provided below, fencing material shall consist of wood, vinyl, brick, decorative cinder block or other material is specifically approved by the Architectural



Control Committee. Notwithstanding the forgoing requirements and restrictions, nothing in this paragraph or Declaration shall prevent Faith Evangelical from constructing a fence, including a fence made of chain link fencing material, to fully or partially enclose a baseball field, soccer field, or other play area on Lot 1 so long as such fence is constructed of new materials and maintained to a standard that is reasonable in comparison to nearby development.

### **SECTION 3. Lighting.**

Lighting for each project on each lot will be non-obtrusive to neighboring lots and shall be directed downward using shielded "cut-off" fixtures rather than exposed-bulb fixtures

### **SECTION 4. Signage.**

Pole signs shall not be installed on any Lot. Monument signs and signage attached to buildings shall be allowed.

### **SECTION 5. City Ordinances.**

All improvements on each Lot, amenities, sheds, pools, courtyards, ball fields and other structures, shall be constructed and maintained to a professional standard, and all activities on each Lot shall be undertaken in conformity with all laws and ordinances of the City of Billings and the State of Montana which may apply, including, without limiting the generality of the foregoing, all zoning and land use ordinances.

### **SECTION 6. Permitted Uses.**

All uses permitted under city zoning rules, ordinances, and state law are acceptable uses for the subdivision, except for the following which are strictly prohibited:

- Construction or operation of any bar, casino, gambling facility, adult bookstore, or sexually oriented type of businesses is prohibited.
- Except as provided below no building on Lot 1 may be used for multi-family residential rental housing, including retirement, low-income, or any multiplex larger than a duplex.  
Nothing in these Declarations shall prohibit Faith Evangelical or its successors from using Lot 1 for a church, church-related housing (including parsonage or employee/missionary housing), school, commercial development, professional offices, single family housing, owner-occupied housing (including patio homes, condominiums and other attached structures) or residential duplexes for rent to the extent such duplexes are permitted by applicable zoning regulations. If for any reason Faith Evangelical or its successor applies to change the zoning of all or any part of Lot 1 from R9600 to R7000, the other lot owners agree not to oppose such an application or zone



change. Lot 1 may be used for retirement or elderly rental housing for persons over the age of 55 if Lot 4 ceases to be used for that purpose or if the owner of Lot 4 grants permission for such a use.

- No building on Lot 4 may be used for multi-family residential housing other than for retirement and elderly rental housing for persons over the age of 55. Lot 4 may be used for multi-family residential housing if Lot 2 ceases to be used for that purpose or if the owner of Lot 2 grants permission for such a use.

#### **SECTION 7. Easements.**

Easements for all installations and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements

#### **SECTION 8. Nuisances.**

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is an annoyance or nuisance to the neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot, and no odors shall be permitted to arise therefrom so as to render any part of the property unsanitary or unsightly or which would be offensive or detrimental to any other Lot or to the occupants thereof. No metals, bulk materials, scrap, refuse, trash or non-operable vehicles shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure, when appropriately screened from view, or on temporary basis during construction activities. No construction equipment or materials of any nature shall be moved onto a Lot more than thirty (30) days before the start of construction, and any structure started on any Lot shall have its exterior completed within eighteen months from commencement of construction. No clothes line poles, wires or devices for hanging clothes shall be erected on any lot. No detached storage buildings shall exceed two thousand (2000) square feet, and all such structures must be of the same construction and finish as the principal structure erected on the lot. No easily visible television or radio antenna shall be allowed in any front or side yards or on any roof. Small satellite dishes may be mounted on the roof or placed in the side or back yard of the property or in any other inconspicuous location. Any such satellite dish should be strategically placed so as to limit the visibility of the dish to the public. No ham or other radio antenna will be allowed. All solar collectors shall be designed as part of and incorporated into a structure and shall not be later added onto such structure.

**SECTION 9. Temporary Structures.**

No structures of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

**SECTION 10. Garbage and Refuse Disposal.**

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All garbage containers shall be enclosed on at least three sides with a site-obscuring wall. Any such wall that is not part of another structure shall be made of brick, cinder block, or other material (other than chain link or wood) if specifically approved by the Architectural Control Committee.

