

Return to:
Sanderson Stewart
1300 North Transtech Way
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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
RESIDENTIAL MANUFACTURED HOME
DEVELOPMENT LOT 5A, BLOCK 1 OF
WESTERN SKY SUBDIVISION, 2ND AMENDED**

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DRAFT

Return to:
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Billings, MT 59102

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DEVELOPMENT LOT 5A, BLOCK 1 OF WESTERN SKY
SUBDIVISION, 2ND AMENDED**

This Agreement is made and entered into this ____ day of _____, 20____, by and between **WESTERN SKY BILLINGS, LLC**, whose address for the purpose of this Agreement is P.O. Box 333, Reed Point, MT 59069, hereinafter referred to as “Subdivider” or “Developer,” and the **CITY OF BILLINGS**, Montana, a municipal corporation, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, at a regular meeting conducted on the ____ day of _____, 20____, the City Council conditionally approved a preliminary plan of Lot 5A, Block 1 of Western Sky Subdivision, 2nd Amended; and

WHEREAS, a Subdivision Improvements Agreement (SIA) is required by the City prior to the approval of the final plan; and

WHEREAS, the real property affected by the proposed plan is covered by and subject to the terms and conditions of that certain Subdivision Improvements Agreement and Waiver between Mont Vista, LLC as “Owners and Subdividers” and the City of Billings as “City,” dated the 23rd day of September, 2019 and recorded the 14th day of November, 2019, under Document No. 3902605 for Western Sky Subdivision, 2nd Amended, all in records of Yellowstone County; and;

WHEREAS, the provisions of this Agreement shall be effective and applicable to Lot 5A, Block 1 of Western Sky Subdivision, 2nd Amended, (the “Subdivision”) upon the filing of the final plan thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of Article 23-600 of the City of Billings Subdivision Regulations for Developments Providing Multiple Spaces for Rent or Lease for Manufactured Homes, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana; and

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.** The Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City of Billings Subdivision Regulations (Section 23.1101, BMCC):
1. None requested.

II. PROPERTY CONDITIONS AND INFORMATION FOR UNIT RENTERS OR LEESEES

- A.** Unit renters or lessees should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and open agricultural areas and contains wildlife migratory routes. Consequently, they are advised that wildlife indigenous to the prairies is found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Unit renters or leases may also 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. Impacts associated with wildlife and any damage arising therefrom is the responsibility of the unit renters or lessees.
- B.** There is attached hereto a Waiver, waiving the right to protest the creation of the special improvement district or districts that may be created by the City to finance the costs of the off-site public improvements pursuant to the terms of this Agreement. The Waiver will be filed with the plat, shall run with the land, and may be employed when public improvements that benefit this subdivision are required or requested. 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.

- C. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains which are still in operation shall remain in place and shall not be altered by the Subdivider or subsequent owners.

III. TRANSPORTATION

A. Streets

All internal access roads within the subdivision will be private and shall be designed to provide access to all sites. No site shall have vehicular access to a public street. The streets shall be laid out to discourage through traffic and intersections with public streets shall be kept at a minimum. Streets shall be designed and built to meet current City Standards.

Subdivider and City agree that the required street improvements are as follows:

1. An updated Traffic Impact Study has been submitted to the Engineering Division for review and approval prior to final plan approval. Construction and/or financial contribution for improvements along South 48th Street West is covered by and subject to the terms and conditions of the Subdivision Improvements Agreement and Waiver under Document No. 3902605 for Western Sky Subdivision, 2nd Amended.

No physical surface improvements to South 48th Street West are anticipated at this time. Instead, the Developer shall make a cash contribution to the City of Billings for future improvements in South 48th Street West. Said contribution shall be made at the time of development of Lot 5A, Block 1, Contribution shall be based on one-half (1/2) of the required surface improvements for a residential street section less a credit for existing surfacing plus the curb and gutter. Contribution shall be made prior to approval of site development for this lot. Any turn lane, street widening or intersection improvements necessary for individual lot development

along South 48th Street West shall be at the expense of the developer.

Intersection contributions for this development were previously identified within the Subdivision Improvements Agreement and Waiver under Document No. 3902605 for Western Sky Subdivision, 2nd Amended. Based on the updated Traffic Impact Study which took into account this development and the recent Zone Change Map Amendment for Western Sky Subdivision, 2nd Amended, and as approved by City Ordinance 20-5737 under Document No. 3932747, the following intersection contributions shall be paid at the time of Lot 5A development:

- Central Ave. and South 48th St. West (4.50%) \$3,750.00

B. Sidewalks

1. A ten-foot-wide multi-use trail shall be constructed along the east side and within the easement of the Shiloh Drain as it lies along South 48th Street West at time of Lot 5A development along South 48th Street West.
2. A ten-foot-wide multi-use trail shall be constructed along the north side of the Hogan's Slough and within the easement adjacent to the development at time of Lot 5A, Block 1 development. Construction may be proportional to the area being developed within Lot 5A, Block 1.
3. Sidewalks on the internal private streets shall be installed at the time of subdivision development and shall be borne by the Subdivider. The sidewalk shall consist of a 5-foot-wide boulevard type sidewalk on both sides of each private street and the Subdivider will install accessible ramps at intersections.

