

DRAFT

SUBDIVISION IMPROVEMENTS AGREEMENT

SHADOW LAWN ESTATES SUBDIVISION

**CITY OF BILLINGS
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SUBDIVISION IMPROVEMENTS AGREEMENT

SHADOW LAWN ESTATES SUBDIVISION

THIS AGREEMENT is made and entered into this ____ day of _____, 2013, by and between **AARON L. SPARBOE** whose address for the purpose of this Agreement is P.O. Box 1942, Billings, Montana 59103, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the plat of Shadow Lawn Estates Subdivision, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on the ____ day of _____, 20____, the City Council conditionally approved a preliminary plat of Shadow Lawn Estates Subdivision; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to Shadow Lawn Estates Subdivision upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

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:

I. VARIANCES

- A.** Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City's Subdivision Regulations:

Variance from the provisions of Section 23-406(B)(6) of the City of Billings Subdivision Regulations requiring the dedication of a 50-foot half right-of-way for Poly Drive, a minor arterial street. The City of Billings Public Works Department has approved a 40-foot half right-of-way dedication in order to meet the future right-of-way needs along this portion of Poly Drive.

II. CONDITIONS THAT RUN WITH THE LAND

- A.** Lot owners should be aware that this subdivision is being built in close proximity to prime deer and turkey habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- B.** Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction. A geotechnical report has been prepared by Rawhide Engineering Inc. for Shadow Lawn Estates Subdivision, Billings, Montana dated August 26, 2013. A copy is available upon request.
- C.** There is attached hereto a Waiver waiving the right to protest the creation of the 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 owner specifically agree that they are waiving valuable rights and do so voluntarily.
- D.** The Subdivider and subsequent contracts/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the City and the Montana Department of Environmental Quality (MDEQ).

This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

- E. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

III. TRANSPORTATION

A. Streets

1. Poly Drive is an existing minor arterial and currently contains a 48-foot wide street within a 60-foot wide right-of-way. This subdivision plat will dedicate an additional 10-foot wide strip of land along the south side of Poly Drive as shown on the plat. The City and Subdivider agree that no Poly Drive public street improvements are required for this subdivision other than a new street approach for Shadow Lawn Court and relocation of the existing lane sign mast arm and pole.

The City Public Works Department anticipates improvements to Poly Drive will occur in 2015. This project will include utilizing the additional ten feet of right-of-way to allow for a bike lane and a new five-foot-wide sidewalk. This work will be done by the City at no cost to the Subdivider or the adjacent property owners.

The City will discourage, but cannot prevent, the construction of overhead utilities on the south side of Poly Drive and the west side of Virginia Lane adjacent to Certificate of Survey No. 3538 and Shadow Lawn Estates Subdivision.

2. O'Malley Drive is an existing residential local access and currently contains an approximate 20-foot wide street within a 60-foot wide right-of-way. No additional land will be dedicated to O'Malley Drive as part of this plat. The O'Malley Drive improvements associated with this subdivision may include satisfactory sub-base, base course, curb, and gutter, and asphalt surface along the south side of Lot 5. The O'Malley Drive improvements will be constructed through a future SID, a waiver for which is attached.

The City and Subdivider agree that no public street improvements are required as part of this subdivision in order to record the final plat.

3. Shadow Lawn Court will be a private street with standard curb and gutter on both sides. The street will be 34-feet from back of curb to back of curb with asphalt surface over a gravel base. The private street will be maintained by the homeowner's association.

B. Sidewalks

A 4-foot wide sidewalk exists along the south side of Poly Drive and the west side of Virginia Lane adjacent to the subdivision. The Poly Drive sidewalk will be replaced in the future with a 5-foot sidewalk by the City.

The 5-foot wide sidewalk along Virginia Lane will be completed by the City at its expense.

A 5-foot wide sidewalk will be installed along the north side of O'Malley Drive adjacent to Lot 5 as part of a future SID, a waiver for which is attached.

