

DECLARATION OF RESTRICTIONS AND CONDITIONS

High Sierra Subdivision
First Filing

Billings, Montana

UNDERSIGNED

to

THE PUBLIC

NOW, THEREFORE, the undersigned, Kimble Properties, Inc., of Billings, Montana, being the owner of all the property known as High Sierra, First Filing, desiring to place restrictions and conditions for the use and occupancy of the lots situated in said First Filing of High Sierra Subdivision, for the use and benefit of the present owners and for future grantees, does hereby declare:

1. Block 1, lots 32 through 68. All of the lots included in Blocks 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 16. Block 17, lots 1 & 14 through 26. Block 18, lots 1 through 7 & 26. Block 19, lots 1 & 14. Block 20, lots 1 & 14. Block 24, lot 12. Block 25, lots 1 & 14 through 15. Block 26, lots 1 through 14. Block 27, lot 1. All the above described lots shall be used for single family residential purposes only. Said lots may not be utilized for any multi-family units, or for professional or commercial uses.

2. There shall be a utility easement on all residential lots as shown upon the plat. Said utility easement is for the purpose of allowing for the construction and maintenance of all underground utilities which will be installed upon said property for the benefit of any of the lots affected by said utility easement. Said utility easement shall carry with it the right of ingress and egress upon said property to allow all owners of the property the right to construct underground utilities in the area designated as utility easement. All property owners and utility companies shall have the right of constructing and maintaining the underground utilities on the utility easement and they are specifically granted the right to go upon said property to use surface rights to the extent that it will be necessary for the construction, improvement, repair and maintenance of said underground utilities.

Individual property owners may not erect any permanent structures or buildings in the utility easement section of the property, nor may they plant any trees in the area designated as the utility easement.

3. All utilities, including but not limited to, electricity, gas, water and telephone, are to be underground, and all connections for individual services from the street to the dwelling or residence shall be likewise underground.

4. No structure shall be erected, altered, placed or permitted upon any such residential lot, other than one detached single-family dwelling not to exceed two-stories in height. For the purpose of these restrictions, "two-stories" shall mean two-stories above grade on at least one overall dimension of the structure, except, "split-level" structures will be permitted. No structure shall exceed 25 feet in height. Garages must be attached to the main dwelling. Carports of the same finish as main dwelling are permitted.

Declaration of Restrictions and Conditions

5. All construction on any lot shall be new and no structure shall be moved onto any said lot. No building shall be erected of material other than commonly used in standard construction.

Each dwelling shall be constructed so that they are (exclusive of the area of porches, terraces, patios and garages) enclosed within the perimeter of the exterior walls shall not be less than as follows:

High Sierra Subdivision, First Filing

Area I: 1,000 square feet Area II: 1,250 square feet

Block 12, All lots
Block 13, All lots

Block 1, lots 32-68	Block 16, All lots
Block 3, All lots	Block 17, lots 1 & 14-26
Block 4, All lots	Block 18, lots 1-7 & 26
Block 5, All lots	Block 19, lots 1 & 14
Block 6, All lots	Block 20, lots 1 & 14
Block 7, All lots	Block 24, lot 12
Block 8, All lots	Block 25, lots 1 & 14-15
Block 9, All lots	Block 26, lots 1-4
Block 10, All lots	Block 27, lot 1
Block 11, All lots	

No tent, trailer, mobile homes or other temporary or moveable structure shall be used as a dwelling or for dwelling purposes, nor shall any basement or garage be so used unless and until there is a complete private, single family dwelling used in connection therewith. The work of constructing the dwelling and landscaping shall be prosecuted diligently from the commencement thereof until completion, and the exterior of the dwelling shall be finished in its entirety before they can be occupied.

6. No excavating shall be made on any of the lots until such time as construction of the structure herein allowed commences; no sand, gravel or dirt shall be removed from any of the lots except in connection with construction as herein allowed.

7. None of the lots shall ever be used for the keeping of livestock or poultry nor for the domestic pets if the latter are kept for breeding or commercial purposes.

8. None of the lots shall be used for any purpose resulting in noxious or offensive odors, dust, smoke or noise, or in unsightly, unclean or hazardous conditions.

9. No trash, debris, organic or inorganic wastes shall be permitted to accumulate on any lot or in any alley or street adjacent to or abutting upon any said lot and shall be properly and efficiently removed or disposed of. Solid waste shall be contained in plastic or metal containers no larger 30 gallons each with lids, or any other type container the city may adopt to use, and all garbage cans or containers shall be placed in a garage or shall be placed in a designated area so as not to be exposed to public view until regular pickup times by the Billings Sanitation Department.

