

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

SUBDIVISION IMPROVEMENTS AGREEMENT

IRONWOOD ESTATES SUBDIVISION, FIFTH FILING

THIS AGREEMENT is made and entered into this 13th day of August, 2012, by and between **REGAL LAND DEVELOPMENT, INC.**, whose address for the purpose of this agreement is P.O. Box 80445; Billings, Montana 59108, 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 the 24th day of May, 2011, the Yellowstone County Board of Planning recommended conditional approval of a preliminary plat of Ironwood Estates Subdivision, Fifth Filing; and

WHEREAS, at a regular meeting conducted on the 13th day of June, 2011, the City Council conditionally approved a preliminary plat of Ironwood Estates Subdivision, Fifth 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 Ironwood Estates Subdivision, Fifth 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. Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City's Subdivision Regulations:
1. Variance from the provisions of Section 23-406(B.12) requiring the preferred standard integral curb and gutter on local residential streets, to provide a 2-foot wide concrete edge ribbon on all streets in this filing.

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 assistance unless there is damage to commercial crops or a threat to public health and safety.
- C. Lot owners should be aware that foundations for residential structures will require soil modifications such as over excavation and recompaction, the use of geotextile fabrics or the use of deep foundations to mitigate the potential for hydrocollapse. The International Building Code Site Class for this filing is Class D. A final geotechnical report will be required prior to construction to determine the foundation requirements for individual structures.
- 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. Owners of lots within this subdivision shall be advised that, in accordance with FEMA Panels 865 and 845 of 1,400, there exists floodplain data for the Cove Creek drainage. There is the potential for flooding within this



subdivision, and any assessment or mitigation of these conditions shall be the responsibility of the owner.

- F. Purchasers of lots in this filing should be aware that when the water main connection is made to Zone 5 West there may be fluctuations in residential water pressures.
- G. 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*.
- H. The Developer 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, Section 28-201, BMCC and Billings *Stormwater Management Manual*.
- I. It is critical that the area between the concrete ribbon and the boulevard sidewalk remain a drainage swale. The property owner shall not pipe, fill-in, or alter the drainage swale without written permission from the City of Billings Engineering. If the lot owner does not comply with this requirement, the City of Billings has the right to remove any landscaping installed in said area and restore the drainage swale at the expense of the property owner. Understanding that swales have a maximum life, ongoing maintenance/cleaning/reconstruction of the swales and culverts under driveways is the responsibility of the lot owner. In addition, lot owners shall be required to maintain/clean/reconstruct their swales and driveway culverts to the exact specifications as they were designed and installed.

III. TRANSPORTATION

A. Streets

1. All streets shall be built to grade with a satisfactory sub-base, base coarse, and asphalt surface. The design cross-sections of said streets shall be submitted to and approved by the City of Billings Public Works and Fire Departments.
2. Streets in the subdivision are to be 30-foot wide asphalt surface plus 2-foot wide concrete ribbons on each side.



3. A traffic accessibility study has been completed for the subdivision. All required improvements and permits identified therein shall be completed by the Subdivider at Subdivider's expense. These are more specifically identified as follows:
- a. Ironwood Estates Subdivision will impact the total projected traffic at the Rimrock Road – Shiloh Road intersection. Based on this, the Subdivider shall make a mitigation contribution not to exceed \$24,067.00 for the improvements at this location with said contribution to be paid in installments with each filing. The installment percentage shall be determined by taking the ratio of the total lots in the filing to the total lots in the master plan. Therefore, the final contribution for Fifth Filing is \$1,067.00.
 - b. Ironwood Estates Subdivision will impact the Rimrock Road – Zimmerman Trail intersection. The Subdivider shall make a mitigation contribution not to exceed \$10,464.00 for the improvements at this location. Therefore, the final contribution for Fifth Filing is \$464.00.
 - c. Ironwood Estates Subdivision will impact the Rimrock Road – 54th Street West intersection. The Subdivider shall make a mitigation contribution not to exceed \$25,846.00 for the improvements at this location. Therefore, the final contribution for Fifth Filing is \$1,146.00.

B. Sidewalks

Paragraph
to be
amended

Standard five-foot wide boulevard style sidewalks are required and will be installed by the lot owner at the time of lot development along the streets in this filing. Pedestrian/bike paths shall be constructed in various linear park areas throughout the subdivision and shall follow the City of Billings design standards. In areas where City utility maintenance vehicles are anticipated, the trail shall be a minimum of 10-feet wide.

C. Street Lighting

Street light installation is not anticipated at this time. Street lights shall be included in the Waiver for construction of same in the future. Said Waiver shall also include a maintenance district for street light energy and the maintenance of future street lights.

