

SUBDIVISION IMPROVEMENTS AGREEMENT
Lake Hills Subdivision, 35th Filing
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City of Billings

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SUBDIVISION IMPROVEMENTS AGREEMENT

Lake Hills Subdivision, 35th Filing

This agreement is made and entered into this ____ day of _____, 20__, by and between Trenton Parks and Matt Stewart, whose address for the purpose of this agreement is **1001 North 22nd Street, Billings, MT 59101**, is hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of *Lake Hills Subdivision, 35th Filing*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *Lake Hills Subdivision, 35th Filing*; 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 *Lake Hills Subdivision, 35th Filing* 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. No variance request is being made as part of this development.

II. CONDITIONS THAT RUN WITH THE LAND

A. 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.

B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope 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.

- C. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts (SID) for only those items specifically identified within this document 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 contractors/builders acknowledge that a Stormwater Pollution and Prevention Plan (SWPPP) may be required to be 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

- Subdivider will execute a private contract to construct public streets, and curb & gutter, within the Subdivision. Gleneagle Boulevard shall be 49 feet back-of-curb to back-of-curb and Cherry Hills Road shall be 34 feet back-of-curb to back-of-curb. These internal access roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings' site development ordinance, and City subdivision regulations.
- Right-of-Way widths for Gleneagle Boulevard shall be 80 feet and Cherry Hills Road shall be 60 feet to meet City of Billings Standards.
- The subdivider will provide a cash-in-lieu contribution, due prior to filing for final plat, for the construction half of a residential street width with a satisfactory sub-base, base course, and standard curb and gutter on Annandale Road along the frontage of Lake Hills Subdivision, 35th Filing. The cash-in-lieu contribution will be based on a cost estimate approved by the City Engineering Division, and will also include engineering design and construction administration.

- The City of Billings will compensate the subdivider for the arterial section of Gleneagles Boulevard (sub-base, base course, and asphalt) through a compensation agreement.

B. Sidewalks

- The Subdivider will install, within the private contract, corner intersection handicap ramps and aprons and will grade all street frontages for sidewalk finished grades.
- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction and shall be included in each building permit. Sidewalks shall be 5-foot wide walks with a 5-foot boulevard.

C. Street Lighting

- No street lighting is proposed for the development, however street lighting is included in the waiver of right to protest.

D. Traffic Control Devices

- Traffic control devices are not required for this subdivision, but are included in the waiver of right to protest.
- Subdivider shall furnish and install street name signs for streets within the subdivision, or located immediately adjacent thereto in accordance with the specifications of the City of Billings Publics Works and Fire Departments.

E. Access

- Access to the lots will be from drive approaches installed at the time of lot development.

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

- This subdivision is located within the jurisdiction of the Billings Area Bikeway and Trails Master Plan (BABTMP), but no trail corridors are identified within this subdivision area. Clubhouse Way is identified as a primary on-street bikeway and improvements may be made in the future under a different project.

G. Public Transit

- This subdivision does not require improvements to ensure public transit service. The nearest transit stop is at the intersection of Wicks Lane and Gleneagles Boulevard.

IV. EMERGENCY SERVICES

The Billings Fire Department currently provides fire protection and paramedic services for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to meet fire suppression requirements. Prior to 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 an 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 apparatus access and water supply.

Temporary emergency access to the subdivision will occur along the northern most 155 feet of Clubhouse Way turning west along Annendale Road to the west edge of Gleneagle Boulevard. The temporary emergency access road will be constructed of gravel and will be twenty (20) feet wide. The temporary road will be required to support fire apparatus vehicle loading (40 tons) during all weather conditions. There will be no signs or gates at the entrance of the emergency access road. The temporary emergency access road will be maintained by the City of Billings.

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 master plan is in place for Lake Hills Subdivision and all future stormwater improvements will be reviewed and approved by the Engineering Division to comply with said plan. Stormwater will be conveyed through a curb-and-gutter system and tying into the existing stormwater system on Cherry Hills Road.

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 to the County Water District of Billings Heights (CWDBH) and sanitary sewers to the City of Billings Public Works Department – Engineering Division. The extension of/connection to water mains and sanitary sewers is subject to the approval conditions of the applications. Applications shall

be submitted for processing prior to the start of any construction and prior to review and approval of any plans and specifications. The appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

The Subdivider/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made or when a building permit is issued for new construction.

It is acknowledged that all fees stated above are subject to the Franchise Fee in effect at the time of payment.

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, CWDBH, Billings Fire Department and the Montana Department of Environmental Quality.

A. Water

Water mains will be extended from those that are existing in the subdivision. Water will be provided by County Water District of Billings Heights. The existing 8-inch water main is located in Cherry Hills Road and currently terminates at the eastern edge of the proposed subdivision. The developer will extend the 8-inch water main along Cherry Hills Road to the intersection of Cherry Hills Road and Gleneagles Boulevard. The developer will also install a 12-inch water main that connects with the 8-inch water main at the intersection of Cherry Hills Road and Gleneagles Boulevard and run north to the intersection of Gleneagles Boulevard and Annandale Road. The developer will install a 12-inch water main to the eastern edge of the subdivision boundary along Annandale Road. Water services will be stubbed to each lot.

B. Sanitary Sewer

Sanitary sewer mains and services will be extended from those that are existing in the subdivision. The existing 8-inch sewer main is located in Cherry Hills Road and currently terminates at the eastern edge of the proposed subdivision. The developer will extend the 8-inch sewer main to the intersection of Cherry Hills Road and Gleneagles Boulevard. The developer will install a new 8-inch sewer main from the intersection of Cherry Hills Road and Gleneagles Boulevard and run it to the north edge of the proposed subdivision. Sewer services will be stubbed to each lot.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will all be located within the right-of-way and utility easements shown on the plat.

VII. PARKS/OPEN SPACE

There is no parkland requirement for this subdivision as the parkland dedication has been previously met.

VIII. IRRIGATION

No irrigation ditches, field laterals, or irrigation easements exist in this subdivision.

IX. SOILS/GEOTECHNICAL STUDY

According to the Geotechnical Concerns letter for Lake Hills Subdivision, 33rd Filing, prepared by Geoscience, PLLP (April 18, 2011), soils found in this area consist of potentially expansive shale and potentially collapsible fine-grained colluvial soils. Foundations shall be placed on sandstone with adequate vertical separation from underlying shale. Where this is not possible, or where foundation elevations are within the soil zone or on expansive shale, subgrade improvement is recommended. A final geotechnical report shall be completed prior to construction, however initial results show that construction on these lots is feasible without fatal flaws.

X. PHASING IMPROVEMENTS

There are no intended phasing improvements.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts 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 special improvement district or private contract, and the improvements shall be installed as approved by the city engineers and the City of Billings Public Works.

XII. 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.

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

“SUBDIVIDER”

Trenton Parks

By: _____

Title: _____

Matt Stewart

By: _____

Title: _____

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 the _____ of *Trenton Parks and Matt Stewart*, who executed the foregoing instrument and acknowledged to me that he executed the same.

 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 _____, 20__.

“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 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: _____

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: _____