Declaration of Restrictions and Conditions

10. No permanent clothesline poles, wires or devices for hanging clothes will be permitted. All clothesline poles must be of the removeable type. No clothesline poles shall be erected in front or side yards of any home.
11. No signs, billboards, posters or advertising devices of any kind or character shall be erected or displayed upon any of the lots, excepting subdivision promotion signs and signs displayed to identify the occupants of a dwelling, and contractors' construction signs.
12. No signs, billboards, posters or advertising divices of any kind or character shall be erected or displayed upon any of the lots, excepting subdivision promotion signs and signs displayed to identify the occupants of a dwelling, and contractors' construction signs.
13. Nothing shall be done or permitted on any lot which is or may become an annoyance or nuisance to the neighborhood, and specifically included as nuisances are the following: all vehicles, whether self propelled or not, shall be parked in such a manner that they are not an aesthetic nuisance to the neighborhood. On-street parking should be limited to visitors and on-site, abandoned vehicles shall not be permitted in the subdivision.
14. Driveways shall be of concrete or blacktop construction, and of one solid unit, instead of a divided unit with grass panels between units.
15. No outside illumination equipment or fixtures shall be constructed unless attached to the main residential structure or garage or unless attached to a pole not to exceed 8 feet in height, which poles shall conform to the general architectural plan of the residence.
16. TV antenna located outside the dwelling or garage shall be no higher than 6 feet above the peak of the roof and must be placed on a pole not to exceed 2 1/2 inches in diameter and attached to the roof or eave of the house or garage. Satellite dishes will be permitted, but not erected on the side or front yard of any home.
17. Within one year after residence is occupied there shall be planted, maintained, and in case of death or destruction replaced by the owner two trees in the front yard. Each tree shall be at least 4 feet in height.
18. Basement walls which are exposed more than 18 inches shall be sided with conventional siding or a coat of stucco.
19. These restrictions may be changed in whole or in part at any time, by an instrument in writing signed by the owners of a majority of the lots in said subdivision. Any changes thus made shall become effective from the time said written instrument is placed on record in the office of the County Clerk and Recorder of Yellowstone County, Montana.

Declaration of Restrictions and Conditions

20. The owners of any lots shall have the right to enforce by any proceeding at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to so thereafter do. In any action brought to enforce these covenants, or for damages because of a breach hereof, the prevailing party shall be entitled to recover all costs of such action, including reasonable attorneys' fees, from the other parties thereto.

21. Invalidity of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

22. The covenants and restrictions of the Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time such covenants shall automatically be extended for successive ten(10) year periods, unless an instrument is recorded, signed by the owners of 60% of the area of all of the lots within this subdivision agreeing to revoke or amend such covenants in whole or in part. This Declaration may be amended during the first 30 year period by an instrument signed by the owners of 60% of the area of said lots. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 5th day of December, 1985.

KIMBLE PROPERTIES, INC.

By Lloyd L. Kimble
Lloyd L. Kimble, President

[Signature]
Notary Public for the State of Montana
My Commission expires: Dec 19 1986

STATE OF MONTANA)
: ss.
County of Yellowstone

On this 5th day of December, 1985, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Lloyd L. Kimble to me known to be the President of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

1374468

Heirship Partition
Repartition
Partitions
Wm. H. H. H. H.
Chas. H. H. H.

STATE OF MONTANA,
County of Yellowstone, } ss.

I hereby certify that the within instrument was filed in my office for record on this DEC 8 1905

at 5:14 o'clock P.M. and is duly recorded in Book 1284 of

on Page 146
Witness my hand and official seal
this 11th day of JANUARY
County Clerk & Recorder
by Charles H. H. H. Deputy

90. P. *Heirship Partition*

AMENDMENT TO DECLARATION OF RESTRICTIONS
AND CONDITIONS OF HIGH SIERRA SUBDIVISION, FIRST FILING

UNDERSIGNED

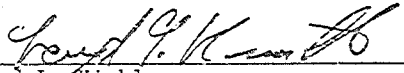
to

THE PUBLIC

The undersigned, being the principal owner of at least 60% of the property in High Sierra Subdivision, First Filing, do hereby amend the Declaration of Restrictions and Conditions which were recorded December 6, 1985, in Book 1284, page 1146. Paragraph .2 should read as follows:

12. No fence shall be erected on front lot line. Fences, hedges or other structures when placed between the residence and side or rear lot shall not be allowed to exceed four feet in height from the finished grade.

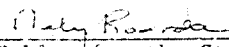
Dated this 12th day of February, 1986.


Loyd L. Kimble
President, Kimble Properties, Inc.

STATE OF MONTANA)
 : ss.
Yellowstone County)

On this 12th day of February, 1986, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Loyd L. Kimble to me known to be the President of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.


