

## **SUBDIVISION IMPROVEMENTS AGREEMENT**

### **Canal Vista Subdivision**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **Canal Vista, LLC**, whose address for the purpose of this agreement is **1550 Poly Drive Billings, MT 59102**, 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 **Canal Vista Subdivision**; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of **Canal Vista 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 **Canal Vista 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**

- A. A variance of City of Billings Subdivision Regulations Section 23-406(B)(13) – boulevard style sidewalks on the private drives of the Canal Vista Subdivision to allow back of curb sidewalks on these roadways.

#### **II. CONDITIONS THAT RUN WITH THE LAND**

- A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development.
- 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 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.
- 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. Each owner of a completed pad shall be a member of the Canal Vista Subdivision Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of a pad. The Home Owners Association will be setup to maintain the permanent stormwater detention facilities and private infrastructure of the development.
- G. The lowest finish floor elevation (which includes the garage) for all lots located on the upper side of the roadways shall be a minimum of 18-inches higher than the top of curb, measured from the highest location along the lot frontage. All lots located on the lower side of the roadway shall either have a finished floor elevation as described for properties above the roadway or shall have the entire sidewalk along the frontage of the pad slope downward to the top back of curb between 1% and 2%. Home builder and lot owner may find it necessary to raise the finish floor elevation of house, yard, or garage during on-site building design and/or during on-lot grading.
- H. The stormwater runoff from individual lots shall be directed toward the public right-of-way wherever possible. However, due to the existing terrain of the subdivision this is not possible for every lot. Where run off from lots cannot be directed to public right-of-way because existing terrain is falling away from the public right of way, the stormwater runoff shall be directed to flow to the same location as it has historically. Home builder and lot owners shall consider the effect of potential off-lot run-on waters from lots uphill of the subject lot, and grade around the home to provide positive drainage away from the home. Home builder and lot owners must take necessary measures to protect the house from surface stormwater flows. Home sites shall allow, through on-site building design and on-lot grading, for stormwater to pass around each home site without negatively impacting adjacent home sites. The lowest openings on each home (window well, walk-out basement doors, etc.) are to be located outside the designated drainage paths. If this is not possible, the builder and

home site owners must take necessary measures to protect these openings from inundating from surface water flows. In any case, the homebuilder shall allow enough space between window wells and required separation to provide sufficient swales and proper storm water drainage away from window wells.

### **III. TRANSPORTATION**

#### **A. Streets**

Lake Channel Drive, Lake Heights Drive, and Ditton Drive within the subdivision shall be public and shall be located within a 56-foot right-of-way, and have a street width of 34-foot back of curb to back of curb width. Passage Way within the subdivision shall be private and shall have a street width of 34-foot back of curb to back of curb width. Britz Canal Road, Panama Canal Road, Erie Canal Road, Ling Canal Road, and Arstein Canal Road within the subdivision shall be private and shall have a 24-foot back of curb to back of curb width. These internal access roads shall be built to grade with a satisfactory subbase, base course, drive over curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings site development ordinance, Subdivision Regulations, and Uniform Building Code.

#### **B. Sidewalks**

City and the Subdivider agree that the developer will install accessibility ramps at time of private contract construction. Individual unit owners will be responsible for the construction of the five-foot wide boulevard sidewalks adjacent to their unit at the time of residence construction. The City reserves the right to construct any missing sidewalk and assess the property owners three years after construction of the private contract.

#### **C. Street Lighting**

Construction or installation of street lights within the public rights-of-way shall not be required at this time. If street lights are installed, a maintenance district will be formed for future maintenance of the streetlights

#### **B. Traffic Control Devices**

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

A traffic accessibility study has been completed for Canal Vista Subdivision. That study analyzed impacts to three intersections affected by additional traffic generated with the development of Canal Vista Subdivision. None of those intersections were noted for improvements.

#### **C. Access**

Access will be provided for the subdivision by continuation of Ditton Drive and Lake Heights Drive.

Location of these accesses shall be subject to review and approval by the City Engineering office.

#### **D. Billings Area Bikeway and Trail Master Plan**

The Billings Area Bikeway and Trail Master Plan does not identify the project area as part of proposed trails or bike paths.

#### **E. Public Transit**

No improvements with regard to public transit are anticipated at this time. The nearest access to the public transit system occurs at the intersection of St. Andrews Drive and Annandale Road.

### **IV. EMERGENCY SERVICE**

Access is provided to this subdivision via Ditton Drive, Lake Channel Drive, and Lake Heights Drive. The City will provide emergency service. Fire hydrants shall be provided at each street intersection, and at intermediate locations where distances from hydrants exceed 500 feet. Appropriate turn arounds will be located on any street in excess of 150 feet that dead end.

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.

### **V. STORM DRAINAGE**

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* (Manual) and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division.

