

DECLARATIONS, RESTRICTIONS,
AND PROTECTIVE COVENANTS FOR
BECKER MINOR SUBDIVISION

This Declaration is made this 18 day of June, 2000, by the undersigned, **James Becker** and **Dorinda A. Becker**, hereinafter referred to as "Declarants."

WHEREAS, Declarants are the owners of five lots comprising a minor subdivision of Beaverhead County, Montana, hereinafter referred to as the "Property," and more particularly described as follows, to-wit:

Lots 1, 2, 3, 4, and 5, Comet Ridge Estates Minor Subdivision, filed for record on the ___ day of _____, 2000, under Clerk & Recorder's Reception No. _____, all located in the SE $\frac{1}{4}$ of Section 8, Township 5 South, Range 12 West, Montana, Principal Meridian; and

WHEREAS, Declarants desire to subject the Property to the provisions of this Declaration for the benefit of the Property and its present and future owners as hereinafter specified, and will convey the property subject thereto,

NOW, THEREFORE, Declarants hereby declare that all of the Property is and shall be held and conveyed upon and subject to the provisions of this Declaration. This Declaration shall constitute covenants running with the land and shall be binding upon all persons having any right, title, or interest in the Property or in any part thereof, their heirs, successors, and assigns, and shall apply to each present and future owner thereof.

ARTICLE I
Surroundings

1.1 Rural Area: The Property is situated in an unzoned, rural area and may be subjected to conditions resulting from non-residential use, including agricultural use, of neighboring lands. Activities incident to such use may produce odors, noise, dirt, smoke, or other conditions some may find offensive or incompatible with permitted land uses within the Subdivision. Normal and necessary resource management activities, legally conducted on neighboring lands, shall not be considered public nuisances.

ARTICLE II
Fire Protection

2.1 Landscaping: Whenever a dwelling or other structure is constructed, installed,

or erected on any lot within the Property, the owner or owners of the lot shall adhere to fire resistant landscaping practices consistent with landscaping guidelines as appear within Appendix F of *Fire Risk Rating* (March 1993) published by the Montana Department of State Lands.

2.2 Fire Resistant Roofing: The roofs of all improvements shall be constructed of fire resistant materials.

ARTICLE III Home Owners' Association

3.1 Home Owners Association: Declarants shall cause or have caused a Montana nonprofit, mutual benefit corporation to be formed called Comet Ridge Estates Minor Subdivision Home Owners Association, Inc., hereinafter referred to as the "Association." The purposes of the Association shall include, but may not be limited to, the following:

a. To develop and maintain the roadways and other common improvements for the benefit of the Property and for the benefit of the and the owners of the individual lots therein;

b. To develop and maintain the roadways and other common improvements for the benefit of the Becker Minor Subdivision, a subdivision of Beaverhead County, Montana, located in W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8, Township 5 South, Range 12 West, M.P.M., provided all of the lot owners of the Becker Minor Subdivision agree in writing thereto; and

c. To develop and maintain the roadways and other common improvements for the benefit of any subdivision or lot owners situated such that their property or lots are served by roadways developed or maintained by the Association or such that their boundaries are shared by the Property.

The Association shall be obligated to and shall assume and perform all functions and obligations imposed on it or contemplated for it under this Declaration or any similar functions or obligations imposed on it or contemplated for it under any Supplemental or Amended Declaration with respect to any Property now or hereafter subject to this Declaration.

3.2 Powers of the Association: The Association shall have all powers necessary or desirable to effectuate its purpose including, but not limited to, the following:

a. The power to levy such annual or special assessments as may be necessary and equitable for the proper management of the Association. Such assessments may include sums for insurance, maintenance, repair, replacement, equipment and such other activities reasonably necessary for the proper functioning of the Association.

b. The power to adopt and enforce such reasonable rules and regulations as may be required to effectuate the purposes of this Declaration of the Association's By-Laws.

c. The power to enforce this Declaration and the By-Laws, rules, and regulations of the Association.

d. The power to construct, maintain, repair, or replace roadways as set forth in the Plat or other common improvements and to make such reasonable and equitable annual or special assessments as may be required for such actions.

e. The power to establish such reserves for capital expenditures as the Association may deem prudent.

3.3 Membership: Every person or entity who is the owner of the fee title or equitable title to a lot within the Property, or who is subject to an assessment by the Association, shall automatically be a member of the Association.