Notary Public for the State of Montana
My Commission expires: 3/21/1988
Billings, Montana



1382074

Hinkle Properties, Inc.

*to the
Hinkle Properties, Inc.
in Helena, Montana
1st filing*

STATE OF MONTANA) ss
(County of Yellowstone)

I hereby certify that the within
instrument was filed in my office
for record this 14
day of Feb. 1966
at 3:34 P. M. and is
duly recorded and indexed at
cost of 1286 of
on file 4974

Witness my hand and official seal
this 14th day of February, 1966

County Clerk & Recorder
By *George G. Andrew* Deputy

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Hinkle Properties

Box 516

Billings, Mt. 59103



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AMENDED DECLARATION OF RESTRICTIONS AND CONDITIONS
HIGH SIERRA SUBDIVISION
FIRST FILING

Jay C. Lyndes, a/k/a Jay Lyndes

TO: The Public

RECITALS:

A. Kimble Properties, Inc. executed that certain Declaration of Restrictions and Conditions, High Sierra Subdivision, First Filing, dated December 5, 1985, filed December 6, 1985, recorded in Book 1284, Page 1146, under Document No. 1374468, records of the County Clerk and Recorder of Yellowstone County, Montana (Declaration of Restrictions and Conditions).

B. The undersigned is the owner of more than 60% of the area of the lots and the owner of a majority of the lots in said subdivision.

C. The undersigned desires to amend the Declaration of Restrictions and Conditions in order to correct certain minor grammatical and spelling errors, to reduce the minimum area allowed for construction of dwellings in Blocks 1, Blocks 3 through 11, and Block 16 to 1100 square feet, and in Blocks 17 through 20 and Blocks 24 through 27 to 1000 square feet, to provide that carports and blacktop driveways are not permitted, to eliminate one of the redundant Paragraphs 11 and 12, and to resolve the apparent conflict between Paragraphs 19 and 22 of the Declaration of Restrictions and Conditions describing the portion of lot owners

American Dream Homes
550 S. 24th St. W
Blgs MT 59102



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whose consent is necessary to amend the Declaration of Restrictions and Conditions by deleting Paragraph 19 (a majority of the lots) and retaining Paragraph 22 (60% of the area).

AMENDED DECLARATION

NOW, THEREFORE, the Declaration of Restrictions and Conditions is hereby amended and changed such that from and after the recording hereof, such Declaration of Restrictions and Conditions shall read as follows in its entirety, and any provisions of the previous Declaration of Restrictions and Conditions which are deleted therefrom as a result of this Amendment shall no longer be in force and effect:

1. Block 1, Lots 32 through 68. All of the lots included in Blocks 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 16. Block 17, Lots 1 & 14 through 26. Block 18, Lots 1 through 7 & 26, Block 19, Lots 1 & 14. Block 20, Lots 1 & 14. Block 24, Lot 12. Block 25, Lots 1 & 14 through 15. Block 26, Lots 1 through 14, Block 27, Lot 1. All the above-described lots shall be used for single family residential purposes only. Said lots may not be utilized for any multi-family units, or for professional or commercial uses.
2. There shall be a utility easement on all residential lots as shown upon the plat. Said utility easement is for the purpose of allowing for the construction and maintenance of all underground utilities which will be installed upon said property for the benefit of any of the lots affected by said utility easement. Said utility easement shall carry with it the right of ingress and egress upon said property to allow all owners of the property the right to construct underground utilities in the area designated as utility easement. All property owners and utility companies shall have the right of constructing and maintaining the underground utilities on the utility easement and they are specifically granted the right to go upon said property to use surface rights to the extent that it will be necessary for the construction, improvement, repair and maintenance of said underground utilities.

Individual property owners may not erect any permanent



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structures or buildings in the utility easement section of the property, nor may they plant any trees in the area designated as the utility easement.

3. All utilities, including but not limited to, electricity, gas, water and telephone, are to be underground, and all connections for individual services from the street to the dwelling or residence shall be likewise underground.
4. No structure shall be erected, altered, placed or permitted upon any such residential lot, other than one detached single-family dwelling not to exceed two-stories in height. For the purpose of these restrictions, "two-stories" shall mean two stories above grade on at least one overall dimension of the structure, except, "split-level" structures will be permitted. No structure shall exceed 25 feet in height. Garages must be attached to the main dwelling. Carports are not permitted.
5. All construction on any lot shall be new and no structure shall be moved onto any said lot. No building shall be erected of material other than commonly used in standard construction.