### **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 water mains and sanitary sewers to the Heights Water District and Public Works Department – Distribution and Collection 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 appropriate water and wastewater construction fees in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots as applied for in the extension application and as per the first paragraph above.

The Developer/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.

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 making connections to existing water main stubs located in Lake Heights Drive and Ditton Drive. The existing water main in these streets is an 8-inch diameter main and is a part of the Heights Water District water distribution system. A new 8-inch water main will be installed in the local interior public streets. The water main within the subdivision will make a looped connection. Fire hydrants will be provided at all appropriate locations and will be subject to approval by the City of Billings Fire Department. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. Water service locations and meters will be as approved by the Heights Water District. All water construction improvements shall be installed in conformance with the design standards, specifications and rules and regulations of the Heights Water District and Montana Department of Environmental Quality, and will be approved by the Heights Water District.

#### **B. Sanitary Sewer**

The subdivision will be served by one connection to an existing 8-inch sanitary sewer main located at the end of Ditton Drive. The sanitary sewer located within the subdivision will consist of an 8-inch sanitary sewer main. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. 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, Distribution, and Collection Division.

#### **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, where possible, and shall be installed underground prior to surface improvements. The location of all such facilities shall be subject to approval of the City Engineer. The width of the utility easements shall be included on the subdivision plat.

## **VII. LANDSCAPING**

Lot owners are required to plant two (2) trees and shall be located to avoid driveways and buried utility lines for HOA.

The HOA will plant twenty (20) trees after first fifteen (15) houses are built, twenty (20) trees after next fifteen (15) houses, and twenty-one (21) trees after next fifteen (15) houses. The trees will be located within the boulevard of the public right-of-way.

The size requirements for the trees to be planted are eight (8) feet tall and 1 ½” caliber.

## **VIII. PARKS/OPEN SPACE**

Parkland dedication for the Lake Hills Subdivision 25<sup>th</sup> Filing was completed previously and is not being adjusted by this project.

The owners of the Canal Vista Subdivision will contribute \$25,000 towards construction of a looped pathway in Sally Ann Park. The pathway layout must be predetermined by a Park Master Plan. Completion of this Park Master Plan will require the City of Billings Parks Department to form an SID and PMD for Sally Ann Park. The Canal Vista Subdivision Developer will participate in costs for the SID and PMD at their equivalent cost and following the completion of the Sally Ann Park Master Plan, they will provide a contribution of \$25,000 towards pathway construction. Costs above this amount will be paid for by equal share from the SID.

## **IX. IRRIGATION**

The Billings Bench Water Association (BBWA) main canal is located adjacent to the Canal Vista Subdivision. The main canal has eroded its way eastward, which will require realignment by the BBWA prior to completion of the project. The realigned portion of the canal will have bank protection installed to prevent continual erosion upon realignment. Best Management Practices will be in place during construction to mitigate offsite runoff into the canal.

Canal Vista, LLC proposes to acquire excess water shares from the BBWA which will be used to set up a community irrigation system for the project area. The community irrigation system will have the pumping unit, connection to the BBWA, power supply to the pumping unit, and primary supply lines in the Canal Vista Subdivision constructed during construction of public roadways and utilities. Individual irrigation supply lines will be constructed by the HOA and their maintenance contractor following construction of residences.

## **X. SOILS/GEOTECHNICAL STUDY**

The Subdivider contracted with DOWL HKM in 2007 to complete a geotechnical analysis of the property. The following are preliminary recommendations from this study:

- Topsoil, fill and any deleterious material should be stripped from all structural areas.
- Soils placed as fill should be moisture conditioned within 3 percent of optimum moisture for compaction and compacted to a minimum of 95 percent of maximum dry density per ASTM

D698.

- Fine grained soils anticipated at footing and slab subgrade elevations of the proposed buildings have the potential for excessive movement. Owner/builder should review geotechnical reports and recommendations prior to foundation construction.
- Street subgrade, utility trenches, and flatwork should be moisture conditioned within 3 percent of optimum moisture and compacted to 95 percent of maximum dry density per ASTM D698
- Bedrock was not encountered during the site work, but shale bedrock is expected to be from 10 to 20 feet below ground surface. The shale is likely weak, thinly bedded and easily excavated. The decomposed nature of the shale indicates that it may susceptible to swell.
- Shallow groundwater conditions were observed in areas adjoining ponds and the BBWA irrigation canal. Foundations and earth supported slabs should be limited to depths of 3 feet or more above seasonal high groundwater depths.
- 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.

## **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 Engineer and Utility Department Manager.

## **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”

**Canal Vista, 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 the \_\_\_\_\_ of **Canal Vista, LLC**, 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: \_\_\_\_\_

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



# 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 date 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:

## Canal Vista Subdivision

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Canal Vista, LLC/Owner**

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 **Canal Vista, 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 in Billings, Montana  
My commission expires: \_\_\_\_\_