

SUBDIVISION IMPROVEMENTS AGREEMENT
Glynn Abbey Subdivision
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City of Billings

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SUBDIVISION IMPROVEMENTS AGREEMENT

Glynn Abbey Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between *Glynn Abbey, LLC* whose address for the purpose of this agreement is **1010 Central Ave., Suite 1, Billings, MT 59102**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Glynn Abbey 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 ____ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of *Glynn Abbey Subdivision*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *Glynn Abbey 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 *Glynn Abbey 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

Subdivider is requesting a variance to provide curbwalk style sidewalk on the exterior side of the main road, Glynn Abbey Way, only. An interior trail system will provide pedestrian access throughout the subdivision in lieu of a second interior roadside sidewalk.

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 antelope habitat and it is possible 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.** A geotechnical investigation was conducted by Rimrock Engineering in August, 2014. The Geotechnical Report for the development found that: "Based on subsurface profiles encountered within the borings, it is likely that a majority of the foundations and associated concrete floor slabs will bear on lean clay soils. Silty sand soils were encountered along the south end of the property. Fluctuating groundwater levels should be taken into consideration during design and construction of residential structures. Basement construction may not be feasible unless lower level slabs can be kept 3-feet above groundwater." Homebuilders should perform a geotechnical exploration for each specific structure due to the potential variation from site to site. Geotechnical recommendations can be found in the Geotechnical Engineering Report for Proposed Glynn Abbey Subdivision completed by Rimrock Engineering in September, 2014 which is kept by Glynn Abbey, LLC. Reference Section IX for further geotechnical information.
- C.** No water rights have been transferred to the lot owners.
- D.** One private irrigation ditch providing water from the Cove Ditch Company Main Canal to lands owned by Yellowstone Meadows Partners exists on the property. The lateral has been relocated and piped along the western and southern boundary of the development and its facilities shall remain in place and shall not be altered by subsequent lot owners.
- E.** There is attached hereto a Waiver waiving the right to protest the creation of a 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.
- F.** The subdivider and subsequent contractors/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.

- G.** 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.

- H.** Lot owners should be aware that portion(s) of this property lie within the designated floodplain, as depicted on the FEMA maps for this area. Please be advised that residential dwellings Lots 1-4, 12-22, 24, and 31-33 will/may be required to have a finished floor elevation of at least 2-feet above the base flood elevation (BFE).

III. TRANSPORTATION

A. Streets

- Glynn Abbey Way will serve as the main access road for the Glynn Abbey Subdivision off of Rimrock Road.
- Pursuant to City of Billings Subdivision Regulations, Glynn Abbey Way and Aston Bay Circle will be considered private roads and will be improved to meet City subdivision and emergency access standards. A cul-de-sac turn-around will be constructed at the end of Aston Bay Circle. A security gate will be provided at both connections of Glynn Abbey Way to Rimrock Road.
- Internal roads will be paved with a width of 34-foot to back of curb and a 60-foot radius within the cul-de-sac.
- All streets will be constructed with curb and gutter meeting design standards outlined in the City of Billings Standard Modification Drawing Sm_M02528-1.
- The Subdivider will provide a cash equivalent contribution towards the improvement of Rimrock Road to a residential standard as specified in the City of Billings Standard Modifications. Subdivider will be given credit for in-place improvements, being responsible for half of the street and adjoining improvements.

B. Sidewalks

- The development has been designed with a boulevard style sidewalk along the outer edge of Glynn Abbey Way throughout the subdivision. The Subdivider is requesting a variance to the sidewalk requirements outlined in Section 23-406.B.13 by allowing for sidewalk installation on the outer edge of the road only, using the interior trail system as substitute for the interior sidewalk requirement.

- The interior trail system shall be constructed at the same time as the street improvements. The 5-foot boulevard sidewalks along the Glynn Abbey Way and Aston Bay Circle shall be installed at the time of lot development by the lot owner. Sidewalks shall be installed by the lot owner within two years of purchase of the property.

C. Street Lighting

- Street lighting is proposed for the development. Lights will be placed along both Glynn Abbey Way and Aston Bay Circle and will be connected to Northwestern Energy's electrical grid. Energy and maintenance costs will be the responsibility of the HOA.

D. Traffic Control Devices

- Stop signs will be installed on Glynn Abbey Way at both intersections with Rimrock Road.

