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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
TRAILS WEST SUBDIVISION, FIFTH FILING**

Table of Contents

I.	Variances	SIA-2
II.	Property Conditions and Information for Lot Purchasers	SIA-2
III.	Transportation	SIA-4
	A. Streets	SIA-4
	B. Sidewalks	SIA-5
	C. Street Lighting	SIA-5
	D. Traffic Control Devices	SIA-5
	E. Access	SIA-6
	F. Billings Area Bikeway and Trail Master Plan	SIA-6
	G. Public Transit	SIA-6
IV.	Emergency Services	SIA-7
V.	Storm Drainage	SIA-7
VI.	Utilities	SIA-8
	A. Water	SIA-9
	B. Sanitary Sewer	SIA-9
	C. Power, Telephone, Gas, and Cable Television	SIA-9
VII.	Parks/Open Space	SIA-10
VIII.	Soils/Geotechnical Study	SIA-10
IX.	Financial Guarantees	SIA-11
X.	Legal Provisions Applying to Subdivider	SIA-11

Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
TRAILS WEST SUBDIVISION, FIFTH FILING**

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between **DORN-WILSON DEVELOPMENT, LLC**, whose address for the purpose of this agreement is 100 Emerald Drive, Billings, Montana 59105, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the preliminary plat of Trails West Subdivision, Fifth 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 Trails West Subdivision, Fifth 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 Trails West Subdivision, Fifth 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 Trails West Subdivision, Fifth 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. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- 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. Lot owners should be aware that a geotechnical investigation and report was completed on August 11, 2008, for the property which identified the following recommendations for individual lots prior to house construction:

1. For structures with foundations constructed within five feet of natural grade, prior to building permit approval, written verification from a geotechnical engineer shall be obtained that foundation preparation and fill material are in compliance with Section 5.3 and Appendix B of the report. Foundations within 3.5 feet of original grade require over excavation by two feet in width and depth plus installation of geo-grid fabric. The new fill requires compaction to 98 percent.
2. For structures with foundations constructed deeper than five feet of natural grade, prior to building permit approval, an engineered design will be required for a deep foundation system

A copy of the entire geotechnical report is available for review at the City Building and/or Planning Division offices.

G. 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 Fifth Filing.

H. Lot owners should be aware that agricultural activities could be present on surrounding properties. Any impacts associated with agricultural activities and any issue arising therefrom is the responsibility of the lot owners.

I. 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.

- 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.
- K.** Lot owners should be aware that the installation of a Barnes Grinder Pump (or hydraulically comparable grinder pump) will be required at each home at time of lot development. Lot owners should be aware that there is the possibility of periodic maintenance and replacement of the grinder pumps.
- L.** 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.
- M.** 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.

III. TRANSPORTATION

A. Streets

1. Ninebark Street, Bear Track Trail, Blackberry Way and Phantom Creek Avenue shall be 34 feet back of curb to back of curb within 56-foot right-of-ways. 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, subdivision regulations, and Uniform Zoning Code.
2. Stockman Avenue shall be 39 feet back of curb to back of curb within a 74-foot right-of-way. This road 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, subdivision regulations, and Uniform Zoning Code.

B. Sidewalks

City and Subdivider agree that the developer will install handicap accessibility ramps at the time of private contract construction. No other 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.

C. Street Lighting

Construction or installation of street lights shall not be required at this time. If street lights are installed in the future, a street light maintenance district will be formed for the entire subdivision to accommodate maintenance of the street lights.

D. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices within and 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.

All off-site contributions and improvements shall be paid as required by the Traffic Impact Study (TIS) before final plat approval.

City and Subdivider agree that Subdivider will make cash contributions to improvements at the following intersections:

56th Street West and Grand Avenue
54th Street West and Grand Avenue
56th Street West and Central Avenue

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 54th Street West/Grand Avenue, 56th Street West/Grand Avenue and 56th Street West/Central Avenue intersections shall be as follows:

	54th St. W./ Grand Ave.	56th St. W./ Grand Ave.	56th St. W./ Central Ave.
Fifth Filing	\$6,671.83	\$4,245.71	\$1,275.70
Lot 9, Block 12	\$5,718.71	\$3,639.18	\$1,093.45

The contributions for Trails West Subdivision, Fifth Filing 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 Lot 9, Block 12 will be developed in separate subdivision filing. The total cash contribution attributable to Lot 9, Block 12 shall be as stated above. No building permits or private contract permits shall be issued for Lot 9, Block 12 until payment has been made for the filing being developed at that time.

E. Access

Access will be provided for the subdivision by extending Ninebark Street, Blackberry Way, Phantom Creek Avenue, and Stockman Avenue. These street connections will connect to the existing subdivision accesses to Grand Avenue and 56th Street West. The streets within the subdivision shall be subject to review and approval by the City Engineering office.

F. Billings Area Bikeway and Trail Master Plan

The Billings Area Bikeway and Trail Master Plan identifies Grand Avenue, adjacent to the site, as an arterial bikeway. The developer will construct a 10-foot wide multi-use path on the south side of Stockman Avenue at the time of private contract construction. Therefore, City and Subdivider agree that trail requirements are being met for the subdivision.