A membership shall be deemed to have vested upon delivery of a duly executed deed or contract for deed to the owner.

Foreclosure of a contract, mortgage, trust indenture, or other security device and repossession of a lot shall terminate an owner's membership, whereupon all rights to such membership shall vest in the secured party.

Membership shall terminate upon the transfer of an owner's interest in a lot to a purchaser.

3.4 Voting Rights: Members shall be entitled to one vote for each lot in which they hold the interest required for membership by Section 3.3. When more than one person or entity hold such interest or interests in any lot, such persons or entities shall be members, and the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote, or fractions of one vote, be cast with respect to any such lot on any one issue.

3.5 First Annual Meeting: Not later than twelve months after three lots within the Property have been conveyed, the Declarants shall call a meeting of all members to be held within forty-five (45) days of said notice for the purposes of holding the Associations' first annual meeting and establishing the administrative operation of the Association.

3.6 Quorum; Voting: A quorum for the transaction of any business of the Association shall be those members comprising at least 35% of its members. Meetings of the members shall be preceded by written notice mailed to each member at his most recent known address not less than ten (10) days prior to the time appointed for a meeting. Notice of any meeting may be waived by a member provided the waiver is in writing. A written record of any meeting shall be maintained by the Association. Any issue affecting the rights of the members shall be submitted to a vote, and the majority of those voting on any issue shall prevail, except as may be otherwise provided herein.

ARTICLE IV

Members' Enjoyment of Roadways and Common Improvements

4.1 Members' Easement of Enjoyment: Every member of the Association shall have

a right and easement of enjoyment in and to any roadways and other common improvements as appear on the Plat, subject to each member's compliance with such reasonable regulations and restrictions, and the payment of such user fees, as may be imposed by the Association. Such easement shall be appurtenant to and shall pass with the title to every lot subject, however, to the following provisions:

4.2 Restrictions: The Association shall have the right to impose reasonable restrictions for the benefit of its members.

4.3 Dedication to the Public: The Association shall have the right to dedicate or transfer all or any part of the roadways or other common improvements to any public agency, authority, or utility for such purposes and subject to such considerations as may be agreed to by the members. No such dedication shall be effective unless an instrument, signed by the Secretary of the Association evidencing the fact that at least three fifths (3/5) of the lot owners concur, has been recorded in the appropriate records of Beaverhead County, Montana.

4.4 Suspension: The Association shall have the right to suspend the voting rights and the rights and easements of a member for any period during which any assessment against his lot remains delinquent.

ARTICLE V Assessments

5.1 Lien for Assessments: The Association shall maintain the roadway and other co improvements of the Comet Ridge Estates Minor Subdivision. Declarant covenants, and by acceptance of a deed conveying, or by contracting to purchase a lot, each owner covenants, whether or not expressed in any such deed or other conveyance, to be a member of the Association and to be subject to the terms and conditions of this Declaration, particularly with respect to the assessments of the Association. All assessments of the Association, together with interest thereon at the rate of ten percent (10%) per annum from the date of assessment until paid, and costs of collection, including a reasonable attorney's fee, shall be a charge on the land and shall constitute a lien upon the lot against which the assessment is made. Such lien shall be deemed perfected upon filing with the Beaverhead County Clerk and Recorder of an account of the assessments due, together with a correct description of the lot to be charged with such lien, verified by affidavit, but any error or mistake in the account of description shall not affect the validity of the lien if the property can be identified by the description. The priority of such lien shall be determined as of the time of filing with the Clerk and Recorder, and it shall be deemed subordinate to all previously recorded or filed interests. Each such assessment, together with interest thereon, and all costs of collection, as mentioned above, shall also be the personal obligation of the owner of such lot at the time when such assessment became due. The Association may establish additional

rules concerning the collection of assessments.

5.2 Purpose of Assessments: Assessments may be levied by the Association for the following purposes:

- a. Roadway maintenance
- b. Snow removal
- c. Insurance and fire protection
- d. Maintenance and enhancement of other common improvements
- e. Collection and enforcement costs
- f. Legal and accounting expenses

5.3 Amount of Assessments: Each lot within the Property shall be assessed an amount annually, payable within thirty (30) days of mailing of a notice of assessment, as may be determined by the Association's Board of Directors; provided, however, that assessments shall not be increased more than fifteen per cent (15%) annually without the approval of at least three fifths (3/5) of the owners of the lots within the Property, either at the annual meeting of the Association or in writing.