E. Gated Private Access

- The development includes two access locations on Rimrock Road. The West access occurs at the intersection of Rimrock Road and 58th Street West. The East access occurs on Rimrock Road 650-feet east of the Rimrock Road-58th Street West intersection. Both approaches on Rimrock Road are 34-feet wide and meet design standards outlined in the City of Billings Standard Modifications.
- The Subdivider will install an access control gate at each Subdivision entrance. In addition to providing access to lot owners and their guests within the Subdivision, the gate will provide access to emergency personnel as well as City of Billings personnel and other authorized persons needing access to City utilities. Specific details regarding access, and maintenance of the public utilities are as outlined within the easement document recorded at the Yellowstone County Clerk and Recorder's Office under document number XXXXXX.
- The security gates will restrict public access to the Subdivision between the hours of 9 p.m. and 5 a.m. The gates will remain open during all other hours of the day.
- The Subdivider will provide specifications to the City regarding the gate operations pertaining to access requirements. In the event of power failure, the access control gate shall automatically open on battery back-up power and remain open until primary power is restored. The gate and gate operating equipment shall be reviewed and approved by the Billings Fire Department prior to installation.
- Subdivider acknowledges that in case of emergency, including emergency access to City utilities, should the gate operations fail, the gate may be destroyed or removed. Subdivider will be responsible for all costs related to reinstalling or repairing the gate.

- Connectivity to the adjacent Yellowstone Club Estates subdivision will be provided by way of a pedestrian access easement connecting the Glynn Abbey Way to Mickey Wright Lane.
- The existing utility easement and maintenance road located along the western boundary of the development will remain and will not be modified to allow for utility maintenance. No construction, including fencing, shall be located in the easement.

F. Billings Area Bikeway and Trail Master Plan

- An internal trail system through the Open Space within the subdivision will be developed by the Subdivider as part of the subdivision improvements. The internal trail system will provide for connectivity to and throughout the interior area of the subdivision.
- Internal trail system will be maintained by the local Homeowners' Association and located within the Open Space area made available to the general public through a public access easement. No further easement is necessary for expansion or existing systems.
- The Billings Area Bikeway and Trail Master Plan identifies bike lanes on Rimrock Road along the frontage of the subject property. While major improvements to Rimrock Road are not planned with this subdivision, future improvements to the Rimrock Road corridor may include bike lanes in this area.

G. Public Transit

- No location for public transit connection will be provided within the development.

IV. EMERGENCY SERVICE

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 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.

Subdivision privacy gates shall be equipped with an approved Knox Key Switch located on the exterior of each gate to provide access to fire and emergency services. Subdivider to contact the Billings Fire Department prior to acquiring the system.

Emergency access to the subdivision will occur at the locations described in Section III. TRANSPORTATION, Subsection E. Access. Approaches and internal roads are designed to accommodate emergency vehicles described previously. The development is occurring in a developed area of the City of Billings and will not have Urban Wildland Interface Code requirements.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

- The existing property does not have any existing or active stormwater detention or retention facilities located onsite. The development will include installation of four (4) stormwater ponds used for routing and retention. Pond 3 will act as the primary stormwater detention facility. The detention volumes required for 50-year and 100-year 24-hour storms are 43,438 cubic feet and 60,848 cubic feet, respectively. Total detention volume within the central open space area is approximately 43,438 cubic feet. The system has been designed to detain runoff and reduce peak discharge rates to below the pre-development conditions.
- Curb and gutter in addition to stormwater inlets and underground piping will be installed throughout the development as designed to manage and route stormwater into the pond detention system. The stormwater collection system will comply with the Billings Stormwater Management Manual and City of Billings Standard Modifications.
- Lot owners should be aware that portion(s) of this property are located within the Cove Creek 100-Year Floodplain. Please be advised that residential dwellings Lots 1-4, 12-22, 24, and 31-33 will/may be required to have a finished floor elevation of at least 2 feet above the base flood elevation.

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 water mains and sanitary sewers to the Public Works Department – Engineering 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 will be served by an 8-inch water main placed within Glynn Abbey Way. The 8-inch line will tie into the existing 20-inch water main along Rimrock Road with appropriate valve and hydrant placement to meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

B. Sanitary Sewer

The subdivision will be served by 8-inch gravity collection mains placed within the interior roads. Collection system grades and placement will meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations. The collection system will tie into the existing 48-inch manhole located within the 58th Street West approach on Rimrock Road. The sanitary sewer tie in will require installation of an interior drop structure within the existing manhole.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will all be located within the subdivision's access and utility easement(s).

