

SUBDIVISION IMPROVEMENTS AGREEMENT
Van Arsdale Subdivision
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(Yellowstone County)

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SUBDIVISION IMPROVEMENTS AGREEMENT

Van Arsdale Subdivision

This agreement is made and entered into this ____ day of _____, 20____, by and between Van Arsdale Development LLC, whose address for the purpose of this agreement is 4729 Jericho Road, Billings, MT 59106, hereinafter referred to as "Subdivider," and YELLOWSTONE COUNTY, Montana, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, the Board of Planning recommended conditional approval of a preliminary plat of Van Arsdale Subdivision; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of Van Arsdale Subdivision; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to Van Arsdale 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 Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of the Yellowstone County, 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

There are no variances requested for this project.

II. CONDITIONS THAT RUN WITH THE LAND

- A.** Lot owners should be aware that there are Bylaws of the Van Arsdale Subdivision Owners Association recorded in conjunction with this subdivision that outlines additional requirements specific to this subdivision.
- 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. Lot owners should be aware of the soil characteristics within the area of this subdivision. A geotechnical field investigation was conducted on May 19, 2017. Based on the findings of this field work, a final geotechnical investigation report entitled "Soils Evaluation for Septic System Drainfields, Proposed Van Arsdale Subdivision, 48th Street West, Billings" was prepared on June 1, 2017. The City may require the owner of each lot to provide a geotechnical investigation and report with the building permit submittal prior to construction.
- D. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- E. 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.
- F. Culverts and associated irrigation ditches shall not be filled in or altered by the Subdivider or subsequent lot owners.
- G. When required by road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way and any relocation outside of the public right-of-way shall be subject to securing and recording easements.

III. TRANSPORTATION

The Subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by Yellowstone County.

A. Streets

Lewis Avenue shall be extended along the entire frontage of Lot 1. A private road (Van Arsdale Circle) shall be constructed between the east and west boundaries of Lots 1 and 2 and the north and south boundaries of Lots 8, and 7 and 2 and 3, respectively. A private cul-de-sac shall be constructed to include the south, west and north boundaries of Lots 4, 5, and 6, respectively. Improvements shall include 24-feet of asphalt paving with 2-foot gravel shoulders on each side, 8' wide drainage swales and 5' wide sidewalks. The cul-de-sac shall have a paved radius of 43.5-feet.

A 12-foot wide reciprocal access easement shall be provided parallel to Lewis Avenue on the north property line of Lot 8 to access Lot 9. The driveway shall be 12' wide gravel.

Sidewalks shall be required on both sides of the private road and along the south side of Lewis Avenue and shall be five foot (5') wide sidewalk. The sidewalk shall be constructed or financially guaranteed by the Subdivider.

B. Traffic Control Devices

1. Subdivider shall furnish or cause to be furnished the necessary traffic control devices within and adjacent to the subdivision in substantial conformance with the most current adopted version of the *Manual on Uniform Traffic Control Devices* (MUTCD).
2. Street name signs shall be installed at all intersections.

C. Access

Legal access will be granted by way of public access easements or dedicated rights-of-way with the recording of the final plat.

D. Heritage Trail Plan

The Heritage Trail Plan identifies an arterial bike route along 48th Street West. This subdivision will not require the construction of a trail connection.

IV. EMERGENCY SERVICE

The Billings Urban Fire Service Area (BUFSA) and Yellowstone County Sheriff Department will provide emergency fire and law enforcement services. Emergency access shall be provided via Lewis Avenue. An operational fire hydrant is located within 1,644 feet of the furthest portion of a residence under construction as measured along the access roads to the site.

V. STORM DRAINAGE

All drainage improvements, shall comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by MDEQ, or its designee.

A. Proposed Detention/Retention Facilities

The storm drainage system shall consist of drainage swales located on the south side of Lewis Avenue and both sides of the private road. Storm water will be directed to the drainage swales along both sides of the private road and Lewis Avenue up to the property boundary.

VI. UTILITIES

A. Water

A multi-user water supply well shall be installed in accordance with Section 4.9 of the Yellowstone County Subdivision Regulations and MDEQ Circular 3, and approved by MDEQ prior to submittal of the final plat application.

The combined domestic and irrigation water demand for the system to serve all nine (9) residences is anticipated to be less than 10 acre-feet/year or 35 gpm.

The Homeowner's Association (HOA) will be responsible operation and maintenance of the multi-user water supply well.

B. Septic System

Individual septic systems shall be installed to Lots 2-9 in accordance with Section 4.8, Yellowstone County Subdivision Regulations, and approved by MDEQ. Lot 1 has an existing septic system that shall be relocated and installed in accordance with Section 4.8, Yellowstone County Subdivision Regulations, and approved by MDEQ. Septic systems shall meet MDEQ Level II treatment requirements.

C. Power, Telephone, Gas, and Cable Television

1. Power, telephone, gas, and cable television will be provided from 48th Street West along the 8-foot easements shown on the approved plat of the subdivision.
2. Power, telephone, gas, and cable television service crossings of roadways will be installed perpendicular to the centerline of those roadways.

VII. PARKS/OPEN SPACE

A dedication of parkland will not be provided as part of this subdivision. The Subdivider will provide cash in lieu of parkland dedication, as outlined in Section 10.6 of the Yellowstone County Subdivision Regulations.

VIII. IRRIGATION

Upon full build out, this subdivision will not have any adverse impact on agricultural water user facilities or any other irrigation systems. There are four (4) existing Big Ditch irrigation ditches running parallel to 48th Street West. Special care shall be taken during construction to protect these ditches in their existing condition. The ditch will be affected by constructing the Subdivision access off of 48th Street West by widening the existing access and extending and/or replacing the existing culverts. These plans will be submitted for approval to the Big Ditch Company.

IX. WEED MANAGEMENT

All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties of the subdivision.

A weed management plan shall be filed and updated as needed for approval by the Yellowstone County Weed Department. The weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record. A revegetation plan shall be submitted as part of the management plan.

X. SOILS/GEOTECHNICAL STUDY

A geotechnical report has been completed and has identified that there are no indications of groundwater present.

A final design level geotechnical investigation will be required when building designs are available.

Foundations, walls, and slabs shall be designed by a structural engineer.

Assessment and mitigation of these conditions shall be the responsibility of the lot owner. The City shall require the owner of each lot to provide a geotechnical investigation and report with the building permit submittal prior to construction.

XI. PHASING OF IMPROVEMENTS

There are no phases associated with this subdivision.

XII. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Planning Board and Board of County Commissioners. 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 designed by and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the state of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvements have been completed in accordance with approved, seal stamped, record drawings, along with all required post-construction certification per Section 4.6.C. of the Yellowstone County Subdivision Regulations.

In the event that all required improvements are not installed and constructed prior to final plat approval, the Subdivider shall provide a monetary security guarantee in the amount of 125% of the estimated total cost by one (1) of the methods listed in Chapter 5 of the Yellowstone County Subdivision Regulations.

XIII. LEGAL PROVISIONS

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.
- 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.

- G. Subdivider agrees to create any required (or expansion of existing) RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

DRAFT

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

“SUBDIVIDER”

Van Arsdale Development LLC

By: _____

Its: _____

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 Duane Van Arsdale, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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

“SUBDIVIDER”

Van Arsdale Development

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

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

DRAFT

