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MODIFICATION OF SUBDIVISION IMPROVEMENTS AGREEMENT SKYVIEW RIDGE SUBDIVISION, FIRST FILING

THIS MODIFICATION of Subdivision Improvements Agreement (this "Modification") is made this ____ day of _____ 2015, by the **STATE OF MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**, whose address is P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City".

RECITALS

WHEREAS, the plat of Skyview Ridge Subdivision, First Filing (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 February 25, 2014, under Document No. 3698532, in the office of the Yellowstone County Clerk and Recorder (the "Agreement"); and

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

AGREEMENT

The parties herby agree as follows:

1. Amendment: Section X.A of the Agreement shall be deleted and replaced with the following:

X. TIMING OF IMPROVEMENTS

The Subdivider does not desire to commence development of lots within the subdivision, but does desire to file the approved final plat of Skyview Ridge Subdivision, First Filing, and to sell and convey lots in said subdivision at some future date. In accordance with the foregoing, the Subdivider and the City agree as follows:

A. First Filing Improvements

First Filing improvements shall be constructed utilizing private contracts. There will be multiple phases of development. Each phase shall construct those street and utility improvements adjacent to that particular phase, or any off-site improvements identified within the traffic impact study that are determined to be necessary to support the development of a particular phase. The phases of development for the First Filing are identified below:

Phase I:

Lots 1 through 4, inclusive, Block 1 and Lots 1 through 2, Block 2; Skyview Ridge Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (6 lots total).

Future Phases:

Lots 5 through 9, inclusive, Block 1, Lot 1, Block 3, Lot 1, Block 4, Lot 1, Block 5, Lot 1, Block 6, Lot 1, Block 7, Lot 1, Block 8, Skyview Ridge Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (11 lots total).

The parties acknowledge that the Phase I improvements will be constructed to serve the lots identified above through one private contract and that the Future Phases may consist of one or multiple additional Phases, each with its own separate private contract.

The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the First Filing improvements, and the Subdivider further acknowledges that no building permits for any First Filing lot shall be issued until a private

contract has been executed for the construction and installation of the public improvements to serve a particular phase, and to provide necessary access and traffic circulation for the traffic generated by those lots.

Pursuant to the foregoing agreement, the Subdivider shall execute and record a Declaration of Restriction on Transfers and Conveyances for said First Filing (attached hereto) to be recorded concurrently with the recording of this agreement. Said Declaration notifies all third parties that said lots and blocks may not be legally sold, conveyed, or transferred until 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 authorized 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 this Agreement.

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

“SUBDIVIDER”

STATE OF MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION

By: _____
John E. Tubbs, Director

STATE OF MONTANA)
 : ss
County of LEWIS & CLARK)

On this _____ day of _____, 2015, before me, a Notary Public in and for the State of Montana, personally appeared JOHN E. TUBBS, known to me to be the DIRECTOR of the STATE OF MONTANA DEPARTMENT OF NATRUAL RESOURCES AND CONSERVATION, who executed the foregoing instrument and who acknowledged to me that he executed the same.

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

“CITY”

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of YELLOWSTONE)

On this _____ day of _____, 2015, 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 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

EXHIBIT – REVISED DECLARATION DOCUMENT

**DECLARATION OF RESTRICTION ON TRANSFERS
AND CONVEYANCES**

SKYVIEW RIDGE SUBDIVISION, FIRST FILING

THIS DECLARATION is made this ____ day of _____ 2015, by the **STATE OF MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**, whose address is P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, the Declarant is the owner of all of the lots in Skyview Ridge Subdivision, First Filing, situated in Section 20, Township 1 North, Range 26 East, P.M.M., Yellowstone County, Montana, hereinafter referred to as the "Subdivision"; and

WHEREAS, the Declarant previously filed a Declaration of Restrictions on Transfers and Conveyances on February 25, 2014 under Document No. 3698533, in the office of the Yellowstone County Clerk and Recorder for Skyview Ridge Subdivision, First Filing and this document is intended to entirely replace the previously recorded Declaration of Restrictions on Transfers and Conveyances; and

WHEREAS, in connection with the filing of the plat for the Subdivision, the Declarant executed that certain Subdivision Improvements Agreement dated the ____ day of _____, 20__ to the City of Billings, which Agreement contains restrictions against the sale, conveyance or transfer of certain lots in the Subdivision until such time as a private contract

has been executed providing for the installation and construction of required public improvements; and

WHEREAS, in order to more fully evidence the restriction against sale, conveyance, or transfer and to give third parties notice of such restrictions, the Declarant desires to execute and record this Declaration of Restrictions.

