

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENTS DISTRICTS**

*Lake Hills Subdivision, 37<sup>th</sup> Filing*  
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CITY OF BILLINGS

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**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS**

*Lake Hills Subdivision, 37<sup>th</sup> Filing*

**This agreement** is made and entered into this \_\_\_\_\_ day of \_\_\_\_, 2020, by and between Ron S. Hill Living Trust, whose address for the purpose of this agreement is **P.O. Box 50636; Billings, Montana 59105**, 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 \_\_\_\_, 2020, the Board of Planning recommended conditional approval of a preliminary plat of Lake Hills Subdivision, 37<sup>th</sup> Filing; and

**WHEREAS**, at a regular meeting conducted on \_\_\_ day of \_\_\_\_, 2020, the City Council conditionally approved a preliminary plat of Lake Hills Subdivision, 37<sup>th</sup> Filing; 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 Lake Hills Subdivision, 37<sup>th</sup> 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 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. No variances are being requested for this subdivision.

**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. Front setbacks for those lots included in the subdivision with frontage determined along Winged Foot Drive shall be calculated from the back of 3-foot pedestrian and light pole easement rather than front of lot line/edge of right-of-way. This applies to Lots 2A, 3A, 4A, 5A, 6A, 7A, 10A, and 11A of Block 51, and Lot 11A of Block 52.
- C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil survey and Geotechnical Engineering Report for Lake Hills Subdivision, 21<sup>st</sup> Filing, prepared by Rimrock Engineering, Inc. (July 2, 2019), indicate that there could be potential limitations for proposed construction on the lots. Refer to Section IX for discussion of the geotechnical study completed for some of the lots within the Subdivision. All permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.
- D. 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.
- E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvements district 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 fourth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- F. The Subdivider and subsequent contractors/builders acknowledge that a Stormwater Pollution and Prevention Plan (SWPPP) may be required to be filed with the City and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Association with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- G. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are

defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

### **III. TRANSPORTATION**

#### **Streets**

- Rights-of-way widths of 60 feet for Greenbriar Road and 50 feet for Winged Foot Drive have already been dedicated in previous filings.
- The Owner shall construct public streets, and curb & gutter within the Subdivision. Streets fronting lots within the Subdivision shall be constructed as 34' back of curb to back of curb. These 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, and city subdivision regulations.
- The construction costs have been funded and no additional monetary security is required.

#### **Sidewalks**

- The Owner will install corner intersection handicap ramps.
- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction and shall be included in each building permit.
- Sidewalks shall be 5-foot wide with a 5-foot boulevard planting strip between the sidewalk and the curb along frontage of those lots included in the subdivision. Transitioning of sidewalk to 5-foot boulevard walk from that of adjacent lots outside the subdivision shall be conducted as called for by City Engineering at time of building permit application.

#### **Street Lighting**

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

#### **Traffic Control Devices**

- Traffic control devices are not required for this subdivision but are included in the waiver of right to protest.
- The Owner will furnish and install street name signs for streets within the subdivision or located immediately adjacent thereto in accordance with the specifications of the City of Billings Public Works and Fire Departments.

#### **Access**

- Access to the lots will be from drive approaches installed at the time of lot development from streets built with this Subdivision. Access permits shall be obtained from City Engineering.

**Billings Area Bikeway and Trails Master Plan (BABTMP)**

- This subdivision is located within the jurisdiction of the BABTMP, but no trail corridors are identified within this subdivision area.

**Public Transit**

- This subdivision does not require improvements to ensure public transit service. The nearest transit stop is at the intersection of Wicks Lane and Gleneagles Boulevard.

**IV. EMERGENCY SERVICE**

The Billings Fire Department currently provides fire protection for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to meet fire suppression requirements. Prior to 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 twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence 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 apparatus access and water supply.

**V. STORM DRAINAGE**

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A master plan is in place for Lake Hills Subdivision and all Future stormwater improvements will be reviewed and approved by the Engineering Division to comply with said plan. The new storm drainage improvements shall be constructed as part of SID 1413. The construction costs have been funded through the establishment of SID 1413 and no additional monetary security is required.

**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 County

Water District of Billings Heights and Public Works Department – Distribution and Collection Division, respectively. 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 in each phase 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 County Water District of Billings Heights, City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

### **Water**

The County Water District of Billings Heights serves the property. There is an existing 8-inch water main located in Greenbriar Road that currently terminates at both East and West edges of the subdivision. SID 1413 will extend the 8-inch water main along the length of Greenbriar Road through the subdivision. Also installing new 8-inch main along the length of Winged Foot Drive through the subdivision. New water services will be installed for all lots in the subdivision.

### **Sanitary Sewer**

Sanitary sewer mains and services will be extended from those that are existing in the subdivision. An existing 8-inch main is located at the intersection of Greenbriar Road and Wentworth Drive and currently terminates at the east edge of the proposed subdivision. SID 1413 will install a new 8-inch sanitary sewer main from the existing 8-inch main and run it along the roadways in front of lots within SID 1413 for sewer services to be installed. New sewer services will also be installed for all lots in the subdivision.

### **Power, Telephone, Gas, and Cable Television**

Private utility facilities (power, natural gas, telephone, and cable) will be installed during construction and located within the right-of-way and utility easements shown on the plat.

**VII. PARKS/OPEN SPACE**

There is no parkland requirement for this subdivision as the parkland requirement has been previously met.

**VIII. IRRIGATION**

No irrigation ditch, field laterals, or irrigation easements exist in this subdivision.

**IX. SOILS/GEOTECHNICAL STUDY**

According to the Geotechnical Engineering Report for Lake Hills Subdivision, 21<sup>st</sup> Filing, prepared by Rimrock Engineering, Inc. (July 2, 2019), some soils found in this area consist of potentially compressible clay soils over sandstone shale bedrock at or near foundation and concrete slab elevations. Field and laboratory test results indicate that some site soils are compressible and potentially expansive with increased moisture which can be detrimental to lightly loaded structures.

Subsurface conditions vary from one location to another and the structural characteristics may vary from one structure to another. Currently all permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

**X. PHASING OF IMPROVEMENTS**

There are no intended phasing improvements.

**XI. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements through Special Improvements District No. 1413. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district and the improvements shall be installed as approved by the City Engineer and the City of Billings Public Works and County Water District of Billings Heights.

**XII. 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 run with the land and apply to and shall be binding on the heirs, personal representatives, successors and assigns and transferees 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”

Ron S. Hill

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, 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:

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

“SUBDIVIDER”

Ron S. Hill Living Trust

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, 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:

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

“SUBDIVIDER”

Ron S. Hill, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, 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 \_\_\_\_\_, 2020.

“CITY”  
CITY OF BILLINGS  
MONTANA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and 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: \_\_\_\_\_

# 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 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:  
Lake Hill Subdivision, 37<sup>th</sup> filing

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

Ron S. Hill Living Trust

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the forgoing instrument as the \_\_\_\_\_ of Ron S. Hill Living Trust known to me to be 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 at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

Ron S. Hill

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be 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 at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Ron S. Hill LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the forgoing instrument as the \_\_\_\_\_ of Ron S. Hill LLC known to me to be 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 at: \_\_\_\_\_

My commission expires: \_\_\_\_\_