**SECTION 11. Landscaping.**

Unless paved or otherwise developed, the immediate area around any structure must be fully professionally sprinkled and landscaped with grass, trees or shrubs within 12 months of occupancy. All park strips located between sidewalks and public streets in the subdivision must be planted in grass and uniform trees. The trees shall be planted 35' to 40' apart or closer if required by city ordinance and shall be a variety permitted under city ordinances, currently believed to include Honeylocust, Seedless Green Ash, Seedless Black Ash, Little Leaf Linden, American Linden, Norway Maple, Hackberry, or Bur Oak. The trees shall be of 1 ½ inch caliber in size or larger. Trees shall be purchased, planted and cared for by the owner, and their placement shall be approved by the Architectural Control Committee prior to planting. Owners shall replace any tree that becomes diseased or dies. Each owner shall maintain any undeveloped portion of its Lot by regularly mowing native vegetation and, if necessary, controlling dust.

**SECTION 12. Recreational Vehicles.**

Recreational vehicles are allowed to be stored on the property if they are stored in an enclosed or screened facility that keeps the recreational vehicles out of sight from the public and/or any street.

**SECTION 13. Animals.**

No animals other than small household pets (dogs, cats, birds, hamster, fish, etc.) shall be kept or allowed on any Lot. Dog kennels, runs, and houses shall be restricted to the rear yards of all houses or other structures. Whenever a permitted animal is allowed to leave a Lot it shall be either on a leash or in a cage.





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#### **SECTION 14. Weed Control.**

Each Lot owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Lot so as to minimize fire and other hazards to surrounding Lots, living units, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, and regulations pertaining to the removal and/or control of noxious weeds.

#### **SECTION 15. Setbacks.**

All residences or other structures, including attached garages, shall be set back from the property lines as follows: at least twenty (20) feet from the front property line; at least five (5) feet from the side property line;; and at least five (5) feet from the rear property line. In addition, all property owners shall comply with any local zoning requirement or other ordinance requiring setbacks greater than those required in this paragraph.

### **ARTICLE III GENERAL PROVISIONS**

#### **SECTION 1. Enforcement.**

Any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, or reservations now or hereafter imposed by the provisions of this Declaration. Failure by any owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### **SECTION 2. Severability.**

Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

#### **SECTION 3. Amendment.**

The covenants and restrictions contained in this Declaration shall run with the land and shall be binding upon the successors and assigns of the undersigned parties. Except as hereafter provided, this Declaration may be amended or terminated by a unanimous vote of the owners of Lots 1, 2, 3 and 4 with each Lot having a single vote. Any such vote shall be taken at a duly noticed and called meeting. Any amendment approved shall be reduced to writing, signed, and recorded so as to be binding upon the Lots. In the event that any Lot is subsequently subdivided, the owners of the newly created lots shall designate a representative to exercise the vote previously granted to the Lot that was



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subdivided. In the event that Lot 3 is subdivided, a vote of 75% of Lots 1-4 (3 of 4) shall be sufficient to amend or terminate this Declaration at such time as Bach or persons or entities affiliated with Bach fail to own or otherwise control a majority of the lots that may in the future come to be located within the current boundary of Lot 3.

#### **SECTION 4. Facsimiles and Counterparts.**

This Declaration may be signed in counterparts, including notarized facsimile counterparts without the necessity of original signatures. Identical agreements with individual signatures, including facsimile signatures, on separate signature pages shall be binding and enforceable.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant identified above, has hereunto set its hand this 9th day of April, 2004.

**DECLARANT:**

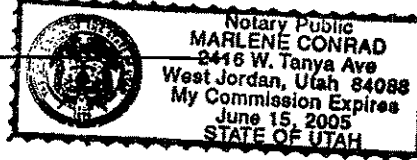
**Bach Builders & Developers, L.L.C.**

By: Dale L. Rindlisbacher  
Dale L. Rindlisbacher, Managing Member

State of Utah )  
 ) ss  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April, 2004 by Dale L. Rindlisbacher representing Bach Builders + Developers, LLC in capacity of managing Member.

Marlene Zornad  
Notary





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## SUBDIVISION IMPROVEMENTS AGREEMENT

### SUMMER RIDGE SUBDIVISION

THIS AGREEMENT is made and entered into this 3<sup>rd</sup> day of April, 2004, by and between **DENNIS EMMERICK** and **LEROY EMERICK, PERSONAL REPRESENTATIVE OF THE ESTATE OF PAULINE L. EMERICK**, whose address for the purpose of this Agreement is 1660 Country Manor Boulevard; Billings, Montana 59102, hereinafter referred to as "Subdividers," and **THE CITY OF BILLINGS**, hereinafter referred to as "City."