ARTICLE VI

Restrictions on Use of Property

6.1 Land Use: No lot within the Property shall ever be occupied or used by or for any building or purpose or in any manner which is contrary to the provisions of this *Declaration* or to applicable provisions of Beaverhead County, Montana, land use regulations.

6.2 No Mining, Drilling or Quarrying: No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted on the surface of the Property.

6.3 Residential Use: No lot within the Property shall be used except for one single-family residential dwelling and for agricultural purposes as hereinafter provided. No lot within the Property shall ever be occupied or used for any commercial or business purposes, provided, however, that the provisions hereof shall not prevent:

- a. Any owner or his duly authorized agent from renting or leasing his lot from time to time; or
- b. Any artist, artisan, or craftsman from pursuing his artistic calling upon private area if such artist, artisan, or craftsman also uses such private area for residential purposes, is self-employed and has no employees working in such private area, and does not advertise or offer any product or work of art for sale to the public upon or from such private area.

6.4 Restriction on Signs: No signs or advertising devices, including, but without limitation, commercial, political, informational, or directional signs or devices shall be erected or maintained on the Property, except for:

- a. One sign per lot no larger than three square feet advertising an owner's home or lot for sale or identifying ownership and address;
- b. As necessary to give directions;
- c. To caution or warn of danger; and
- d. As may be required by law.

6.5 No Subdivision: No lot within the Property shall be subdivided; provided, however, that the boundaries of lots may be adjusted so long as no additional lot is created.

6.6 Maintenance of Property: All lots within the Property and all improvements thereon shall be kept and maintained by the owner thereof in clean, safe, attractive, and sightly condition and in good repair.

6.7 No Noxious or Offensive Activity: No noxious or offensive activity shall be carried on upon any Property, nor shall anything be done or placed on any lot within the Property which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

6.8 Noxious Weeds: Noxious weeds shall be controlled in compliance with any applicable local, state, or federal law, ordinance, or regulation and shall not be permitted to become a nuisance to neighboring property.

6.9 Maintenance of Animals: A reasonable number of generally recognized house or yard pets and livestock may be maintained on the Property subject to the following provisions:

- a. Dogs: All dogs will be required to remain on a leash at all times when they are not constrained within a house, within a run, or within the boundaries of a lot within the Property.
- b. Overgrazing: Overgrazing is prohibited.
- c. Cattle Guards: The installation or use of cattle guards is prohibited.

6.10 Waste Disposal: All human and solid waste shall be disposed consistent with applicable local, state, or federal laws, ordinances, or regulations.

6.11 Non-conforming Uses: A use of the Property, or any portion thereof, in violation of the provisions of this *Declaration* at the time of its recording is a non-conforming use and may be continued; provided, however, if it is voluntarily discontinued for one (1) year or more, then it shall be deemed abandoned and any further use shall be subject to the restrictions of this *Declaration*.

A non-conforming use shall not be enlarged, intensified, increased, or extended unless by doing so the non-conforming use will thereby comply with the provisions of this *Declaration*.

The casual, temporary, or illegal use of the Property or any portion thereof, dwellings, or improvements shall not be sufficient to establish the existence of a non-conforming use or to create rights in the continuance of such use.

ARTICLE VII
General Provisions

7.1 Severability: The invalidity or unenforceability of any provision of this *Declaration* or any supplemental or amended declaration in whole or in part shall not affect the validity or enforceability of any other provision of this *Declaration*.

7.2 Captions: The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision, restriction, covenant or condition contained in this *Declaration*.

7.3 Enforcement: Failure to enforce any of the restrictions, rights, reservations, limitations, or covenants contained herein, or in any supplemental or amended declaration, shall not in any event be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. Upon the violation of any of the covenants or restrictions set forth herein, any owner of a lot within the Property may bring an action to enjoin and restrain said violation or collect damages on account thereof. In the event of such litigation, the prevailing party shall be entitled to a reasonable attorney's fee.

7.4 Amendment: The provisions of this *Declaration* shall run with the land from the date of recording for a period of thirty-five years, after which they shall be automatically renewed unless amended by the written agreement of the persons owning three-fifths (3/5'ths) of the lots within the Property and with the prior written consent of the Beaverhead County Commissioners.