G. 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 Ninebark Street, Blackberry Way, Phantom Creek Avenue and Stockman Avenue. Fire hydrants shall be provided at each street intersection, and at intermediate locations where distances exceed 500 feet. Appropriate turn arounds will be located on any street in excess of 150 feet.

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. The storm drainage system for Trails West Subdivision, Fifth Filing will consist of a curb and gutter surface collection and curb inlets that drain into storm drainage piping, as well as surface conveyance. The storm drain piping will discharge into existing storm drain piping and to an existing mechanical stormwater filtration manhole, and to an existing stormwater detention facility located on Lot 4, Block 13 Trails West Subdivision, 3rd Filing, with a discharge to the Birely Drain. The existing mechanical stormwater filtration manhole and stormwater storage volume were designed to include Trails West Subdivision, Fifth Filing. All drainage improvements shall comply with the provisions of the City of Billings *Stormwater Management Manual* and Chapter 28, BMCC.

- B.** The stormwater detention area is located on a private lot (Lot 4, Block 13 of Trails West Subdivision, Third Filing) and will be maintained by the homeowners' association (HOA) established for this subdivision. The mechanical stormwater filtration manhole is existing, and associated improvements are also privately owned and maintained by the HOA. Trails West Subdivision, Fifth Filing will be included in the HOA that is responsible to maintain these facilities. O&M requirements and HOA maintenance and fiscal responsibilities have been outlined within the Trails West Subdivision, Third O&M Manual.
- C.** The elevation of residential dwellings must be established in recognition of the City's policy that storm runoff flows are allowed to a depth of 18-inches in the gutter flowline of adjacent streets during the major storm.
- D.** 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 Chapter 28, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- E.** The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and the 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 City of Billings *Stormwater Management Manual*.

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 and sanitary sewers to the Public Works Department – Engineering 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 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

Service to the subdivision will be provided from the existing water main stubs in Ninebark Street, Blackberry Way, Phantom Creek Avenue, and Stockman Avenue. Connecting these mains will provide a looped system for the subdivision. 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.

B. Sanitary Sewer

Service to the subdivision will be provided from an existing sanitary sewer main stubs in Ninebark Street and Blackberry Way. City and Subdivider agree that sanitary sewer service to the Fifth Filing of the subdivision will be provided through low-pressure sanitary sewer mains. 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 low-pressure sanitary sewer service and each lot will need to use a Barnes Grinder Pump (or hydraulically comparable grinder pump). 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 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 Code Annotated 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 Fifth Filing has a total of 36 lots, requiring a parkland dedication of 0.597 acres. The Subdivider and City agree that this parkland dedication will be met through a cash-in-lieu payment to the development of Cottonwood Park. City and Subdivider agree the cash payment in lieu of parkland dedication shall be made prior to final plat approval. A comparative market analysis, or other approved method to determine raw land value, shall be used to determine the parkland dedication amount in accordance with Section 23-1006, BMCC.

VIII. SOILS/GEOTECHNICAL STUDY

The Subdivider has performed a geotechnical analysis for this property (dated August 11, 2008).

Recommendations from the report include:

1. Approximately six inches of surface soils should be stripped and removed from the site or stockpiled for use in non-structural areas.
2. Site and lot grading can be accomplished using conventional earthmoving equipment.
3. Fill across lot grading should be placed and compacted to a minimum of 95 percent relative compaction in accordance with the ASTM D698 compaction test method.
4. If trenches are extended deeper than five feet or are allowed to dry out, the excavations may become unstable and should be evaluated to verify the stability prior to occupation by construction personnel.
5. Street subgrade outside of utility trenches should be placed at 95 percent of ASTM D698 and utility trench backfill should be placed at 97 percent of ASTM D698.
6. The street section for the property shall include three inches of asphaltic concrete over a 10-inch base course.

7. The potential for sulfate attack from existing soils appears to be negligible, and conventional Type II cement may be used according to Table 1904.3 of the 2000 International Building Code.
8. For home construction, over-excavation will likely be required. It is recommended that a more comprehensive geotechnical study be completed prior to installing foundations so lot-specific site conditions can be determined.

IX. 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.

X. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- 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”

DORN-WILSON 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 the person who signed the foregoing instrument as the _____ of **DORN-WILSON DEVELOPMENT, LLC**, 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: _____

“OWNER”

DOUGLAS D. FRANK

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20____, before me, the undersigned Notary Public for the State of Montana, personally appeared **Douglas D. Frank**, known to me to be the persons who signed the foregoing instrument and who acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

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

This Agreement is hereby approved and accepted by 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 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: _____

Approved as to Form:

City Attorney

**WAIVER OF RIGHT TO PROTEST
FUTURE SPECIAL IMPROVEMENT DISTRICTS**

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 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:

Trails West Subdivision, Fifth Filing

Signed and dated this ____ day of _____, 20__.

“SUBDIVIDER”

DORN-WILSON DEVELOPMENT, LLC

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 _____ of Dorn-Wilson Development LLC, the person who executed the forgoing instrument and 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: _____

“OWNER”

RONALD E. FRANK

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20 __, before me, the undersigned Notary Public for the State of Montana, personally appeared **Ronald E. Frank**, known to me to be the person who signed the foregoing instrument and who acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

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