#### WITNESSETH:

**WHEREAS**, the Yellowstone County Planning Department recommended approval, subject to certain recommendations, of an area known as Summer Ridge Subdivision (the "Subdivision"), located in the City of Billings, Yellowstone County, Montana, and recommended its approval to the City Council of the City of Billings; and

**WHEREAS**, at a regular meeting held on the 26th day of January, 2004, the City Council approved, subject to certain conditions, a preliminary plat of the Subdivision; and

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

**NOW, THEREFORE**, the parties of this Agreement, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

1. Subdividers have requested and the City hereby grants the following variances by the City Council from strict interpretation of the City's Subdivision Regulations:
  - A. A variance from BMCC 23-601(d) restricting access on arterial streets to allow for two access locations on Central Avenue and for one access point on South 32nd Street West. The access locations and sizes shall be in accordance with the recommendations of the Traffic Accessibility Study prepared for the Subdivision and shall be subject to the review and approval of the City Engineer.
2. Subdividers hereby agree to construct the following improvements as required and in conformance with the City of Billings Subdivision requirements:



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## A. ***STREETS***

### 1. ***Street Improvements.***

Summer Ridge Place will be constructed. The design cross section of said street will be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. The design cross section of said street shall be subject to the review and approval of the City Engineer. Summer Ridge Place shall be 37 feet wide, back of curb to back of curb.

Said street improvements shall be constructed by private contract(s) and shall be included within a monetary guarantee provided to the City prior to filing of the final plat.

Central Avenue shall be constructed with a satisfactory subbase, base course, curb and gutter, asphalt surfacing, and a 5-foot-wide boulevard walk on the south half of the street. The street shall be constructed to accommodate a 64-foot back of curb to back of curb street width at the time of future full street construction. The Subdividers shall be responsible for the southerly portion of the street improvements outlined herein, which shall include a width of 49 feet from the back of curb to edge of asphalt on the north side of the roadway extending across the entire subdivision Central Avenue frontage.

South 32nd Street West shall be constructed with a satisfactory subbase, base course, curb and gutter, asphalt surfacing, and a 5-foot-wide boulevard walk on the east half of the street. The street shall be constructed to accommodate a 49-foot back of curb to back of curb street width at the time of future full street construction. The Subdividers shall be responsible for the east one-half of the street improvements outlined herein, extending across the entire subdivision South 32nd Street West frontage.

Said street improvements shall be constructed by private contract(s) and shall be included within a monetary guarantee provided to the City prior to filing of the final plat.

All site improvements within or associated with the Subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, the Uniform Building Code, and the *Stormwater Management Manual*.

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2. **Traffic Control Devices.** Subdividers will furnish the necessary traffic control devices within or adjacent to the Subdivision in conformance with City of Billings standards. Subdivision will participate in the cost of modifications to the existing traffic signals at the intersection of Central Avenue and 32nd Street West. With the widening of Central Avenue and South 32nd Street West, the following improvements need to be made to the traffic control existing at the intersection:

- a) The pole on the southwest corner of the intersection, used for southbound traffic control, needs to be moved to allow adequate space for roadway widening on both Central Avenue and South 32nd Street West. Because of this move, a longer mast arm needs to be installed to provide sufficient length for the southbound lane signals. With the addition to the intersection of an exclusive left-turn lane for northbound traffic, a longer mast arm with an additional signal head must be installed on the pole in the northeast corner of the intersection.
- b) Loop detectors need to be installed for the northbound left-turn lane and for the eastbound right-turn lane.
- c) The following signing changes need to be made in the vicinity of the intersection improvements:
  - (1) In the northbound direction, the existing advance intersection lane control sign (R3-8C(R)) needs to be removed and replaced with an (R3-8B) lane control sign.
  - (2) The left-turn only mast arm mounted sign (R3-5) needs to be reset to match new lane configurations. The thru-left mast arm mounted lane control sign (R3-6L) needs to be removed and replaced with two new signs, (R3-5 and R3-5A).
  - (3) In the eastbound direction, two new lane control signs, a mandatory movement lane control sign (R3-7R), and an advanced intersection lane control sign (R3-8B) need to be placed in advance of the intersection. New mandatory movement lane control signs, (R3-5A and R3-5R), need to be installed on the existing mast arm.