C. Street Lighting

Construction or installation of street lights on South 48th Street West 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.

Street light installation within the internal private streets is at the discretion of the subdivider. If constructed, street lights on private streets within Lot 5A shall be owned, operated and maintained through the mechanism of a Homeowners Association (HOA).

D. Traffic Control Devices

1. Traffic signals, signage, and striping shall be installed in accordance with the Traffic Impact Study. The timing, extent and level of participation in those improvements shall be in accordance with approval by the City of Billings.
2. Directional signage and traffic control devices required throughout the subdivision shall be installed by Subdivider at time of lot development. All traffic control devices will be designed in accordance with the Manual on Uniform Traffic Control Devices and shall be subject to review and approval by the City Traffic Engineer.

E. Access

1. Location of accesses shall be in accordance with the Traffic Impact Study. Access to Lot 5A shall include a new full access from South 48th Street West approximately 1,320 feet south of King Avenue West, and a right-in/right out access from South 48th Street West approximately 250 feet north of the south end of Lot 5A. This south access from South 48th Street West was previously located at the south end of the lot per the plat of Western Sky Subdivision, 2nd Filing (Document No. 3902604).

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

The subdivision is included in the Billings Area Bikeway and Trail Master Plan. Improvements identified in that plan shall be made at time of lot development. The Subdivider shall construct a ten-foot wide multi-use trail along South 48th Street West and along Hogan's Slough at time of lot development. Construction shall be within the easements of those facilities.

G. Public Transit

Strong internal street circulation and interconnectivity is provided in the development plan for Western Sky Subdivision, 2nd Amended. This will, in turn, provide sidewalks for pedestrians to access public transit routes. No other specific public transit provisions are proposed at this time.

IV. EMERGENCY SERVICES

Two points of access are provided to this subdivision from South 48th Street West. In addition, private fire hydrants will be installed at the required locations as reviewed and approved by the City of Billings Fire Department. This shall include fire hydrants spaced at a distance no greater than three hundred feet along private streets. At the time of development, a Site Development Plan shall be submitted to the City of Billings Fire Department in sufficient detail to verify compliance with all required emergency ingress, egress and circulation requirements. All of the private fire hydrants shall be owned, operated and maintained through the mechanism of a Homeowners Association (HOA).

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrants in place to allow for 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 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* and Section 23-706, BMCC and shall be in accordance with the stormwater management plan to be submitted to and accepted by the Engineering Division. All storm drainage improvements not located within a publicly dedicated right-of-way or easement shall be considered a private installation and shall be operated and maintained under a Homeowners Association (HOA) Stormwater Facility Maintenance Agreement between the Subdivider and the City.

That portion of storm drain system to be extended from the southerly end of South 46th Street West and Crescent Street along and within the storm drain easement along the northerly and easterly property lines of Lot 5A south to the Hogan's Slough shall be considered a private installation and shall be owned, operated and maintained through the mechanism of the Homeowners Association (HOA) Agreement.

Stormwater on site will be conveyed to the collection system via surface flows on the private streets and through a network of catch basins, inlets, and piping which will convey runoff to either the Shiloh Drain along South 48th Street West (the South 48th Street West Drain) and Hogan's Slough along the south boundary of the development. Discharges directly tied to these drains shall be terminated with an acceptable back flow prevention device to prevent large storm events flowing in the South 48th Street West Drain and Hogan's Slough Drain from back-flowing into the storm drain lines that service the subdivision.

The developer shall reconstruct the portion of Hogan's Slough that runs along the south lot line of Lot 5A, Block 1 to increase capacity to 450 cfs with 1.5 feet of freeboard in accordance with the recommendations of the West Billings Stormwater Management Plan.

In consideration of the capacity increase of the Hogan's Slough and as previously agreed upon and specified in the Subdivision Improvements Agreement and Waiver between Subdivider and City under Document No. 3902605 for Western Sky Subdivision, 2nd Amended, the City of Billings allowed developers to directly discharge the site's stormwater (with the use of on-site stormwater quality mitigation measures) to the South 48th Street West Drain and Hogan's Slough. In addition, the developers were to make a \$303,000.00 cash contribution proportioned and based upon individual lot sizes within Western Sky Subdivision, 2nd Amended to the City of Billings for construction of facilities in service of the

City of Billings' Shiloh Conservation Area. Those facilities will then be constructed by the City of Billings in a location and at a time found to be appropriate to the City. Storm drainage contributions for this development were previously identified within the Subdivision Improvements Agreement and Waiver under Document No. 3902605 for Western Sky Subdivision, 2nd Amended.

VI. UTILITIES

This 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. 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 acknowledges that the subdivision shall be subject to the applicable system development fees in effect at the time a building permit is issued for new construction.

