

Return to:
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1300 North Transtech Way
Billings, MT 59102

SUBDIVISION IMPROVEMENTS AGREEMENT COPPER RIDGE SUBDIVISION, SEVENTH FILING

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SUBDIVISION IMPROVEMENTS AGREEMENT COPPER RIDGE SUBDIVISION, SEVENTH FILING

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between **COPPER RIDGE WEST, INC.**, whose address for the purpose of this agreement is 175 North 27th Street, Suite 900, Billings, Montana 59101, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the preliminary plat of Copper Ridge Subdivision, Seventh Filing, located in the City of Billings, Yellowstone County, Montana, was submitted to the Planning and Community Services Department which recommended its approval to the Yellowstone County Board of Planning; and

WHEREAS, at a meeting held on the ___ day of _____, 20___, by the Yellowstone County Board of Planning, the Board recommended for approval, subject to certain conditions, an area known as Copper Ridge Subdivision, Seventh Filing, and

WHEREAS, at a regular meeting held on the _____ day of _____, 20___, the City Council approved, subject to certain conditions, a preliminary plat of Copper Ridge Subdivision, Seventh Filing, and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to the plat of Copper Ridge Subdivision, Seventh Filing, upon 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 requests no variances.

II. CONDITIONS THAT RUN WITH THE LAND

- A.** Lot owners should be aware that this subdivision could contain wildlife migratory routes. Consequently, owners are advised that wildlife indigenous to this area could be found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also experience problems with damage to landscaped shrubs, flowers, and gardens. Any impacts associated with wildlife and any damage arising therefrom is the responsibility of the lot owners.
- B.** Lot owners should be aware that there is a Declaration of Restrictions and Protective Covenants recorded in conjunction with this subdivision, which outlines additional requirements specific to this subdivision design.
- C.** Lot owners should be aware that the United States Postal Service mail delivery will be made only to centralized delivery locations. Such locations shall consist of from 8 to 16 mailboxes per location. The location of each centralized mailbox setting is shown on the overall development plan and the private contract construction plans. Subdivider shall install the mailboxes within the private contract for the Seventh Filing.
- D.** Lot owners shall be advised that land in proximity to the northern boundary of Copper Ridge Subdivision is a right-of-way owned by the Burlington Northern Santa Fe Railroad, upon which they actively operate a transportation business. The noise from moving trains is clearly audible in the subdivision. This activity is protected by state law and can be expected to continue indefinitely. Subdivider, for itself and all successor owners of property within Copper Ridge Subdivision, hereby waives any right to object and/or protest the noise created by normal operation of trains running along the railway, acknowledges that the railroad right-of-way is private property, and further acknowledges that Copper Ridge Subdivision and successor owners of lots within the subdivision have an affirmative duty to stay off the Burlington Northern Santa Fe Railroad property and to keep children, guests, and invitees off the property.

- 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.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- G.** Certain lots as shown on the final plat of Copper Ridge Subdivision, Seventh Filing contain storm water drainage easements with a drainage swale along property lines. This storm water drainage easement and drainage swale is for conveying storm water and shall not be altered in any way to inhibit the conveyance of storm water. It shall be the lot owners' responsibility to maintain and perpetuate this storm water swale, as a fully functional swale.
- H.** The lowest finished floor elevation (which includes the garage) shall be a minimum of 18-inches higher than the top of curb measured from the highest location along the lot frontage. Higher finished floor elevations shall be required on a lot by lot basis, as noted on the final plat.
- I.** The lowest openings on each home (window well, walk-out basement doors, and equivalent openings) shall be located outside drainage paths. If this is not possible, the homebuilder and lot owners must take necessary measures to protect these openings from being inundated from surface water flows. Allow enough space between window wells and property lines to provide sufficient swales and drainage away from window wells, and meet applicable building codes for drainage requirements.
- J.** The developer and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated

with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

III. TRANSPORTATION

A. Streets

Right-of-way widths. Copper View Way, Copper Bluffs Circle and Copper Sunset Drive shall be 56-foot rights-of-way. 70th Street West shall be a 61-foot right of way. Rimrock Road to 70th Street West is classified as a collector street. The minimum right of way for a collector street is 74 feet. A 60-foot right of way has previously been dedicated across the frontage of the property. An additional dedication will be provided with this plat on the north side of Rimrock Road.