IN WITNESS WHEREOF, the undersigned have executed this *Declaration* for the Comet Ridge Estates Minor Subdivision of Beaverhead County, Montana, on the day and year first above written.


James Becker


Dorinda A. Becker

THE STATE OF MONTANA)

:SS

County of Beaverhead)

On this 18 day of June, 2000, before the undersigned, a Notary Public, personally appeared **James Becker** and **Dorinda A. Becker**, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Patti Thompson Odasz
Notary Public for State of Montana
Residing at Dillon, Montana
My commission expires ~~July 18, 2002~~
May 31, 2003

Filed for record this _____ day of _____ 200__ at _____ o'clock ___ M. and
 Recorded in Book _____ of Deeds on Page _____ of the Records of County of Beaverhead, State of Montana.
 _____ Clerk and Recorder By _____

SUBDIVISION IMPROVEMENTS AGREEMENT

The parties to this Subdivision Improvements Agreement ("this Agreement") are **JAMES L. BECKER** and **DORINDA I. BECKER** of P. O. Box 460494, Polaris, MT 59746, ("the Developers"), and BEAVERHEAD COUNTY, a political subdivision of the State of Montana, ("the County").

WHEREAS, the Developers seek permission to subdivide an approximate 13 acre tract within the County to be known as COMET RIDGE ESTATES MINOR SUBDIVISION ("the Subdivision");

WHEREAS, the Developers also desire to defer construction of improvements described in the subdivision conditional on approval by Beaverhead County;

WHEREAS, the purpose of this Agreement is to protect the County and is not intended for the benefit of contractors, suppliers, laborers or others providing work, services, or materials to the Subdivision, or for the benefit of lot or home buyers in the Subdivision; and

WHEREAS, the mutual promises, covenants and obligations contained in this Agreement are authorized in state law and the County subdivision regulations;

NOW, THEREFORE, IT IS RESOLVED, the parties hereby agree as follows:

1. **EFFECTIVE DATE:** The effective date of this Agreement shall be the date that final subdivision plat approval is granted by the County.
2. **ATTACHMENTS:** The Attachments cited herein are hereby made a part of this Agreement.

DEVELOPER'S OBLIGATIONS

3. **IMPROVEMENTS:** The Developers shall construct and install, at their own expense, those subdivision improvements specified below. The Developers' obligation to complete the improvements shall arise upon approval of the final subdivision plat, shall not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the subdivision, and shall be independent of any obligations of the County contained in this Agreement.

The following are improvements which must be completed. The following list shall not be construed as limiting or releasing any improvement required by the above conditions or documents.

Completion of construction of approximately 200 yards of road from Grasshopper Creek to existing road per attached Pioneer Excavation and Landscaping Agreement

4. STANDARDS: The Developers shall construct the required improvements according to the standards and specifications required by the County as specified in the conditional approval of the subdivision by Beaverhead County.

5. WARRANTY: The Developers warrant that each and every improvement shall be free from defects for a period of one (1) year from the date that the County accepts the dedication of the last improvement completed by the Developers.

6. COMMENCEMENT AND COMPLETION RECORDS: The Developers shall fully complete all of the required improvements on or before the third anniversary of final approval of the Becker Minor Subdivision.

7. COMPLIANCE WITH LAW: The Developers shall comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting their obligations under this Agreement.

COUNTY'S OBLIGATIONS

8. INSPECTION AND CERTIFICATION: (A) The County shall provide for inspection of the improvements as they are completed and, where found acceptable; and shall certify those improvements as complying with the standards and specifications set forth in the conditional subdivision approval. The inspection and certification shall occur within thirty (30) days of written notice by the Developers that the improvements are complete and Developers desire the County inspection and certification. Before requesting certification of any improvement, the Developers shall present to the County valid lien waivers from all persons providing materials or performing work on the improvement.

(B) Certification by the County does not constitute a waiver by the County of the right to proceed with foreclosure of the mortgage in the event defects in or failure of any improvement are found following the certification.

9. NOTICE OF DEFECT: The County shall provide timely notice to the Developers whenever inspection reveals that an improvement does not conform to the standards and specifications for improvements, or is other wise defective. The Developers shall have thirty (30) days from the date the notice is issued to remedy the defect. The County may not declare a default under this Agreement during the thirty (30) day remedy period unless the Developers clearly indicate they do not intend to correct the defect. The Developers shall have no right to correct the defect in, or failure of, any improvement found after the County accepts dedication of the improvement(s).