Each dwelling shall be constructed so that the finished area above grade (exclusive of the area of porches, terraces, patios and garages) enclosed within the perimeter of the exterior walls shall not be less than as follows:

High Sierra Subdivision, First Filing

Area I: 1,000 square feet Area II: 1,100 square feet

Block 12, All lots	Block 1, Lots 23-68
Block 13, All lots	Block 3, All lots
Block 17, Lots 1 & 14-26	Block 4, All lots
Block 18, Lots 1-7 & 26	Block 5, All lots
Block 19, Lots 1 & 14	Block 6, All lots
Block 20, Lots 1 & 14	Block 7, All lots
Block 24, Lot 12	Block 8, All lots
Block 25, Lots 1 & 14-15	Block 9, All lots
Block 26, Lots 1-4	Block 10, All lots
Block 27, Lot 1	Block 11, All lots

No tent, trailer, mobile home or other temporary or moveable structure shall be used as a dwelling or for dwelling purposes, nor shall any basement or garage be so used unless and until there is a complete private, single family dwelling used in connection therewith. The work of constructing the dwelling and landscaping shall be prosecuted diligently from the commencement thereof until



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- completion, and the exterior of the dwelling shall be finished in its entirety before it can be occupied.
6. No excavating shall be made on any of the lots until such time as construction of the structure herein allowed commences; no sand, gravel or dirt shall be removed from any of the lots except in connection with construction as herein allowed.
 7. None of the lots shall ever be used for the keeping of livestock or poultry nor for domestic pets if the latter are kept for breeding or commercial purposes.
 8. None of the lots shall be used for any purpose resulting in noxious or offensive odors, dust, smoke or noise, or in unsightly, unclean or hazardous conditions.
 9. No trash, debris, organic or inorganic wastes shall be permitted to accumulate on any lot or in any alley or street adjacent to or abutting upon any said lot and the same shall be properly and efficiently removed or disposed of. Solid waste shall be contained in plastic or metal containers no larger than 30 gallons each with lids, or any other type of container the City may adopt to use, and all garbage cans or containers shall be placed in a garage or shall be placed in a designated area so as not to be exposed to public view until regular pickup times by the Billings Sanitation Department.
 10. No permanent clothesline poles, wires or devices for hanging clothes will be permitted. All clothesline poles must be of the removable type. No clothesline poles shall be erected in front or side yards of any home.
 11. No signs, billboards, posters or advertising devices of any kind or character shall be erected or displayed upon any of the lots, excepting subdivision promotion signs and signs displayed to identify the occupants of a dwelling, and contractor's construction signs.
 12. Nothing shall be done or permitted on any lot which is or may become an annoyance or nuisance to the neighborhood, and specifically included as nuisances are the following: all vehicles, whether self-propelled or not, shall be parked in such a manner that they are not an aesthetic nuisance to the neighborhood. On-street parking should be limited to visitors and on-site, abandoned vehicles shall not be permitted in the subdivision.
 13. Driveways shall be of concrete construction, and of one solid unit, instead of a divided unit with grass panels between units.

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14. No outside illumination equipment or fixtures shall be constructed unless attached to the main residential structure or garage or unless attached to a pole not to exceed 8 feet in height, which poles shall conform to the general architectural plan of the residence.
15. TV antennas located outside the dwelling or garage shall be no higher than 6 feet above the peak of the roof and must be placed on a pole not to exceed 2½ inches in diameter and attached to the roof or eave of the house or garage. Satellite dishes will be permitted, but not erected on the side or front yard of any home.
16. Within one year after any residence is occupied, there shall be planted, maintained and, in case of death or destruction replaced by the owner, two trees in the front yard. Each tree shall be at least 4 feet in height.
17. Basement walls which are exposed more than 18 inches shall be sided with conventional siding or a coat of stucco.
18. The owners of any lots shall have the right to enforce by any proceeding at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to so thereafter do. In any action brought to enforce these covenants, or for damages because of a breach hereof, the prevailing party shall be entitled to recover all costs of such action, including reasonable attorney's fees, from the other parties thereto.
19. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force or effect.
20. The covenants and restrictions of the Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time such covenants shall automatically be extended for successive ten (10) year periods, unless an instrument is recorded, signed by the owners of 60% of the area of all the lots within this subdivision agreeing to revoke or amend such covenants in whole or in part. This Declaration may be amended during the first 30-year period by an instrument signed by the owners of 60% of the area of said lots. Any amendment must be recorded.



JAY C. LYNDES *att*

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 18 day of November, 1985, by and between KIMBLE PROPERTIES, INC., hereinafter referred to as "Subdivider", and THE CITY OF BILLINGS, hereinafter referred to as "City".