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- (4) No parking any time signs, (R7-1), need to be placed adjacent to the exclusive right-turn lane and the 12-foot shoulder in the east and southbound directions.
- (5) No signing changes are needed for the westbound direction. All signage shall be installed according to the Manual of Uniform Traffic Control Devices (MUTCD) Specifications.

These intersection improvements are the result of impacts from various developments along Central Avenue and South 32nd Street West. Summer Ridge Subdivision shall contribute 2.4 percent to the cost of the improvements at this intersection based on its contribution to total daily traffic volumes.

Said improvements are included in existing Waivers and shall be included in the Waiver recorded herewith.

- 3. *Streetlights.* Construction or installation of streetlights within or adjacent to the Subdivision shall not be required at this time, but streetlights shall be included in the Waiver for construction of the same in the future. Said Waiver shall also include a maintenance district for streetlight energy and the maintenance of streetlights. Conduits will be installed, if required, at driveway locations.
- 4. *Sidewalks.* Sidewalks along South 32nd Street West and the south side of Central Avenue shall be 5-foot-wide boulevard style and shall be constructed at the time of construction of the street improvements. Summer Ridge Place shall include 5-foot-wide boulevard walks on each side of the street and shall be installed at the time construction on the adjacent lots is undertaken. Said sidewalk construction shall be included as a requirement of the building permit(s) issued for the adjacent lots. The requirement for sidewalks shall be included in the buy/sell agreements, and the same is also included in the Waiver referenced in Paragraph 8. Corner intersection handicap ramps and aprons as necessary will also be constructed at the time of street construction.



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5. *Street Name Signs.* Street name signs for streets adjacent to the Subdivision exist. The Subdividers shall install a street name sign at the intersection of South 32nd Street West and Summer Ridge Place.
6. *Stop Signs.* The Subdividers shall install a stop sign at the intersection of Summer Ridge Place and South 32nd Street West. The Subdividers shall install stop signs on the accesses on Central Avenue if they are constructed as a street type approach.

B. *UTILITIES*

1. *Water Main Construction.* A 24-inch water main exists in South 32nd Street West. A 12-inch water main exists in Central Avenue from the South 32nd Street West to the 31st Street West intersection. The Subdividers shall be responsible for extension of the 12-inch water main in Central Avenue from 31st Street West to the easterly boundary of the Subdivision. Costs associated with the construction of said water main shall be included within the monetary guarantee as outlined in Paragraph 2.A. herein. The Subdividers shall construct an 8-inch water main in Summer Ridge Place.
2. *Sanitary Sewer Main Construction.* A 42-inch trunk sewer main exists in South 32nd Street West. To provide sanitary sewer service to the Subdivision, the Subdividers shall construct a sanitary sewer in Summer Ridge Place from South 32nd Street West to the easterly end of Summer Ridge Place, and a sanitary sewer north from the easterly end of Summer Ridge Place, north within a 20-foot-wide sanitary sewer easement to the southerly boundary of Lot 2. The Subdividers will not be required to construct a sanitary sewer main in Central Avenue, if, in lieu, the sanitary sewer constructed in Summer Ridge Place is installed with adequate depth to serve Tracts 1B and 1C of Certificate of Survey 2991, lying east of the Subdivision, and that a right-of-way is provided to allow for extension of the sanitary sewer to said Tracts 1B and 1C, upon development, or resubdivision of Lot 3.
3. *Approval of Extensions.* The Subdivision Improvements Agreement does not constitute an approval of extension or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water and sanitary sewer to the Public Works Department. The extension/connection to water and sanitary sewer is subject to the approval of the applications and the conditions of approval.

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Applications will need to be submitted for processing prior to the start of any construction.

4. *Standards of Connections.* The water service and sewer service connections and appurtenances shall be sized and installed as approved by the Public Works Director. Water and sewer services for each lot shall be installed prior to making street improvements and shall be installed in conformance with City design standards and specifications and the rules and regulations of the City of Billings and the Montana State Department of Environmental Quality.
5. *Trunk and Lateral Sanitary Sewer Construction Fees/Transmission and Water Main Construction Fees.* It is acknowledged that the properties within the Subdivision are not subject to the transmission water main fees. All properties within the Subdivision are subject to the trunk sanitary sewer construction fee in effect at the time service extension is requested. Lateral sewer is not required in South 32nd Street West, and a lateral construction fee will not be assessed for this frontage. The Subdivision has participated in the construction of the existing lateral water in Central Avenue and will be required to construct the remaining water main within Central Avenue, as described in B.1.
6. *System Development Fees.* The Subdividers acknowledges that the Subdivision shall be subject to applicable system development and franchise fees in effect at the time new water and/or sewer service connections are made.
7. *Franchise Fees.* All fees and billings are subject to a 4 percent franchise fee.
8. *Other Facilities.* All telephone, gas, electrical power, and cable television lines within the public right-of-way shall be installed prior to surface improvements. The location of all such facilities within the public right-of-way shall be subject to approval of the City Engineer.

