

SUBDIVISION IMPROVEMENTS AGREEMENT
West Meadows Subdivision 2nd Filing
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(Yellowstone County)

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SUBDIVISION IMPROVEMENTS AGREEMENT

(Name of Subdivision)

This agreement is made and entered into this ____ day of _____, 2018, by and between Wineridge, Inc., whose address for the purpose of this agreement is P.O. Box 81508, Billings, MT 59108, hereinafter referred to as "Subdivider," and YELLOWSTONE COUNTY, Montana, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, at a regular meeting conducted on ____ day of _____, 2018, the Board of Planning recommended conditional approval of a preliminary plat of (*Subdivision Name*); and

WHEREAS, at a regular meeting conducted on ____ day of _____, 2018, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of West Meadows 2nd Filing; 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 West Meadows Subdivision 2nd 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 requirement of the Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of 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

A. Subdivider has requested, and the County hereby grants, the following variances by the Board of County Commissioners from the strict interpretation of the County's Subdivision Regulations (Chapter 11, Yellowstone County Subdivision Regulations):

1. A variance for the distance from a dry hydrant to the furthest structure of the proposed subdivision. The furthest lot is located approximately 3,800 linear feet from the dry hydrant.

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 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.

- B.** Lot owners should be aware that soil characteristics within the area of this subdivision, as described in 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.
- C.** 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.
- D.** 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.
- E.** Culverts and associated drainage swales shall not be filled in or altered by the subdivider or subsequent lot owners.
- F.** 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.
- G.** Subdivider may obtain water rights from the High Ditch Company or Cove Ditch Company to be used for a community irrigation system that would be operated and maintained through a Homeowners Association of the West Meadows Subdivision 2nd Filing. This is not a County required improvement.
- H.** The Burlington Northern Railroad right-of-way is located along the southeast boundary of the site and is in active operation. Noise from the moving trains is clearly audible within the subdivision.
- I.** Future maintenance of all public (or common) improvements shall be done through one (1) or more Rural Special Improvement Districts (RSIDs) created as part of the SIA for this subdivision. The subdivision, is located in a RSID; RSID#773M. A Homeowner's Association (HOA) will also be created for the purposes of maintaining the irrigation supply system for all lots located within the West Meadows Subdivision 2nd Filing and the following lots of the West Meadows Subdivision: Lots 1 through 4 of Block 7; Lots 5 through 12 of Block 8; and Lot 1 of Block 9. This HOA will be created prior to completion of Stage I West Meadows Subdivision 2nd Filing.

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

Streets shall be built to grade with a satisfactory engineered subbase, base course, and asphalt surface. The internal subdivision streets will be 28 feet wide (24-foot wide paved surface with 2-foot side gravel shoulders) public streets with drainage ditches on both sides. Culverts shall be provided to convey stormwater across roadways and driveways. The engineered design cross-sections of said streets shall be submitted to Yellowstone County Public Works Department. Staged improvements of streets shall be as outlined in Section XI in this SIA.

1. Interior Curbs and Gutters: Curbs and gutters within the subdivision will not be installed.
2. Street Name Signs: Street name signs for streets within the subdivision or located immediately adjacent thereto shall be furnished and installed in accordance with the specifications of the County Public Works Department and in compliance with MUTCD standards.

B. Traffic Control Devices

1. No traffic signals are required for this subdivision.
2. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices.

C. Access

A 60-foot wide right-of-way shall be dedicated by Subdivider for all internal streets. A right-of-way-dedication for Central Avenue was completed previously under the West Meadows Subdivision, which includes not only the petitioned right-of-way of Central Avenue, but an additional 10' of dedicated right-of-way. This dedication is not to be changed by this package.

Dedicated rights-of-way are closed until approval by the County Public Works Department. No permits for approaches to the roadway will be issued prior to approval by the County Public Works Department except as outlined herein.

All driveway approaches shall be piped in accordance with the approach standards of Yellowstone County Public Works. ROW culvert sizes are shown MDEQ storm water design report.

The County Public Works Department will issue permits for approaches to the public roadway (Central Avenue and Whistler Way) prior to opening of the dedicated rights-of-way, if the required public improvements outlined herein are secured by letter of credit or a letter of commitment to lend funds from a commercial lender.