NOW, THEREFORE, in consideration of these premises, the Declarant, for itself and its successors and assigns, does hereby declare:

1. Except as hereinafter provided, the Declarant does hereby agree and declare that the following described lots shall not be sold, transferred, or conveyed to any third party unless and until a release has been executed and recorded in accordance with the provisions hereinafter appearing:

Phase I:

Lots 1 through 4, inclusive, Block 1 and Lots 1 through 2, Block 2; Skyview Ridge Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (6 lots total).

Future Phases:

Lots 5 through 9, inclusive, Block 1, Lot 1, Block 3, Lot 1, Block 4, Lot 1, Block 5, Lot 1, Block 6, Lot 1, Block 7, Lot 1, Block 8, Skyview Ridge Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (11 lots total).

2. It is the express purpose and intent of this Declaration to restrict or preclude sale, transfer, or conveyance of the above-described lots until such time as a private contract has been executed and necessary funding guarantees provided, as the case may be, providing for the construction and installation of those public improvements required under the above-described Subdivision Improvements Agreement which by reference thereto is hereby incorporated herein as though fully set forth at this point. It is anticipated, however, that the Declarant will develop Skyview Ridge Subdivision, First Filing, in distinct phases, upon providing for the installation and construction of the public improvement necessary to serve the particular phase. In that regard a release of some but not all of the above described lots may be executed and recorded from time to time, in accordance with the provisions hereinafter appearing, and upon the recording of said release, the covenants and restrictions contained herein with respect to the

lots described in said release shall be deemed canceled and terminated, and of no further force and effect.

3. Upon compliance with the requirements for a private contract specified above, a release for the lot or lots affected thereby shall be executed and recorded by the City of Billings, pursuant to the provisions contained in the said Subdivision Improvements Agreement. The execution and recording of said release shall be deemed conclusive evidence to all third parties purchasing or acquiring any lot described therein that the restriction against sale, conveyance, or transfer of said lot has been removed.
4. UNTIL SUCH RELEASE IS EXECUTED AND RECORDED, THIS DECLARATION SHALL SERVE AS NOTICE TO ALL THIRD PARTIES PURCHASING OR ACQUIRING ANY OF THE ABOVE-DESCRIBED LOTS OF THE EXPRESS RESTRICTIONS AGAINST ANY SUCH SALE, CONVEYANCE OR TRANSFER, AND OF THE TERMS AND CONDITIONS OF THE SAID SUBDIVISION IMPROVEMENTS AGREEMENT, AND SHALL FURTHER SERVE AS NOTICE THAT THE CITY OF BILLINGS MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED IN THE SUBDIVISION IMPROVEMENTS AGREEMENT SHOULD THE TERMS OF THIS DECLARATION BE VIOLATED.
5. The terms, conditions, and restrictions contained in this Declaration shall not preclude or restrict the ability of the Declarant to (a) sell, convey, and transfer all of the above-described lots, all of the lots in one phase, or those lots remaining subject to the terms of this Declaration, as one unit or group, to a third party, parties or entities; provided, however, that such sale shall be subject to this Declaration and the lots shall continue to be subject to the restrictions herein provided against the sale, transfer and conveyance until a release has been executed and recorded; or (b) enter into sale and purchase agreements for individual lots; provided, however, that the deeds or other conveyance documents shall not be delivered to the prospective buyer nor shall the closing under any such sale and purchase agreements occur until such time as a release covering the affected lot has been executed and recorded.
6. The terms and conditions of this Declaration shall run with the land and shall be binding upon and shall inure to the benefit of the Declarant, the City of Billings, and their successors and assigns.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

STATE OF MONTANA DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

By: _____
John E. Tubbs, Director

STATE OF MONTANA)
 : ss.
County of LEWIS & CLARK)

On this _____ day of _____, 2015, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same.

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