#### C. *STORM DRAIN SYSTEM*

A 36-inch storm drain exists in Central Avenue approximately 850 feet east of the Subdivision at the intersection of Central Avenue and 29th Street West. It will be necessary to extend the storm drain to the intersection of South 32nd Street West to serve the Subdivision and to





drain the Central Avenue Street improvements. The Subdividers shall construct the storm drain within Central Avenue, from the connection point to the intersection of 32nd Street West. Said storm drain improvements shall be constructed by private contract(s) and shall be included within a monetary guarantee provided to the City prior to filing of the final plat.

The City may contribute to the cost of oversizing of the storm drain in Central Avenue, pending approval of the expenditure by City Council.

The Subdividers shall construct the storm drain extending through the Subdivision within a dedicated right-of-way, or storm drain easement to the easterly end of Summer Ridge Place; then west within Summer Ridge Place to the intersection of South 32nd Street West, to provide service to a portion of South 32nd Street West and to the internal portions of the Subdivision. Said storm drain improvements within the Subdivision shall be constructed by private contract(s) and shall be included within a monetary guarantee provided to the City prior to filing of the final plat.

D. *SURVEY MONUMENTS*

Survey monuments shall be installed in accordance with City code and the Montana Subdivision and Platting Act.

E. *PARKS*

There is no park requirement for this minor plat.

3. Subdividers agree to provide for any necessary adjustment or alteration of existing improvements in order to install the improvements contemplated by this Agreement, without cost to the City.

The existing lateral irrigation ditches on or adjacent to the Subdivision shall be relocated outside of the street right-of-way or abandoned prior to construction of street improvements, without cost to the City.

4. *CONSTRUCTION*

Except as otherwise provided, Subdividers shall install and construct said improvements utilizing the mechanics of private contracts secured by letters of credit or letters of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Public Works Director. No building permits shall be issued until the approved security guarantees are in

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place for construction and installation of the public improvements to serve the lot requesting a building permit. Occupancy permits shall be issued only when the improvements are found to be substantially complete.

5. Subdividers agree to notify the City Engineer and Public Works Director of the date and hour construction is anticipated to begin on the required improvements and to keep the City Engineer and Public Works Director informed of the progress of construction. If the construction is stopped for any reason other than overnight, holidays, and weekends, the Subdividers agree to notify the City Engineer and the Public Works Director of the stoppage. Further, Subdividers agree to notify the City Engineer and the Public Works Director not less than four (4) hours before construction is scheduled to resume.
6. All improvements required under this Agreement for the interior of and adjacent to the Subdivision shall be installed by private contract(s). Individual building permits will not be issued until the necessary funding guarantees have been provided for the construction and installation of the public improvements required to serve the lot requesting permits.

All engineering and legal work in connection with these improvements shall be paid for by the Subdividers, and such improvements shall be installed as approved by the City Engineer and Public Works Director.

7. There is attached hereto a Waiver waiving the right to protest the creation of a special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land and shall constitute the guarantee by the Subdividers and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdividers and owners specifically agree that they are waiving valuable rights. Upon such execution of, and submittal of security guarantees for the private contract which includes any improvements, then the Waiver may be modified to eliminate those items which were constructed under the private contract and which the Subdividers have, therefore, already participated in. In the event the Subdividers fail or refuse to commence construction under a private contract, the City shall be entitled to rely on the Waiver and create the district or districts necessary to install said improvements.
8. When the improvements are constructed through private contract, the Subdividers will be held responsible for the care and maintenance of all improvements until completion and final acceptance by the City.
9. While the improvements are being constructed hereunder, the construction site shall be kept free and clear of all unsightly accumulation of rubbish and debris,



and the public shall be protected by the use and maintenance of sufficient and proper barricades, lights, and related construction items as specified in the Manual of Uniform Traffic Control Devices during the course of construction.