W I T N E S S E T H

WHEREAS, at a meeting held by the City-County Planning Board on the 6TH day of MARCH, 1984, the Board approved, subject to certain recommendations made by the staff, a proposed plat of an area known as HIGH SIERRA SUBDIVISION, First Filing, and recommend its approval to the City Council of the City of Billings, and

WHEREAS, at its meeting on the _____ day of _____, 1984, the Billings City Council approved, subject to certain conditions of the Public Utilities Board, an application for Enlargement of the Water Service Area and Sanitary Sewer Service Area to include the subject property, and

WHEREAS, at the meeting on the 12TH day of MARCH, 1984, the City Council approved the High Sierra Subdivision, First Filing, a part of the proposed High Sierra Subdivision, situated in the S $\frac{1}{2}$, and S $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ of Section 17, Township 1 North, Range 26 East, MPM, more particularly described as being Tract 6B and a portion of Tract 6A, Certificate of Survey No. 2017, 4th Amended, and a portion of Tract 4, Certificate of Survey No. 2017, 2nd Amended, Yellowstone County, Montana, and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to approval of the final plat by the City-County Planning Board.

NOW, THEREFORE, the parties to 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. Provisions of Agreement. The provisions of this Agreement shall be effective and applicable to High Sierra Subdivision, First Filing, upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana.

2. Variances Requested. Subdivider requests a variance to allow a single 40-foot wide access to the commercial lots, said access to be located 400 feet from the easterly edge of High Sierra Subdivision off of Wicks Lane beginning 15.48' West of the Southeast corner of Lot 15, Block 1, and ending 5.48' West of the Southeast corner of Lot 17, Block 1, and the City Council of the City of Billings approved the variance request on the 12TH day of MARCH, 1984.

3. Improvements. Subdivider agrees to construct the following improvements as required and in conformance with the City of Billings regulations:

(a) Streets

- i. All dedicated streets shall be built to grade with satisfactory sub-base, base course, curb and gutter, and asphalt surface. The design cross section of the streets shall be determined from actual field tests conducted by a responsible testing laboratory. The design section shall be submitted to, and approved by the City Engineer.
- ii. Subdivider has obtained permission from the State of Montana to acquire an easement for that portion of Wicks Lane from the SE corner of Section 17, Township 1 North, Range 26 East, to the point where Wicks Lane becomes located solely upon the aforementioned described property. Said easement shall be 60 feet in width and is more particularly described on Exhibit A attached hereto and by reference incorporated herein. City will make application to obtain the easement in its name. In this manner the easement will not have to pass through the Subdivider's hands but will go directly to City. Said easement application to be filed by City is more particularly described on Exhibit B attached hereto and by reference incorporated herein.
- iii. Subdivider further agrees to assist the City in acquiring additional right-of-way for future expansion of Wicks Lane West to Alkali Creek Road.
- iv. Subdivider agrees to contribute either: (a) \$27,600 to acquire the Southerly portion of Wicks Lane from the State of Montana, or if this portion of the property can be acquired by the City without cost to them, then (b) Subdivider agrees to give to the City a waiver as to the subdivision to contribute \$27,600 for the subgrade preparation of the 30-foot wide gravel base across the proposed extension of Wicks Lane across the State land to the west of the subdivision when said improvements

are constructed or installed; (c) City has the right either to ask Subdivider to pay for the initial acquisition of Wicks Lane shown on the proposed plat, or for the waiver of the \$27,600 to be used for subgrade preparation, but not for both.

(b) Sidewalks

- i. Subdivider agrees to install a five foot wide concrete sidewalk of the boulevard type on both sides of Wicks Lane when the same is constructed. Boulevard sidewalks will be placed along the collector streets at the time the houses are built. The remaining sidewalks required in First Filing will be installed at the time building construction occurs on the lots. Responsibility of such installation will be with the owners of the lots at the time of construction. This statement will be included in the Buy/Sell Agreements of all lots. A cash bond in the amount of 130% of the cost of the sidewalks shall be delivered at the time of applying for a Building Permit to insure that the sidewalks are constructed, or at Subdivider's option they may be included in the SID's. Sidewalks will be included in the Waiver.

(c) Curbs and Gutters

- i. Subdivider agrees to install standard curbs and gutters in First Filing, along High Sierra Boulevard, and on the interior streets adjacent to the school sites and on both sides of Fantan Street from Wicks Lane to Morocco Drive. Curbs and gutters and street design on Wicks Lane shall be as approved by the City Engineer.
- ii. As to the remaining curbs and gutters to be installed within the Subdivision, they shall be of the rollover curb and gutter type and will be placed on all of the remaining local residential streets.

(d) Street Name Signs, Traffic Control Devices and Intersection Modifications.