The City and Subdivider agree that no sidewalk improvements are required as part of this subdivision in order to record the final plat.

C. Street Lighting

The City and Subdivider agree that street lights are not required to be installed as part of this subdivision.

D. Traffic Control Devices

The City and Subdivider agree that offsite traffic control devices are not required to be installed as part of this subdivision. Onsite, a stop sign will be installed at Shadow Lawn Court at the approach to Poly Drive.

E. Access

Access to Lots 1, 2, 3, and 4 will be from Shadow Lawn Court, a private street located within the easement as shown on the plat. A new driveway approach from O'Malley Drive shall be constructed for Lot 5 at such time that a dwelling is constructed on Lot 5.

F. Billings Area Bikeway and Trail Master Plan (BABTMP)

The City and Subdivider agree that no BABTMP improvements are required as part of this subdivision.

G. Public Transit

The City and Subdivider agree that no public transit improvements are required as part of this subdivision.

IV. EMERGENCY SERVICE

Emergency access to the subdivision is provided via Poly Drive, O'Malley Drive, and Shadow Lawn Court. City and Subdivider agree that no additional emergency access is required as part of this subdivision.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within the 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Chapter 28, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division.

There are no public storm drainage facilities in Poly Drive, Virginia Lane, or O'Malley Drive to serve this subdivision. Standard curb inlets and a perforated pipe storage system will be installed under Shadow Lawn Court to meet the City of Billings stormwater management requirements for the street and for Lots 1, 2, 3, and 4. A small berm will be constructed along the south side of Lots 2 and 3 to protect the neighboring lots from any overland runoff. The storm drain system will be maintained by the homeowner's association.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of/to water mains and sanitary sewers to the Public Works Department - Distribution and Collection Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable system development and franchise fees in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Water

The subdivision is currently served with public water by a 10-inch main located in Poly Drive and a 6-inch main located in O'Malley Drive. Lots 1 thru 4 will be served by 2-inch services extended south from the 10-inch main in Poly Drive. Lot 5 will be served by a water service extending north from the 6-inch main in O'Malley Drive.

In addition, a 6-inch private fire line and hydrant will be placed on Shadow Lawn Court with connection to the 10-inch main in Poly Drive. The fire line and hydrant will be maintained by the homeowner's association.

B. Sanitary Sewer

The subdivision is currently served with public sanitary sewer. The existing 8-inch City main located within the subdivision will be partially abandoned and regraded to serve the lots. From a new public manhole in Shadow Lawn Court, private sewer mains will be extended east and west to serve the Shadow Lawn development. The private mains will be maintained by the homeowner's association.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines shall be placed in designated easements as shown on the subdivision plat and shall be installed underground prior to surface improvements. The location of all such facilities shall be subject to approval of the City Engineer.

VII. PARKS/OPEN SPACE

There is no parkland requirement for this proposed subdivision, as this is a minor subdivision [MCA 76-3-621(3)(d)].

VIII. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study has been prepared and will be submitted to the City with the preliminary plat application.

IX. FINANCIAL GUARANTEES

The City and Subdivider agree that because all the public improvements required as part of this subdivision will be constructed by future SID's and/or by the City of Billings no financial guarantees are required as part of this subdivision.

X. LEGAL PROVISIONS

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B. 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.
- C. The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.

- D. 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.
- E. 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.
- F. 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.

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IN WINESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

AARON L. SPARBOE

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STATE OF MONTANA)
: ss
County of Yellowstone)

On this ____ day of _____, 2013, before me, a Notary Public in and for the State of Montana, personally appeared Aaron L. Sparboe, known to me to be the person who executed the foregoing instrument and who acknowledged to me that he executed the same.

IN WITNESS WHEROF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

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

This Agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 2013.

“CITY”

CITY OF BILLINGS, MONTANA

DRAFT

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 2013, before me, a Notary Public in and 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 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