10. Subdividers agree to guarantee all improvements for a period of one (1) year from the date of final acceptance by the City of Billings by a requirement in the private contract that the contractor must guarantee improvements for a period of one (1) year after final acceptance by the City.
11. The owners of the properties involved in this proposed Subdivision by signature subscribed hereinbelow agree, consent, and shall be bound by the provisions of this Agreement.
12. The covenants, agreements, and all statements in this Agreement shall run with the land and shall be binding on the heirs, personal representatives, successor, and assigns of the respective parties.
13. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
14. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
15. Subdividers shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdividers acknowledge and agree that nothing contained herein shall relieve or exempt it from such compliance.
16. This Agreement will not have force or effect until such time as the final plat is approved by the City Council and this Agreement is executed by the City of Billings.
17. The funds for the purchase of the land within the subdivision shall be delivered to the title company no later than 2:00 p.m. April 12, 2004, the day of the City Council meeting for final plat approval. Furthermore, the subdivision plat and this agreement for Summer Ridge Subdivision are to be recorded the day of the closing with the Subdividers, Pauline Emerick and Dennis Emmerick. The closings with Faith Evangelical Church and Primrose shall occur that same day.
18. It is understood that upon transfer of the deed to the property, the Bach Corporation replaces Dennis Emmerick and the Estate of Pauline L. Emerick as Subdivider.



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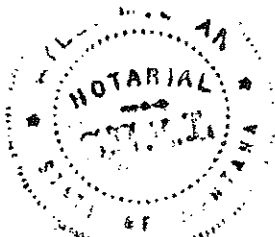
IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

Dennis Emmerick  
DENNIS EMMERICK

Leroy Emerick  
LEROY EMERICK, PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
PAULINE L. EMERICK

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone)

On this 3<sup>rd</sup> day of April, 2004, before me, a Notary Public for the State of Montana, personally appeared DENNIS EMMERICK, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.



Myles M. Egan  
Notary Public for the State of Montana  
Printed name: MYLES M. EGAN  
Residing at Billings, Montana  
My commission expires: 8/19/2006

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone)

On this 4<sup>th</sup> day of April, 2004, before me, a Notary Public for the State of Montana, personally appeared LEROY EMERICK, PERSONAL REPRESENTATIVE OF THE ESTATE OF PAULINE L. EMERICK, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.



Myles M. Egan  
Notary Public for the State of Montana  
Printed name: MYLES M. EGAN  
Residing at Billings, Montana  
My commission expires: 8/19/2006



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CITY OF BILLINGS, MONTANA



By Charles F. Tooley  
Mayor

By Susan Shuhler  
City Clerk

STATE OF MONTANA )  
: ss.  
County of Yellowstone )

On this 12<sup>th</sup> day of April, 2004, before me, a Notary Public for the State of Montana, personally appeared Charles F. Tooley and Susan Shuhler, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the same on behalf of the City of Billings.

Deputy



Marita Herold  
Notary Public for the State of Montana  
Printed name: Marita Herold  
Residing at Billings, Montana  
My commission expires: 7/24/2004

Approved to as form:

Brent Brooks  
City Attorney



## WAIVER


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

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

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

Summer Ridge Subdivision.

  
DENNIS EMMERICK

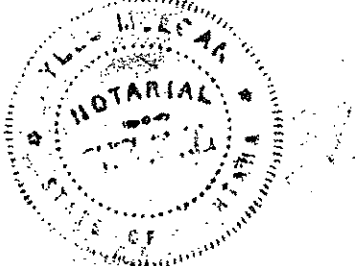
  
LEROY EMERICK, PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
PAULINE L. EMERICK



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STATE OF MONTANA )  
: ss.  
County of Yellowstone)

On this 3<sup>rd</sup> day of April, 2004, before me, a Notary Public for the State of Montana, personally appeared DENNIS EMMERICK, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.



Myles M. Egan  
Notary Public for the State of Montana  
Printed name: MYLES M. EGAN  
Residing at Billings, Montana  
My commission expires: 8/19/2006

STATE OF MONTANA )  
: ss.  
County of Yellowstone )

On this 4<sup>th</sup> day of APRIL, 2004, before me, a Notary Public for the State of Montana, personally appeared LEROY EMERICK, PERSONAL REPRESENTATIVE OF THE ESTATE OF PAULINE L. EMERICK, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.



Myles M. Egan  
Notary Public for the State of Montana  
Printed name: MYLES M. EGAN  
Residing at Billings, Montana  
My commission expires: 8/19/2006