- i. Street name signs and traffic control devices located within High Sierra Subdivision or on streets adjacent thereto shall be furnished and installed in accordance with the specifications of the City Engineer. Subdivider shall only be required to pay its proportionate share of the signs, intersection modifications, and traffic signals at Wicks Lane and Governor's Boulevard, at Wicks Lane and High Sierra Boulevard, Wicks Lane, Lake Elmo Drive, and Sierra Granda Boulevard and Glen Eagles Boulevard based on the amount of traffic generated by High Sierra Subdivision in relation to the total traffic as determined by an engineering study at the time that these traffic controls are warranted. Subdivider agrees

to pay its proportionate fair share of intersection modifications at Wicks Lane and Nutter Boulevard, and Wicks Lane and Governors Blvd. However, it is contemplated that said improvements will be installed by creation of the SID's referred to in paragraph 3(b).

(e) Storm Drain

- i. Storm drain lines will be constructed to serve the interior of the subdivision.
- ii. Subdivider agrees to create an SID for the purpose of construction of storm drains for the purpose of carrying surface runoff away from the High Sierra Subdivision. Subdivider shall only be required to pay its proportionate share of any offsite storm drainage project.

(f) Required Improvements to be Constructed by SID's.

- i. The following SID's shall be created simultaneously with the filing of the plat:
 - a. Storm drainage SID. An SID to provide storm drain trunk improvements to High Sierra Subdivision through Lake Hills Subdivision.
 - b. Wicks Lane SID. An SID for Wicks Lane improvements from the East edge of High Sierra Subdivision to High Sierra Blvd.
 - c. Utility SID. An SID to provide sanitary sewer, water, storm drain and street improvements for High Sierra Subdivision First Filing Phase 1 construction.
 - d. Park SID. An SID to create park improvements for First Filing.
 - e. Wicks Lane East - Offsite. An SID to construct Wicks Lane from the East edge of High Sierra Subdivision to Nutter Boulevard.

(g) Off-site Improvements

- i. Subdivider shall not initially be required to make the following off-site improvements
 - a. Traffic signals at the locations of Wicks Lane and Governors Boulevard, Wicks Lane and Lake Elmo Road; Wicks Lane and La Fiesta; Wicks Lane and High Sierra; Glen Eagles and Sierra Grande; La Fiesta and Sierra Grande.

- b. Improvements to Wicks Lane except as herein provided.

Subdivider agrees to share his proportionate share of the cost of making said improvements as determined by an engineering study based upon the amount of traffic generated by High Sierra Subdivision at the time these improvements are required, and hereby waives the right to protest the creation of a Special Improvement District, or numerous Special Improvement Districts, by the City of Billings, Montana, to construct the aforementioned improvements when the same are constructed or installed.

(h) Parks

- i. The parks for First Filing will be developed at the time of construction of other initial improvements. Costs of basic development will be borne by the Subdivider through an SID to provide for the improvements outlined below:
 - a. Grading and shaping for proper drainage.
 - b. Installation of an automatic sprinkler irrigation system using city water as approved by the City Park Department.
 - c. Seeding the park area to grass as approved by Park Department.
 - d. Planting suitable trees at a spacing determined by the Park Department which is ten (10) trees per acre.
 - e. Maintenance of parks shall be performed by City but paid for by funds received from a maintenance district including only the property within High Sierra Subdivision. Initial operation and maintenance assessments will be based upon a rate of \$0.03/sq. ft. of developed park. This rate shall be adjusted annually according to actual costs incurred.
 - f. Temporary all weather access, via Wicks Lane, to initial park dedication will be provided in First Filing.

(i) Utilities

- i. Sanitary sewer and water lines will be provided as approved by the Public Utilities Engineer in compliance with the rules, regulations, resolutions, policies and

ordinances of the Public Utilities Department and the City Council.

(j) Buffer on Commercial Site

- i. Subdivider agrees to provide for a uniform wood fence screening buffer between the North side of the commercial lots, being Lots 1 through 32 of Block 1, and the residential lots which will be erected and installed at the time of the development of the commercial lots, provided that when seventy percent (70%) of the commercial lots are developed that the remainder of the buffer be constructed.

(k) Other Utilities

- i. Telephone, gas and electric facilities shall be provided prior to paving streets and shall be placed underground. In addition, Subdivider will allow the TV cable company servicing this area to install plastic tubes or conduits to accommodate cable TV lines under streets at such locations as may be required by the City Engineer prior to paving streets.
- ii. Utility Easement for Lot 1, Block 45. The eight foot (8') utility easement, shown on the subdivision plat, on the east side of the school site along Fantan Street shall be subject to the following conditions and restrictions:

Grantor (School District) allows Grantee (Utility Company) the right of ingress egress over and across the lands of the Grantor to and from the above-described property, the right to clear and keep cleared all trees and other obstructions as may be necessary except that the Grantor reserves the right to occupy, use, and cultivate said property for all purposes and may, in its discretion, use said right-of-way easement for walks, driveways, and other such structures.