OTHER PROVISIONS

10. EVENTS OF DEFAULT: The following conditions, occurrences or actions shall constitute

a default by the Developers during the completion period:

- a. failure to complete construction of the improvements within the time provided for herein;
- b. failure to remedy the defective construction of any improvement within the remedy period ;
- c. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.

11. MEASURE OF DAMAGES: The measure of damages for breach of this Agreement shall be the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements shall be prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the promissory note or mortgage establishes the maximum amount of the Developers' liability. The County shall be entitled to complete or to contract to complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.

12. LOCAL GOVERNMENT RIGHTS UPON DEFAULT: Upon the occurrence of any event of default, the County may bring action on this Agreement. The County shall have the right to complete improvements itself or contract with a third party for completion, or the County may assign the proceeds of the foreclosure sale to a subsequent developer who has acquired the Subdivision and who shall have the same rights of completion.

13. INDEMNIFICATION: The Developers agree to indemnify and hold the County harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Developers are not employees or agents of the County.

14. AMENDMENT OR MODIFICATION: The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the County and by the Developers.

15. ATTORNEY'S FEES: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each shall bear its own costs in their entirety.

16. THIRD PARTY RIGHTS: No person or entity who is not a party to this Agreement shall have any right of action under this Agreement, except that if the County does not exercise its rights within sixty (60) days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the County to exercise its rights.

17. SCOPE: This Agreement constitutes the entire agreement between the parties and no statements, promises or inducement that is not contained in this Agreement shall be binding on the parties.

18. TIME: For the purpose of computing the commencement and completion periods, and time periods for County action, times in which war, civil disasters, acts of God or extreme weather conditions occur shall not be included if the events prevent the Developers or the County from performing the obligations under this Agreement. Time is specifically made of the essence in this Agreement.

19. ASSIGNS: The benefits of this Agreement to the Developers shall not be assigned without the express written approval of the County. Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the County to assign its rights under this Agreement.

20. SEVERABILITY: If any part, term or obligation of this Agreement is held by the courts to be illegal, the illegality shall not affect the validity of any other part, term or provision, and the rights of the parties shall be construed as if the part, term or provision were never part of the Agreement.

DATED this 18 day of June, 2001

BEAVERHEAD COUNTY, a political subdivision
of the State of Montana

BY: Scott S. Hony

ITS: Chairman

ATTEST:

Rosalee B. Richardson by Kristy L. Sauerber Deputy
ROSALEE B. RICHARDSON
CLERK & RECORDER AND EX OFFICIO CLERK
OF BOARD OF COUNTY COMMISSIONERS

James A. Becker
JAMES A. BECKER

Dorinda I. Becker
DORINDA I. BECKER

THE STATE OF MONTANA)

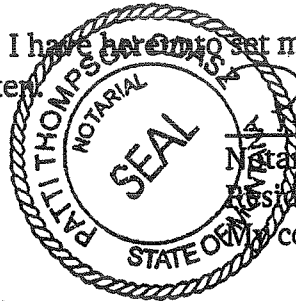
: ss

County of Beaverhead)

Kristy L. Sauerber

On this 21 day of June, 2001, before me, the undersigned, a Notary Public, personally appeared and ROSALEE B. RICHARDSON, personally known to me to be the Chairman of the Board of County Commissioners and the ^{Deputy} Clerk and Recorder and Ex Officio Clerk of said Board of County Commissioners, respectively, of Beaverhead County, Montana, the political subdivision of the State of Montana that executed the within instrument, and acknowledged to me that such political subdivision of the State of Montana executed the same.

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



Patti Thompson Odasz
Notary Public for State of Montana
Residing at Dillon, Montana
My commission expires May 31, 2003

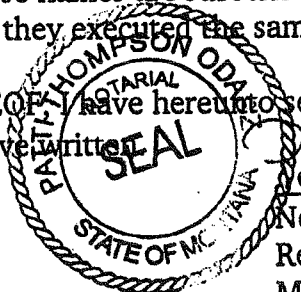
THE STATE OF MONTANA)

: ss

County of Beaverhead)

On this 20 day of June, 2001, before me, the undersigned, a Notary Public, personally appeared and JAMES A. BECKER and DORINDA I. BECKER, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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



Patti Thompson Odasz
Notary Public for State of Montana
Residing at Dillon, Montana
My commission expires