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Sanderson Stewart.
1300 North Transtech Way
Billings, MT 59102

MODIFICATION OF SUBDIVISION IMPROVEMENTS AGREEMENT VINTAGE ESTATES SUBDIVISION

This Modification of Subdivision Improvements Agreement (this "Modification") is made this _____ day of _____, 20___, by and between **VINTAGE ESTATES, LLC**, whose address for the purpose of this agreement is PO Box 20875, Billings, MT 59104 hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City".

RECITALS

WHEREAS, the plat of Vintage Estates Subdivision (the "Subdivision"), located in the City of Billings, Yellowstone County, Montana, is subject to the terms of that certain Subdivision Improvements Agreement by and between the Subdivider and City recorded April 15, 2005, under Document No. 3329141, in the office of the Yellowstone County Clerk and Recorder (the "Agreement"); and

WHEREAS, pursuant to Section 5. H of the Agreement, the Agreement may be modified in writing and executed in the same manner as the Agreement.

AGREEMENT

The parties hereby agree as follows:

1. Amendment. Section 3. A. 1. b; Section 3. A. 1. d; Section 3. A. 6, Section 3. A. 7; Section 3. D; Section 4. A; Section 4. B; Section 4. C; Section 4. D; Section 4. F; Section 4. G; and Section 4. H of the Agreement shall be deleted and replaced with the following:

3. Subdivider hereby agrees to construct the following improvements as required in conformance with City of Billings Subdivision Regulations:

A. STREETS

1. *Street Construction*

- b. According to the *Billings Urban Area 2000 Transportation Plan*, Grand Avenue is classified as a principal arterial. The Subdivider and City agree that the development of existing Tracts 1 and 2 of Certificate of Survey No. 1877 would trigger improvements to the south half of the Grand Avenue right-of-way. These improvements include curb and gutter on the south side of the right-of-way adjacent to the property, 5-foot wide boulevard walk along the south side of Grand Avenue adjacent to the Subdivision and paving necessary to construct a westbound left-turn lane at the primary access on Grand Avenue. The improvement plans and specifications will be approved by the City Engineer and be in accordance with City of Billings requirements. Because of the uncertain grade information along Grand Avenue, these improvements may not be constructed at this time but shall, in this event, be secured by a suitable financial guarantee as may be approved by the City of Billings. The financial guarantee shall be submitted at the time of ~~Phase II~~ Phase III improvements. The developer shall build a westbound left turn lane as part of ~~Phase I~~ Phase III improvements. In addition, the developer would be responsible for 1.9 percent of the cost to construct a westbound right-turn lane at the Grand Avenue-54th Street West intersection and 1.2 percent of the cost of intersection improvements at the 54th Street West-Rimrock Road intersection. These costs shall be \$3,040.00 and \$1,800.00, respectively, and shall be submitted at the time of Phase II improvements.
- d. In the event that Tract 3 of Certificate of Survey No. 1877 is subdivided or improved in the future, a connection utilizing arch culvert across the Big Ditch will be constructed, with the developer and the owning entity of Tract 3 of Certificate of Survey No. 1877 each responsible for half of the total cost of materials and construction. Any connection across the ditch would require permission from

the Big Ditch. A cash-in-lieu contribution for this improvement would be made by the developer at the time of ~~Phase III~~ Phase IV improvements. At time of construction, a cost share agreement would be negotiated between the two parties and be would approved by the City of Billings.

6. *Heritage Trail*

The Heritage Trail Non-Motorized Trail System Plan recommends a multi-use trail along the southern boundary of the subdivision. Vintage Estates Subdivision proposes that the Heritage Trail be located along the north side of the Big Ditch, adjacent to the Big Ditch Easement.

A 20-foot right-of-way shall be provided by the developer for the multi-use trail. The trail shall connect to the pedestrian network of Vintage Estates Subdivision. The Heritage Trail shall be constructed during ~~Phase III~~ Phase IV development of Vintage Estates Subdivision.