Notwithstanding any provision in this easement to the contrary, this easement is limited to underground services only except that transformers and pedestals shall be allowed.

Grantee, at its own expense, agrees to repair any damage to said property or right-of-way caused by installation, maintenance, or repair of equipment installed or to be installed in said right-of-way and to restore said property and right-of-way to its previous condition after such installation, maintenance, or repair.

(l) Survey Monuments

- i. Survey monuments shall be installed as required.

(m) First Filing to be Developed in Phases.

- (i) Subdivider intends to develop the first filing in several phases with improvements to be constructed as required for the phase under development or construction.
- (ii) Subdivider agrees to provide each purchaser of property with a copy of this agreement and waivers, and to make reference to said documents and any buy/sell agreements, contracts for deed, or documents of transfer. Subdivider agrees to make purchaser aware that he has no right to build, attempt to build or construct on any lot until the required improvements are constructed or a special improvement district has been created to make the necessary improvements. Furthermore, subdivider shall make purchaser aware that the sale of a lot to a third party will not trigger waiver provisions and allow purchaser to obtain improvements by a special improvement district to be created by the City.

4. Existing Structures. Any existing structures upon High Sierra Subdivision First Filing will be removed at Subdivider's expense on or before the date upon which Subdivider agrees to place improvements.

5. Alteration or Adjustment of Existing Improvements. Subdivider agrees to provide for any necessary adjustment or alteration of existing improvements necessary in order to make the improvements contemplated by this Agreement without cost to City. Existing improvements mean those improvements in place at the time of approval of First Filing.

6. Notification to City of Construction. Subdivider agrees to notify the City Engineer and Chief Utilities Engineer of the date and hour construction is anticipated to begin on the required improvements and to keep the City Engineer and Chief Utilities Engineer 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 the Chief Utilities Engineer of the stoppage. Further, Subdivider agrees to notify the City Engineer and the Chief Utilities Engineer not less than four (4) hours before construction is scheduled to resume.

7. Petition to Create SID. Upon the execution of this Agreement, Subdivider has petitioned the City for creation of Special Improvement Districts for the purpose of construction of the improvements required hereby within High Sierra Subdivision, First Filing.

8. SID to Include. Subdivider agrees that all the foregoing improvements in First Filing will be installed by utilizing mechanics of Special Improvement Districts as designated in the Subdivision Improvement Agreement filed with the final plat. All engineering and legal work in connection with such districts and improvements shall be paid by Special Improvement Districts or shall be paid by the Subdivider and such improvements shall be installed as approved by City Engineer and Chief Utilities Engineer.

9. Waiver by Subdivider. In the event that Subdivider fails or refuses to create an SID to make the improvements as required by this Agreement, the Subdivider hereby waives the right to protest the creation of a Special Improvement District by the City of Billings, Montana, to construct the necessary improvements required by this Agreement. Subdivider further agrees to waive the right to protest the creation of a park maintenance district, and a street light construction and maintenance district. A copy of said waiver is attached hereto and by reference incorporated herein.

10. Requirements During Construction. 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 on Uniform Traffic Control Devices during the course of construction.

11. Construction Easement During Installation. During construction of the public improvements called for by the terms of this Agreement, the entire subdivision shall be burdened with a construction easement to allow the installation of all of the improvements called for by this Agreement.

12. Guarantee of Public Improvements. 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 Special Improvement District that the contractor must guarantee improvements for a period of one (1) year after final acceptance by the City.

13. Issuance of Building Permits. If the installation of improvements is accomplished by Special Improvement District, Subdivider agrees that building permits shall be applied for and shall be issued in accordance with City regulations and ordinances in effect at the time that such requests are made. No building permit will be issued prior to the sale of bonds and execution of a construction contract for such improvements, but not more than ninety (90) days prior to the scheduled completion of construction of water and sewer lines.

14. Reciprocal Access Easements. Lots contained in First Filing designated as commercial site shall be subject to a 70 foot reciprocal access easement across the southern portion of all of the commercial lots so as to provide ingress and egress between individual lots. Said reciprocal access easement can, at the discretion of the Subdivider, be altered or amended at the time of the final site review so as to pinpoint the exact area which will be burdened by an access easement. The easement may be used by any of the lot owners. The easement shall be maintained by the lot owners of the respective lots so that the same can be used for vehicular access between all of the individual lots located in the commercial site. Said easement will be maintained by the property owners so as to allow a free flow of traffic between all of the lots in the commercial site.