The existing overhead powerline is owned by the Yellowstone Country Club with service provided by Northwestern Energy. The overhead line will be realigned and buried within the access and utility easement(s) of the Glynn Abbey Subdivision as agreed upon by the two parties.

VII. PARKS/OPEN SPACE

- The City of Billings Subdivision Requirements require a minimum of 2.42 acres to be provided for the Glynn Abbey Subdivision (11% of Gross property area less roadway easement). The subdivision will provide 3.70 acres of proposed publicly accessible Open Space to fill the minimum

requirement. Portions of this Open Space will contain stormwater retention ponds and a trail network throughout.

- The park will be dedicated and held privately by the Homeowners Association. A public access easement will overlay the parkland area to provide access to the general public.
- Local Homeowners Association will be set up to maintain the open space proposed within the subdivision. Until 51 percent of the lots have been sold, the Subdivider will be responsible for maintenance of the open space proposed within the subdivision.
- If the proposed open space is not properly maintained based, on City of Billings Standards, the City of Billings withholds the right to create a Maintenance District to assume maintenance of the open space. Homeowners Association should be given notice of intent to create a new Maintenance District and an opportunity to implement corrective measures prior to creation of the District.

VIII. IRRIGATION

- One existing private lateral connected to the Cove Ditch Main Canal is located within the subdivision. The existing lateral will be relocated to the western and southern boundaries of the subdivision. Additionally, the existing open lateral will be converted to a closed pipeline system through the property. Owner of the private lateral is responsible for operation and maintenance.
- Installation of the irrigation improvements will be completed in a timely manner as to ensure uninterrupted service to its users. Developer will ensure the ability to irrigate is not impeded during construction of the subdivision.
- The existing lateral maintains a prescriptive easement through the property with no definite width from centerline of the canal. The lateral is proposed to be relocated within the existing utility easement along the western and southern boundaries of the subdivision.
- No water rights are being transferred to future property owners within the subdivision. Irrigation water rights from the Cove Creek Ditch will be held by the Homeowners Association. Subdivision lots will have access to the said water right by way of a private greywater distribution system that is owned and operated by the HOA.
- A private greywater distribution system will distribute irrigation water from the centrally located ponds to the subdivision lots. The HOA shall be responsible for associated operation and maintenance costs.

IX. SOILS/GEOTECHNICAL STUDY

- The subsurface profile varies across the site. In general the subsurface profile along the north portion of the property consists of mainly lean clay soils with lenses and laminations of silty sand. The subsurface profile

along the south portion consists of approximately 4 to 7 feet of lean clay overlying silty sand soils. Groundwater was encountered at approximate depths ranging from 3 to 7 feet.

- Clay and sandy soils encountered within the site generally are weak and highly compressible. The moisture content within the near surface clay soils is usually relatively low, which helps to form a crust of material typically having moderate shear strength and low compressibility. Below the crust, the soils become considerably moister and exhibit low shear strength and high compressibility. Additionally, the presence of relatively shallow groundwater is of concern.
- Potentially soft/loose and saturated soils should be expected within excavations below the groundwater table. De-watering and the use of trench boxes will likely be required within the utility trenches. The base excavations for utility installation may require stabilization prior to utility installation.
- Based on the subsurface profile encountered within the borings, it is likely that a majority of the foundations and associated concrete floor slabs will bear on lean clay soils. Silty sand soils were encountered along the southern property boundary. Fluctuating groundwater levels should be taken into consideration during design and construction of residential structures. Basement construction may not be feasible unless lower level slabs can be kept 3 feet above the groundwater table.
- Homebuilders should perform a geotechnical exploration for each specific structure due to the potential variation from site to site.
- Soils were found to be corrosive for concrete. All concrete should be Type V Portland Cement for projects or infrastructure within the subdivision.
- A full version of the Geotechnical Report can be obtained from the developer or from the City of Billings Building Division.

X. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XI. 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.

On this ____ day of _____, 20__, 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: _____

Waiver of Right to Protest

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Glynn Abbey Subdivision

Signed and dated this ____ day of _____, 20__.

Subdivider/Owner

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be Glynn Abbey, LLC the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, 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: _____