A traffic impact study was prepared and submitted with the preliminary plat application.

D. Billings Area Bikeway and Trail Master Plan (BABTMP)

The subdivision is not within the area of the BABTMP.

E. Survey Monuments

Survey monuments shall be installed as required by Yellowstone County and the Montana Subdivision and Platting Act.

F. Maintenance

RSID 773M was adopted in 2012 for purposes of maintenance of all street improvements including signage, surfacing, culverts, weed control, and fire protection facilities located within the dedicated rights-of-way and dedicated park areas as indicated on the plat. The associated estimated costs will be used for maintenance.

IV. EMERGENCY SERVICE

Fire Protection Service: The entire West Meadows Subdivision is located within the Laurel Volunteer Fire District (LVFD) and as such, the LVFD provides fire service to the area. A dedicated fire suppressant system (water source) for LVFD use has been constructed at Monad and 80th Street West (at the entrance to the larger West Meadows subdivision). The system has designated signage. Costs associated with maintenance of the system are provided in the RSID.

Access to the individual properties via the collector road shall be addressed within the 2012 International Fire Code, Fire Department Access. The driveways leading to the structures located on these individual properties shall provide a minimum unobstructed width of 12 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches when any portion of an exterior wall of the first story of a building is located less than 150 feet from a road. These roads shall be all-weather surface roads.

Driveways leading to structures located on individual properties when any portion of an exterior wall of the first story of a building is located in excess of 150 feet from the road shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches, and roads in excess of 150 feet from the road in length that dead end shall be provided with turnarounds with an inside turning radii of not less than 30 feet and an outside turning radii of not less than 45 feet. These roads shall be all-weather surface roads.

V. STORM DRAINAGE

All storm water facilities located within or adjacent to the subdivision are an integral part of the street drainage system and shall remain so until such time as a storm drain trunk system becomes available and is utilized by the subdivision.

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

VI. UTILITIES

A. Water

Public water service is not available to the subdivision at this time. The subdivision will be served by individual cisterns for each lot. The systems shall be located as shown on the site layout approved by DEQ. Installation and maintenance of said systems shall be the responsibility of the lot purchaser.

B. Septic System

Municipal public sewer service is not available in the subdivision at this time. The subdivision will be served by individual on-site wastewater disposal systems as approved by DEQ. These systems shall be located and installed as shown on the site layout approved by DEQ. Installation and maintenance of said systems shall be the responsibility of the lot purchaser.

C. Power, Telephone, Gas, and Cable Television

Telephone, gas, electrical power, and cable television lines (where said utilities are available and existing to the subdivision) shall be installed as required and prior to street paving.

VII. PARKS/OPEN SPACE

As part of the West Meadows Subdivision, the Subdivider made a park contribution of land of 6.4206 acres. The required land contribution is 2.8714 acres for West Meadows Subdivision 2nd Filing. The park dedication made as part of the original West Meadows Subdivision was not vacated as part of the West Meadows Amended Subdivision package and is to be considered the park land dedication for the West Meadows Subdivision 2nd Filing.

RSID#773M was previously created for maintenance of public infrastructure within the West Meadows Subdivision. The irrigation system in the park of the West Meadows Subdivision 2nd Filing will be required to be maintained by the HOA discussed previously.

VIII. IRRIGATION

Concurrent with the recordation of the final plat, the Subdivider shall grant irrigation ditch easements, as depicted on the face of the plat, for the Cove Ditch, which currently exist on the property. The Cove Ditch will be maintained by the Cove Ditch Company. The ditch easements will be 66 feet. There are no definitive plans for water share transfer at this time.

The mitigation efforts to protect the ditches during construction include:

- Maintenance of easements where feasible
- Standard erosion and sediment control measures will be used, and spill prevention best management practices (BMPs), and other BMPs will be used during construction.

IX. WEED MANAGEMENT

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

The weed plan shall include the following and shall be referenced in this SIA:

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said 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. A seeding recommendation can be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.
- The Subdivider shall provide restoration of the areas disturbed during construction of the improvements outlined herein, as follows:

Dryland Prairie Mix that may be seeded by either broadcast or drill.

X. SOILS/GEOTECHNICAL STUDY

Lot owners should be aware that soil characteristics within the area of this subdivision, as described in 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.