It is the intention of this provision to provide access to all commercial lots, but still to allow the Subdivider the flexibility to determine the exact location of the permanent easement when it is determined how the property will be developed.

15. Compliance with City Ordinances and Regulations. The final subdivision shall comply with all the requirements of the City Subdivision Ordinance, the Billings Municipal Code, and the laws and administrative rules of the State of Montana.

16. Spreading of SID's on Other Lands Within High Sierra Subdivision. To equalize the benefits to be received from improvements to be constructed within the First Phase of High Sierra Subdivision, it was necessary to spread the cost of some improvements upon land not being developed in the First Phase. Upon the development of additional phases of High Sierra Subdivision, it will be necessary to respread the cost of those improvements against the new lots to be created by future filings. Upon subsequent filings within High Sierra Subdivision, the cost assessed against the undeveloped lands will be respread in accordance with the engineers' recommendations based upon the benefits that said lands receive from the initial improvements or, upon creating new SID's for the subsequent filings, the amount remaining unpaid may be included in the newly created SID's and these assessments paid off by the newly created SID's.

17. Agreement Binding. This Agreement shall be binding upon the assigns of the parties hereto.

18. Tract 6B. Billings High School District #2 of Yellowstone County has purchased Tract 6B of Certificate of Survey No. 2017, Fourth Amended, amending Tract 6, being a parcel of land which lies within the first filing of the High Sierra Subdivision. School District #2 purchased Tract 6B subject to this Subdivision Improvement Agreement and the attached Waivers for On-Site Improvements and for Off-Site Improvements, and also subject to the creation of the special improvement districts which are required to make the contemplated improvements called for herein. Since School District #2 has already taken the property subject to the Subdivision Improvement Agreement, waivers and SID's which are being entered into between the Subdivider and the City, the signature of the School District is required on the Subdivision Improvement Agreement, the Waiver for Off-Site Improvements, the Waiver for On-Site Improvements, and on the Plat solely for the purpose of consenting to the platting of the subdivision. Billings High School District #2 is not assuming any responsibility concerning the accuracy or completeness of those documents. It is expressly understood that Billings High School District #2 must comply with this Agreement and the waivers as they apply to Tract 6B.

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



THE CITY OF BILLINGS, MONTANA

By James W. Van Arsdale
Mayor

By D. Wharton
City Clerk

KIMBLE PROPERTIES, INC.

By Lloyd L. Kimble
LOYD L. KIMBLE, President

BILLINGS HIGH SCHOOL DISTRICT #2

By Karen Doolen
KAREN DOOLEN, Chairman,
Board of Trustees

ATTEST:

Nely Roorda

STATE OF MONTANA)
 : SS.
County of Yellowstone)

On this 18 day of November, 1985, before me, the undersigned, a Notary Public for the State of Montana, personally appeared JAMES W. VAN ARSDALE and ANNA C. WHORTON, known to me to be the Mayor and the City Clerk of the City of Billings, and acknowledged to me that they executed the same on behalf of the City of Billings.

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

Dorothy M. Muffitt
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission expires: 10-30-87

STATE OF MONTANA)
 : SS.
County of Yellowstone)

On this 9th day of July, 1985, before me, the undersigned, a Notary Public for the State of Montana, personally appeared LOYD L. KIMBLE, known to me to be the President of KIMBLE PROPERTIES, INC., the corporation that executed the foregoing instrument, and acknowledged to me that said corporation executed the same.

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

Lloyd L. Kimble
Notary Public for the State of Montana
Residing at Billings, Montana
My Commission expires: Dec 19 1986

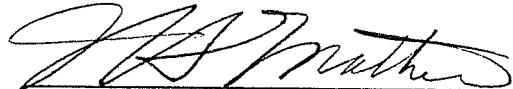
STATE OF MONTANA

)
: ss.

County of Yellowstone

On this 26th day of July, 1985, before me, the undersigned Notary Public, personally appeared KAREN DOOLEN, known to me to be the Chairman of the Board of Trustees of Billings High School District #2, and personally executed the within instrument on behalf of the entity herein named, and acknowledged to me that such entity executed the same.

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



Notary Public for the State of Montana
Residing at Billings, Montana

My Commission expires: 11/24/86

1372732

Kimberly Corporation

Steel

City of Billings

Jack Simpson
Mayor

STATE OF MONTANA }
County of Yellowstone }
AND DISTRICT OF THE CITY OF BILLINGS }
NOV 19 1985

Wick and Jack P
City Clerk & Recorder
City of Billings

10/20/85