Pavement widths. Copper View Way, Copper Bluffs Circle and Copper Sunset Drive shall be 34 feet back of curb to back of curb. 70th Street West shall be 30-feet of asphalt and curb and gutter on the east side of the street. Rimrock Road will be completed with curb and gutter on the north side of Rimrock Road and 30-feet of asphalt from the eastern boundary of the subdivision to 70th Street West (approximately 380 lineal feet). A borrow ditch will remain on the south side of Rimrock Road. These 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, city subdivision regulations, and Uniform Building Code.

B. Sidewalks

City and Subdivider agree that developer will install handicap accessibility ramps at time of private contract construction. No additional boulevard sidewalks will be installed by the developer as part of construction improvements.

Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction. Sidewalks shall be 5-foot wide boulevard sidewalks. The sidewalk along the frontages of Lot 19, Block 1 (Rimrock Road, 70th Street West and Copper View Way) shall be 5-foot wide boulevard sidewalk to be constructed with the private contract for the subdivision. The sidewalk along the right of way frontage between Lots 18 and 19, Block 2 shall 5-foot boulevard sidewalk to be constructed with the private contract for this subdivision.

C. Street Lighting

Construction or installation of streetlights in subdivision shall not be required at this time, but streetlights are included in the Waiver, which also includes a maintenance district for street light energy and maintenance.

D. Traffic Control Devices

1. The Subdivider shall furnish and install all necessary traffic control devices adjacent to the subdivision. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction. All traffic control devices shall be subject to review and approval by the City Engineering office.
2. Street name signs shall be installed at all intersections.
3. The City and Subdivider agree that the Subdivider will make cash contributions to improvements at the following intersection:

Rimrock Road and 62nd Street West – 10.67 percent
Grand Avenue and 70th Street West – 7.54 percent
70th Street West and Colton Boulevard – 8.60 percent

The percentages are based on 360 total lots in the subdivision. Each filing will contribute their proportionate share of the contributions.

The amount and timing of these contributions shall be as outlined below. These contributions represent a fair and equitable amount based on subdivision traffic using these intersections and may be used by the City for design and construction of geometric improvements, auxiliary turn lanes, or intersection controls such as traffic signals or roundabouts, at these intersections. Improvements will not be constructed until the City determines they are needed and the timing and extent of the improvements shall be at the City's sole discretion.

The amount of the contributions for the Rimrock Road/62nd Street West, Grand Avenue/70th Street West, and 70th Street West/Colton Boulevard intersections shall be as follows:

	Rimrock Road/ 62nd Street West	Grand Ave./70th Street West	70th Street West/Colton Blvd.
Seventh Filing (53-Residential Lots)	TBD	TBD	TBD
Lot 1, Block 3	TBD	TBD	TBD
Lot 2, Block 3	TBD	TBD	TBD
Lot 3, Block 3	TBD	TBD	TBD
Lot 4, Block 3	TBD	TBD	TBD

The contributions for Copper Ridge Subdivision, Seventh Filing (53-residential lots) shall be made prior to final plat approval. No building permits or private contract permits will be issued until Subdivider has made the cash contribution to the City.

It is anticipated that Lots 1 through 4, Block 3 will be developed in separate subdivision filings. The total cash contribution attributable to Lots 1 through 4, Block 3 shall be as stated above; however, the contribution may be apportioned over the various phases based on the amount of traffic each is expected to generate. No building permits or private contract permits shall be issued for Lots 1 through 4, Block 3 until payment has been made for the phase being developed at that time.

E. Access

Access will be provided in two locations for the subdivision. One will be an extension of Copper Bluffs Circle and the other an extension of 70th Street West and Rimrock Road.

F. Public Transit

There are no MET Transit routes that service this subdivision at this time. No improvements with regard to MET Transit vehicles are anticipated at this time.