D. Traffic Control Devices

1. 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 City of Billings Public Works and Fire Departments.
2. No traffic signals are anticipated for this subdivision.
3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

E. Access

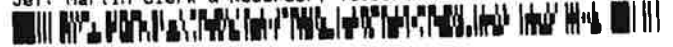
No construction in or alteration of the drainage swales throughout the subdivision shall be allowed, unless by specific right-of-way permit issued by the City of Billings. This shall include, but not be limited to, landscaping, irrigation systems, and drive approaches.

F. Heritage Trail Plan

The subdivision is within the Heritage Trail Plan. The plan identifies a proposed multi-use trail along the Cove Creek drainage way. This drainage is in proposed public park dedication; therefore, additional trail dedication is not necessary.

IV. EMERGENCY SERVICE

An emergency access road will need to be installed by the Subdivider to meet city and state requirements to allow emergency access to the subdivision via 62nd Street West. The road shall be designed to a minimum unobstructed width of not less than 20-feet wide and shall be constructed to adequately support a 40-ton vehicle with a surface so as to provide all-weather driving capabilities. Gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read "EMERGENCY ACCESS ONLY" using red letters not less than 2-inches wide and 6-inches high on a white reflective background. A cross-sectional design of the road including location, sections, surfacing, drainage, and design of gates and barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer's office prior to actual construction. The actual construction of this emergency access road shall be completed prior to



Ironwood Estates Subdivision, Fifth Filing final plat approval. The actual construction of this emergency access may not be necessary if a separate all-traffic secondary access to the subdivision is identified and its actual construction is completed and approved prior to Ironwood Estates Subdivision, Fifth Filing final plat approval. Release of the obligation for the construction of the emergency access is subject to the approval of the City Engineer and the Billings Fire Department.

An additional 20-foot wide gravel temporary emergency access road with gates will be required for Phase II of Ironwood Estates Subdivision, Fifth Filing, which will connect the end of Canyonwoods Drive in Phase I to the existing Canyonwoods Drive at the southwest corner of Lot 62, Block 1 of Ironwood Estates Subdivision, Fifth Filing. A temporary emergency access easement across any lots will be required at the time of Phase II construction if the right-of-way is not utilized.

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.
- Any section of road greater than 150 feet requires an approved turnaround.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

**V. STORM DRAINAGE**

Storm drainage and surface flow shall be provided by a combination of surface drainage, storm piping, swales to natural drainage ways, and detention created in drain ways within the park. The sizing and location of swales and drainage paths will be subject to review and approval by the Engineering Department and in conformance with the *Stormwater Management Manual*, February 2011, and Section 23-407, BMCC. A storm drainage master plan report has been developed for this subdivision.

The storm drainage master plan has been approved by the City Engineer's office and includes driveway culvert sizes.

It is critical that the area between the concrete ribbon and the boulevard sidewalk remain a drainage swale. The property owner shall not pipe, fill-in, or alter the drainage swale without written permission from the City of Billings Engineering. If the lot owner does not comply with this requirement, the City of Billings has the right to remove any landscaping installed in said area and restore the drainage swale at the expense of the property owner.

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 Subdivider/Owner acknowledges that the subdivision shall be subject to the applicable system development and franchise 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 and regulations of, and as approved by the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

A. Water

Subdivider will install, at its expense, water mains or services within and/or adjacent to the subdivision to serve the lots therein. Said mains or services will be connected to existing mains at appropriate places, sizes, locations, and standards as approved by the Public Works Director and shall be installed in conformance with the design standards, specifications, rules, and regulations of the City of Billings and the Montana State Department of Environmental Quality.

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

B. Sanitary Sewer

Subdivider will install, at its expense, sanitary sewer mains or services within and/or adjacent to the subdivision to serve the lots therein. Said mains or services will be connected to existing mains at appropriate places, sizes, locations, and standards as approved by the Public Works Director and shall be installed in conformance with the design standards, specifications, rules, and regulations of the City of Billings and the Montana State Department of Environmental Quality.

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

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

There are platted several large public parks both aggregate and linear throughout the subdivision that shall remain in a natural or improved state. A park development plan detailing level, type, and timing of improvements contemplated in this filing has been approved by the City Council. An update to the approved Ironwood Park Master Plan was submitted, reviewed and approved by the City Park Board on May 11, 2011. Vacation of a portion of the existing dedicated park land in Ironwood Estates Subdivision, Fourth Filing will be required for this



filing. Compensation to the City of Billings for 2.193 acres of the vacated park land, in the amount of \$49,703.60.