XI. STAGING OF IMPROVEMENTS

The Subdivider does not desire to commence construction of public improvements for all the lots within the subdivision at one time, but does desire to file the approved final plat for West Meadows Subdivision 2nd Filing and to sell and convey lots in said subdivision in stages. In accordance with the forgoing, the Subdivider and County agree as follows:

- A.** The first stage of infrastructure shall consist of the development of Lots 6 through 8 Block 1 and Lots 4 through 6 and 17 through 19 Block 2. Lots 1 through 5 of Block 1 and Lots 1 through 3 of Block 2 may be developed prior

to completion of infrastructure in this stage as infrastructure for those lots are included in a stage of construction in the West Meadows Amended Subdivision SIA. This stage shall include Vescue Way in its entirety and White Pine Circle between two temporary gravel turnarounds north and south of Vescue Way.

Stage one will also include completion of the secondary subdivision access on Homewood Park Drive to the Emergency Secondary Access Road standards of the Yellowstone County Subdivision Regulations. This emergency access will begin at the northwest corner of Lot 1 of Block 7 of the West Meadows Subdivision, proceed westward on Central Avenue to the intersection with Homewood Park Drive, then proceed north to the southeast corner of the Century Hills Ranchettes Subdivision. This emergency access road will be gated and chained off to prohibit

The Stage I improvements shall include the Stage I street improvements and the Stage I private utility improvements as described in this agreement.

- B.** The second stage of infrastructure shall consist of the development of Lots 10 through 12 of the West Meadows Subdivision Block 8, Lots 1 through 3 of Block 6, Lots 1 through 6 of Block 5, Lots 1 through 3 of Block 4, Lot 1 of Block 3, Lots 3 through 6 of Block 7, and the three Park areas located on White Pine Circle. This stage shall include White Pine Circle from above Cove Ditch to the intersection with West Bird Way, West Bird Way from the intersection with Central Avenue to the intersection with White Pine Circle, and Central Avenue from the temporary turnaround at the northeast corner of Lot 4 Block 1 to the intersection with West Bird Way.

The Stage II improvements shall include the Stage II street improvements and the Stage II private utility improvements as described in this agreement.

- C.** The third stage of infrastructure shall consist of the development of Lots 7 through 16 of Block 2 and Lots 1 and 2 of Block 7. This stage shall include the remainder of White Pine Circle south of the temporary turnaround located at the southern boundary of Lot 17 Block 2 and the remainder of Central Avenue east of the intersection with West Bird Way.

The Stage III improvements shall include the Stage III street improvements and the Stage III private utility improvements as described in this agreement.

- D.** The fourth stage of infrastructure shall consist of the development of Lots 1 through 6 of Block 8. This stage shall include the remainder of White Pine Circle and the remainder of West Bird Way.

The Stage IV improvements shall include the Stage IV street improvements and the Stage IV private utility improvements as described in this agreement.

All staged improvements shall be installed and constructed utilizing a private contract guaranteed with appropriate monetary securities/guarantees. Said security/guarantee shall be in conformance with the requirements as outlines within the Yellowstone County Regulations.

Stages two and three will be installed by the Subdivider in the future. The Subdivider agrees not to sell or convey any lots in the Subdivision to be served by the Stage two and three improvements until the necessary installation of the public improvements to serve said lots and provide necessary access and traffic circulation for the traffic generated by those lots. All stages must either be constructed prior to final plat or have financial guarantees prior to final plat as outlined in Section XII.

Pursuant to the foregoing agreement, the Subdivider shall execute and record a Declaration of Restrictions on Transfers and Conveyances for lots in said Stages two through four, to be recorded concurrently with the recording of this Agreement. Said Declaration notifies all third parties that said lots may not be legally sold, conveyed or transferred until a Release executed by the Yellowstone County and substantially in the form of a Release 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 a Certificate executed by Yellowstone County 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 County does hereby authorize the Department of Public Works and the County Commissioners 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.

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 contacting parties pursuant to said special improvement district or 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 improvement, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvement 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 improvement for a period of one year from the date of the 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 agree 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 improvement prior to final plat approval.

Attest: _____
County Clerk and Recorder

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 2018, before me, a Notary Public in and for the State of Montana, personally appeared _____, _____, and _____, known to me to be the Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

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