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.

Only water and sewer installations within dedicated public rights-of-way shall be considered public. All other extensions of water and sewer mains and services shall be considered private installations and shall be operated and maintained under separate private party agreements.

A. Water

The City of Billings has extended a water main in a portion of King Avenue West fronting the subdivision. The developer extended a water main from that public main at South 46th Street West to the south and to the west on Crescent Street that provided water services to each of the lots for Western Sky Subdivision, 2nd Amended. For this development, extension of a private water main from the public water main in Crescent Drive constructed under City Private Contract P-755 will occur and said private

water mains will be constructed in private streets to serve each manufactured home unit in this subdivision.

The private water main serving Lot 5A shall be extended within an existing utility easement that extends from Crescent Street to Lot 5A. The private main shall have appropriate flow meter and backflow device near the point of connection to the public water main in Crescent Street.

The Developer shall make a cash contribution to the City of Billings for future water main improvements in South 48th Street West. Said contribution shall be made at the time of development of Lot 5A, Block 1, Contributions shall be based on one-half (1/2) of the cost of a 12-inch water main. Contribution shall be made prior to approval of site development for this development.

B. Sanitary Sewer

The City of Billings has extended a sanitary sewer main in a portion of King Avenue West fronting the subdivision. The developer extended a sanitary sewer main from that public main at South 46th Street West to the south and to the west on Crescent Street that provided sanitary services to each of the subdivision lots for Western Sky Subdivision, 2nd Amended.

For this development, extension of a private sewer main from the public sewer main in Crescent Drive constructed under City Private Contract P-755 will occur and said private sewer mains will be constructed in utility easements from Crescent Street to Lot 5A and within internal private streets to serve each manufactured home unit in this subdivision.

No construction or contribution to a sanitary sewer main in South 48th Street West will be needed at this time. Developer acknowledges that a future sanitary sewer main may be installed in South 48th Street West. Each lot within Western Sky Subdivision, 2nd Amended shall be responsible for its pro rata share of the costs of that improvement at the time of construction of that improvement. It is anticipated that the City will create a Special Improvement District (SID) for the installation of that improvement that contemplates cost contributions from the other three development areas abutting this improvement being responsible for their share of the cost under the SID.

C. Power, Telephone, Gas, and Cable Television

Private utilities shall be coordinated prior to construction to serve the development. Said utilities will serve the development in private utility easements at locations either shown on the face of the plat or in areas determined at the time of development.

VII. PARKS/OPEN SPACE

Park dedication will be made through a combination of private park development for residents in the community, a 20-foot wide linear park dedication and development along the two public 10-wide multi-use paths along 48th Street West and the Hogan's Slough, and a cash-in-lieu of contribution. The total net area of residential development for this subdivision is 18.05 acres. The cash-in-lieu contribution is calculated on eleven percent of the net area of the residentially zoned Lot 5A minus the private park and linear park, with a cost per acre of \$40,000.00 applied. The required park dedication is 1.98 acres and the areas for the private park and linear parks equal 1.74 acres, leaving a cash in lieu contribution of 0.24 acres, or \$9,600.00. Cash contribution is to be made at time of development of said lot.

VIII. IRRIGATION

Irrigation ditches that are still operational and servicing this property or downstream properties shall be maintained until no longer needed. Easements for their locations shall be provided.

IX. POSTAL DELIVERY

The Subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service. Exact locations will be determined upon design development of Lot 5A.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study has been performed on the Subdivision. Additional soils/geotechnical investigation may be required at time of development requiring additional analysis.

XI. TIMING OF IMPROVEMENTS

The Developer shall make a cash contribution to the City of Billings for future improvements in South 48th Street West. Said contribution shall be made at the time of development of Lot 5A, Block 1, contribution shall be based on one-half (1/2) of 12-inch water main and proportional right-of-way improvements. Contributions shall be made prior to approval of site development for this lot. No contribution shall be required for a sanitary sewer main at this time in South 48th Street West. If it is determined at some point in the future that sanitary sewer is required in South 48th Street West, the entirety of Western Sky Subdivision, 2nd Amended may be responsible for its proportional share of the costs of one-half of a 12-inch sanitary sewer at the time of construction of those improvements. It is anticipated that the City will create a Special Improvement District (SID) for the installation of that improvement.

XII. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct all required on-site improvements with cash or by utilizing the mechanics of a special improvement district or private contracts secured by bond, 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 Montana Department of Environmental Quality (MDEQ), the City Engineer and the Utility Department Manager.

XIII. 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. This guaranty shall not apply to any failure or defect caused by changes in design, construction or materials required by the City.
- 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, then the prevailing party 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.

DRAFT

“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 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

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:

Lot 5A, Block 1 of Western Sky Subdivision, 2nd Amended

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

WESTERN SKY BILLINGS, LLC

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the person who executed the foregoing instrument as the _____ of WESTERN SKY BILLINGS, 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