Maintenance of the common public park improvements has been accomplished through the establishment of Park Maintenance District No. 4027. The improvements shall be installed as approved by the City of Billings Public Works Department and Parks Department.

VIII. SOILS/GEOTECHNICAL STUDY

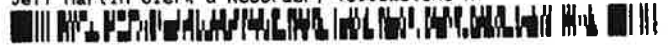
Lot owners should be aware that foundations for residential structures will require soil modifications such as over excavation and recompaction, the use of geotextile fabrics or the use of deep foundations to mitigate the potential for hydrocollapse. The International Building Code Site Class for this filing is Class D. A final geotechnical report will be required prior to construction to determine the foundation requirements for individual structures.

IX. PHASING OF IMPROVEMENTS

The Subdivider may install improvements in the future in one or more phases. The Subdivider agrees not to sell or convey any lots in the subdivision until such time as a private contract has been executed and necessary funding guarantees have been provided for the construction and installation of the public improvements to serve said lots. The Subdivider acknowledges that no building permits will be issued in a phase until private contract has been executed and the funding guarantee is in place. Occupancy permits will not be issued for any lots until the improvements have been accepted and approved by the City of Billings. As used herein, a phase of construction shall mean that amount and extent of required improvements to serve each lot intended to be developed and sold within the said phase boundary.

As described, the improvements referred to herein shall be installed by private contracts, which shall be secured by cash in escrow, letter of credit, or a letter of commitment to lend funds from a commercial lender in accordance with the City of Billings Subdivision Regulations. In the event the Subdivider fails to install or construct such improvements or fails to finance in another satisfactory manner at the time performance is due, the City may initiate the creation of special improvement district or districts and shall be entitled to rely on the waiver in connection with creation of said districts.

As used herein, the Phase I lots to be served by the initial private contract are more particularly described as follows:



Lots 1 and 2, Block 1; Lots 62-63, Block 1; Lots 1 and 16, Block 2; Lot 1, Block 3; Lots 1 through 3, Block 4; all in Ironwood Estates Subdivision, Fifth Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (10 lots total).

As used herein, the lots to be served by a private contract in future phases are more particularly described as follows:

Lots 3 through 61, Block 1; Lots 2 through 15, Block 2; Lots 2 through 18, Block 3; all in Ironwood Estates Subdivision, Fifth Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (90 lots total).

Included herewith is a Declaration of Restriction on Transfers and Conveyances which notifies all third parties that said lots may not be legally sold, conveyed, or transferred until a release executed by the City of Billings and substantially in the form of Exhibit A attached hereto has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No lots shall be released until a certificate completed in the form of Exhibit B attached hereto has been executed by the Department of Public Works stating that above conditions have been met, which certificate must accompany any request for a release. By the acceptance and recording of the agreement, the City of Billings does hereby authorize the Department of Public Works, the Mayor, and the City Clerk of the City of Billings 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.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, as one unit, all lots in the subdivision, nor shall the requirements for installation of improvements become effective as a result thereof; provided, however, that such sale shall be subject to the restrictions herein provided against the transfer of individual lots until the conditions set forth above have been met.

X. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash 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 private contract, and the improvements shall be installed as approved by the City Engineer and utility department manager.

SIA

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08/24/2012 11:34 AM Pages: 12 of 15 Fees: 5.00
Jeff Martin Clerk & Recorder, Yellowstone MT



XI. LEGAL PROVISIONS

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B.** The owners of the properties involved in this proposed subdivision, by signature subscribed herein below, agree, consent, and shall be bound by the 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.



WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and Founders of the hereinafter described real property, do hereby waive for a period of 20 years after the date that the final subdivision plat is filed, the right to protest the formation of one or more special improvement district(s) for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and are supported by sufficient independent consideration to which the undersigned is a party, and shall run with the land and shall be binding upon the undersigned, its successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned that is the subject of this waiver is more particularly described as follows:

Ironwood Estates Subdivision, Fifth Filing

SUBDIVIDER/OWNER

REGAL LAND DEVELOPMENT, INC.

By: [Signature]

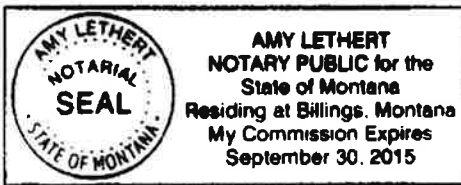
Its: [Signature]

STATE OF Montana)

County of Yellowstone) : ss

On this 20th day of July, 2012, before me, a Notary Public in and for the State of Montana, personally appeared Daniel Welby, known to me to be the person who executed the foregoing instrument as the President of **REGAL LAND DEVELOPMENT, INC.** 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.



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