7. *Traffic Control Devices*

The Subdivider shall furnish and install all necessary traffic control devices adjacent to the Subdivision. Traffic control devices shall include all necessary signing, striping and channelization devices to properly complete the implementation of the proposed street construction.

All traffic control and street improvements will be as outlined in the approved traffic accessibility study provided to the City by the Subdivider. The traffic circles shall be approximately 10-foot inside diameter and shall contain landscaping within the island. Maintenance of said landscaping shall be part of the Vintage Estates Park Maintenance District. The traffic accessibility study will be subject to review and approval by the City Traffic Engineer.

Traffic circles ~~shall~~ may be installed by the Subdivider at the Vineyard Way-Burlington Avenue and Beringer Way-Cabernet Lane intersections. Design of said traffic circles shall be approved by the City Traffic Engineer.

Any change of anticipated use of any lot from that estimated in the original traffic accessibility study will require an update of the traffic analysis and recommendations.

D. PARKS AND OPEN SPACE

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Paragraph (1) calls for park area to be 11 percent of the land proposed to be subdivided into parcels of one-half acre or smaller. A portion of this 11% will be provided as by dedication of an 1.405-acre on-site park and 0.652 acres of trail corridor. A Park Maintenance District will be set up for ~~this portion~~ the park area. As part of Phase I improvements, 1.290 acres of the parkland dedication will be ~~dedicated~~ credited. As part of Phase II improvements, ~~.768~~ .384 acres of the parkland will be ~~dedicated~~ credited and a cash-in-lieu payment for ~~.522~~ .261 acres for the development of Cottonwood Park will be contributed. As part of Phase III improvements, .384 acres of parkland will be credited and a cash-in lieu payment for ~~1.290~~ .261 acres will be contributed for the development of Cottonwood Park. As part of Phase IV improvements, a cash-in lieu payment for 1.290 acres will be contributed for the development of Cottonwood Park. Park development will occur as part of ~~Phase III~~ Phase IV improvements. The cash-in-lieu contribution amount will be determined by a vacant land appraisal or a recent conveyance document establishing the value of the unsubdivided land. This land value will be determined at the time of Phase II, ~~and Phase III~~ and Phase IV development. Along with this, the subdivider agrees that it will be part of the Park Maintenance District associated with Cottonwood Park.

4. PHASING

- A. The Phase I improvements shall be constructed utilizing a private contract. The Phase I improvements shall include construction of those portions of Vintage Lane, Beringer Way, Vineyard Way and Merlot Lane adjacent to the Phase I lots, including all necessary utilities within said streets. ~~In addition, a westbound left turn lane shall be installed as part of Phase I improvements.~~ Phase I construction will also include construction of a temporary

stormwater retention area as defined within an approved stormwater management report.

- B. The Phase II improvements shall be constructed utilizing a private contract. The Phase II improvements shall include construction of those portions of Beringer Way, Vineyard Way and Burlington Avenue and Cabernet Lane adjacent to the Phase II lots, including all necessary utilities within said streets. The 20-foot wide emergency access road connecting the end of Burlington Avenue to 52nd street West and up 52nd Street West to Grand Avenue shall also be constructed in Phase II. The emergency access road, barricades and signage shall be constructed as approved by the City Fire Department. Phase II will also include additional stormwater retention area as defined within an approved stormwater management report.
- C. The Phase III improvements shall be constructed utilizing a private contract. The Phase III improvements shall include construction of those portions of Beringer Way, Vineyard Way, ~~Riesling Lane, Beringer Lane, and Vineyard Circle~~ and Cabernet Lane adjacent to Phase III lots, including all necessary utilities within said streets. In addition, a westbound left-turn lane shall be installed as part of Phase III improvements. Phase III will also include additional stormwater retention area as defined within an approved stormwater management report.
- D. The Phase IV improvements shall be constructed utilizing a private contract. The Phase IV improvements shall include construction of those portions of Beringer Way, Vineyard Way, Riesling Lane, Beringer Lane, and Vineyard Circle adjacent to Phase IV lots, including all necessary utilities within said streets.
- F. The Subdivider will install the Phase II improvements in the future. The subdivider agrees not to sell or convey any lots in the subdivision to be served by the Phase II improvements, and the Subdivider further acknowledges that no building permits for lots within Phase II shall be issued until a private contract has been executed for the construction and installation of the public improvements to serve said lots, and to provide necessary access and traffic circulation for the traffic generated by those lots. As used herein, the lots to be served by the said Phase II are more particularly described as follows:

Phase II

Lots 11 through ~~15~~ 13, inclusive, Block 1; Lot 10, Block 2; Lots 8 through 14, inclusive, Block 4; Lots 1 through ~~16~~ 8, inclusive, Block 5; ~~Lots 1 through 7, inclusive, Block 6;~~ and lots ~~6~~ 10 through 11, inclusive, Block 8, all in Vintage Estates Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (~~42~~ 21 lots total).

- G. The Subdivider will install the Phase III improvements in the future. The Subdivider agrees not to sell or convey any lots in the Subdivision to be served by the Phase III improvements, and the Subdivider further acknowledges that no building permits for lots within Phase III shall 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 to serve said lots, and to provide necessary access and traffic circulation for the traffic generated by those lots. As used herein, the lots to be served by the said Phase III are described as follows:

Phase III

Lots ~~16~~ 14 through ~~19~~ 15, inclusive, Block 1; Lots ~~8~~ 1 through ~~13~~ 7, inclusive, Block 6; ~~Lots 1 through 4, inclusive, Block 7;~~ Lots ~~1~~ 6 through ~~5~~ 9, inclusive, Block 8; and ~~lots 1 through 9, inclusive, Block 9, and Lots 9 through 16, inclusive, Block 5,~~ all in Vintage Estates Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (~~28~~ 21 lots total).

- H. The Subdivider will install the Phase IV improvements in the future. The Subdivider agrees not to sell or convey any lots in the Subdivision to be served by the Phase IV improvements, and the Subdivider further acknowledges that no building permits for lots within Phase IV shall 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 to serve said lots, and to provide necessary access and traffic circulation for the traffic generated by those lots. As used herein, the lots to be served by the said Phase IV are described as follows:

Phase IV

Lots 16 through 19, inclusive, Block 1; Lots 8 through 13, inclusive, Block 6; Lots 1 through 4, inclusive, Block 7; Lots 1 through 5, inclusive, Block 8; and lots 1 through 9, inclusive, Block 9, all in Vintage Estates Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (28 lots total).

Pursuant to the foregoing Agreement, the Subdivider shall execute and record a Declaration of Restriction on Transfers and Conveyances for said Phase II and Phase III and Phase IV lots (attached hereto) to be recorded concurrently with the recording of this Agreement. Said Declaration notifies all third parties that said lots may not be legally sold, conveyed, or transferred until a release executed by the City of Billings and substantially in the form of Exhibit A attached hereto has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No lots shall be released until a certificate substantially in the form of Exhibit B attached hereto has been executed by the Department of Public Works stating that the above conditions have been met, which certificate must accompany any request for a release. By the acceptance and recording of the Agreement, the City does hereby authorize the Department of Public Works, Mayor, and City Clerk of the City to review any request for release and to execute such certificates and releases as may be necessary to evidence a release from the restriction against sale, conveyance, and transfer of lots in the Subdivision.

2. Ratification. But for the amendment expressly made in this Modification, Subdivider and City hereby ratify and confirm the provisions of the Agreement.

“CITY”

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this _____ day of _____, 20__, before me, a Notary Public for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana whose names are subscribed to in the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

Approved as to Form:

City Attorney