IV. EMERGENCY SERVICES

Access is provided to this subdivision from two existing locations. The Copper Ridge Subdivision, Seventh Filing, will complete a street connection from Copper Bluffs Circle and from 70th Street West. In addition, fire hydrants will be installed

at the required locations as reviewed and approved by the City of Billings Fire Department.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) 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 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 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

- A. All storm drainage improvements shall comply with the provisions of Chapter 28, BMCC, and shall be in accordance with the recommendations of an approved storm drain study to be submitted to the City of Billings Engineering Department by the Subdivider. The stormwater in the subdivision will be managed on-site through surface flow on the streets, inlets, piping, and stormwater detention facilities. The stormwater design for Copper Ridge Subdivision, Seventh Filing, will conform to the current City of Billings Stormwater Management Manual and be reviewed by the City of Billings Public Works Department.
- B. The developer will construct three large detention basins along the southern boundary of the subdivision. The developer will construct one detention pond with this filing located on Lot 19, Block 1. The other detention facilities will be constructed with future filings. The detention facilities will be located on Home Owner's Association (HOA) owned lots and shall be operated and maintained by the HOA. The stormwater detention facilities

will have an outlet to Rimrock Road and be piped to a City of Billings owned stormwater management facility located near the intersection of 62nd Street West and Rimrock Road.

- i. The Subdivider may direct runoff from this filing and future filings to the City of Billings stormwater management facility located near the intersection of Rimrock Road and 62nd Street West. The City of Billings will review the stormwater storage provided on-site to ensure compliance with the City of Billings Stormwater Management Manual (SWMM). The Subdivision will be required to retain, or provide treatment, of the water quality volume/flow on-site in accordance with the SWMM.
- ii. The Subdivider shall make a cash contribution to the City of Billings stormwater management facility at a rate of \$ _____ per square foot of net residential lot area. The rate has been established based on the reduction of stormwater storage on-site in the subdivision (all filings) due to the discharge to the City of Billings stormwater management facilities, and the ability to fully drain the on-site stormwater detention facilities in accordance with the ~~SWMM~~. The contribution shall be phased with the development of the subdivision and due at the time of lot development.
- iii. The storm drain pipe in Rimrock Road will be sized to account for flow from Rimrock Road, a restricted flow from Copper Ridge Subdivision, Seventh Filing (including the area north of the railroad tracks that drains to the subdivision through an existing culvert (approximately 300 feet east of 70th Street West) under the railroad tracks), and up to 1 cfs from the existing Copper Ridge Subdivision or other subdivision. The Subdivider shall install the storm drain improvements in Rimrock Road from 70th Street West east to the Birely Drain (approximately 3,200 lineal feet) with the private contract for the development. The Subdivider shall be reimbursed by the City of Billings for the Rimrock Road proportionate share of the storm drain improvements. In the future, if storm drain from the existing Copper Ridge Subdivision, or other subdivision to the south, is connected to the storm drain in Rimrock Road, they too will be required to reimburse the Subdivider for their proportionate share of the Rimrock Road storm drain improvements. The City of Billings shall reimburse the Subdivider at the time of storm drain construction based on their proportionate share of actual construction and engineering design costs. In the future, if an

additional subdivision connects to the storm drain, their reimbursement to the Subdivider would be due at the time of connection and be based on their proportionate share of the construction and engineering design costs.

VI. UTILITIES

Water and sanitary sewer lines shall be sized and installed in conformance with the City design standards and specifications, and the rules and regulations of the City of Billings.

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, Engineering Division. The extension/connection of/to water mains and sanitary sewers are 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 fees and franchise fee 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 and regulations of, and as approved by, the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

A. Water

Service to the subdivision will be provided from the existing 12-inch water main stub in Rimrock Road and also from an existing 12-inch water main stub in Copper Bluffs Circle. The Subdivider will extend the existing 12-inch water main from the existing terminus in Rimrock Road westward to 70th Street West and then into the subdivision. The Subdivider will also extend the existing 12-inch water main stub in Copper Bluffs Circle from the existing terminus into the subdivision.

Extension of the water mains will provide a looped system for the subdivision upon full build out of the Seventh Filing. Appropriately sized

mains and services in the internal streets will provide service to the individual lots within the subdivision. It is anticipated that each lot shall be provided with its own separate water service. All water construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department.

A cash-in-lieu payment of \$34,829.00 for the 12-inch water main and two fire hydrants has been previously made for the water main improvements from the existing terminus to the western boundary of Copper Ridge Subdivision, Fifth Filing (approximately 860 lineal feet). This previous contribution will be applied toward the construction the 12-inch water main to the subdivision in Rimrock Road, or be refunded to the developer and the developer will construct the water main to the subdivision.

B. Sanitary Sewer

Service to the subdivision will be from the existing 8-inch sanitary sewer stub located in Copper Bluffs Circle and also from an existing 18-inch sanitary sewer main located in Rimrock Road. The Subdivider shall extend the existing 18-inch sanitary sewer west to approximately 70th Street West, or a smaller sized main as approved by the City Engineering Department.

Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. Each lot shall be provided with its own service. All sanitary sewer construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department.

Improvements noted herein shall include, but not be limited to, any and all interim improvements that may be deemed necessary due to phased or partial construction.

The 18-inch, or smaller, sanitary sewer main in Rimrock Road from the existing terminus to the western edge of Copper Ridge Subdivision, Fifth Filing will be installed at the time of the Copper Ridge Subdivision, Seventh Filing improvements, either with the private contract or by a separate project, at the City's discretion. The cost of the installation of the sanitary sewer main in Rimrock Road from the existing terminus to the western edge

of Copper Ridge Subdivision, Fifth Filing will be paid by the City of Billings.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines shall be placed in designated easements outside of the right-of-way 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

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Additionally, Section 23-1002.B.1 of the City of Billings municipal code covers parkland dedication of major subdivisions. The Seventh Filing has a total of 53 residential lots, requiring a parkland dedication of 1.115 acres. The Subdivider will make a cash in-lieu contribution for the 1.115 acres in lieu of parkland dedication.

VIII. HOMEOWNER'S ASSOCIATIONS

A homeowner's association (HOA) will be established for this subdivision. The HOA will have the following responsibilities:

A. Contact Information

HOA shall provide contact information of the senior board official to the City Engineering Department upon the establishment of the HOA and/or changing of board members.

B. Stormwater Drainage Facilities

The HOA shall be responsible for the maintenance of the on-site stormwater drainage facilities located on Lot 19, Block 1. The HOA shall share the cost of maintenance of the community stormwater facilities.

IX. SOILS/GEOTECHNICAL STUDY

The Subdivider has retained an engineering firm to prepare a geotechnical analysis for this property. A copy of the entire geotechnical report prepared by Rawhide Engineering, Inc., dated July 28, 2017, is available for review at the City Building and/or Planning Division offices. There are variable soil conditions throughout the Subdivision, and the potential exists for collapsible soils within the Subdivision.

A lot specific geotechnical report shall be the responsibility of the lot owner.

The Subdivider has contracted with Rawhide Engineering to perform a preliminary geotechnical analysis for this property dated July 28, 2017.

Recommendations from the report include:

1. Approximately 6-inches of surface soils should be stripped and removed from the site, or stockpiled for use in non-structural areas.
2. Fill should be placed and compacted to a minimum of 97 percent relative compaction, in accordance with the ASTM D698 compaction test method.
3. Provide positive drainage away from residences.
4. Street subgrade, utility trenches, parking areas and concrete flatwork subgrade should be placed at a minimum of 97 percent of ASTM D698.
5. A large track hoe or specialized equipment may be required during foundation excavations, depending on the location and depth of the excavation. The boring logs should be reviewed for conditions across the site.
6. Due to the hydro-collapse and settlement potential of native soils on this site, plants should not be placed within 3 feet of foundations. Care should be taken with the landscaping not to create drainage obstructions, such as concrete curbing, which will collect and retain water near the foundations.
7. As noted in the Rawhide Engineering July 28, 2017 report, and in accordance with the International Residential Code, downspouts with 6-foot extensions should be used. Positive drainage away from all foundations should have 6 inches of fall in the first 10 feet away from the foundations. If sufficient room is not available to construct the 10-foot slope, drainage swales should be constructed as far from the foundations as possible.

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 Engineering Department and Public Works Department, Distribution and Collection Division.

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 provision of the 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 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”

COPPER RIDGE WEST, INC.

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 the person who signed the foregoing instrument as the _____ of **COPPER RIDGE WEST, INC.**, and who acknowledged to me that said company 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: _____

WAIVER OF RIGHTS TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and sole owner of the hereinafter described real property, do hereby waive for a period of 20 years after the date that the final subdivision plat is filed, the right to protest the formation of one or more special improvement district(s) 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 are supported by sufficient independent consideration to which the undersigned is a party, and shall run with the land and shall be binding upon the undersigned, its 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:

Copper Ridge Subdivision, Seventh Filing

“SUBDIVIDER”

COPPER RIDGE WEST, INC.

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 the person who signed the foregoing instrument as the _____ of **COPPER RIDGE WEST, INC.**, and who acknowledged to me that said company 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: _____