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Performance Engineering, LLC
608 N 29th Street
Billings, MT 59101

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

Lake Hills Subdivision, 38th 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, 38th Filing

This agreement is made and entered this ____ day of _____, 20____, by and between *Yellowstone Property Solutions, LLC* whose address for the purpose of this agreement is **PO Box 21280 Billings, MT 59104**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Lake Hills Subdivision, 38th Filing* located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, the City Council conditionally approved a preliminary plat of *Lake Hills Subdivision, 38th 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, 38th 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

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 (Section 23.1101, BMCC):

1. No Variances have been requested at this time.

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 by the completion of the conditions set forth in the 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 there is a Stormwater Pollution and Prevention Plan (SWPPP) 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 Associated 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 with Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

III. TRANSPORTATION

A. Streets

- Clubhouse Way has a right-of-way width of 50-feet. The Subdivider shall create a 3-foot wide right-of-way easement along Clubhouse Way.

- Lot owners should be aware that front setback requirements as called for by applicable zoning regulations shall be calculated from the back of the 3-foot wide right-of-way easement rather than front property line.
- Internal access roads shall be built in accordance with the City of Billings' site development ordinance, and City subdivision regulations.

B. Sidewalks

- 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.

C. Street Lighting

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

D. Traffic Control Devices

- Traffic control devices have been furnished and installed with previous filings. No additional traffic control devices are being dedicated as part of this filing; however, traffic control devices are included in the waiver of right to protest.

E. Access

- Access to the lots will be from drive approaches installed at the time of lot development.
- Internal access roads shall be built in accordance with the City of Billings' site development ordinance, and City subdivision regulations.

F. Billings Area Bikeways and Trail Master Plan

- This subdivision is located within the jurisdiction of the BABTMP, but no trail corridors are identified within this subdivision area. Clubhouse Way is identified as an arterial on-street bikeway.

G. 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

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

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

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.

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

The County Water District of Billings Heights (CWDBH) serves the property. New water services will be extended from the existing 8” water main along Clubhouse Way for all lots in this filing. An existing water service will remain and be utilized. Design standards shall be in accordance with CWDBH regulations and improvements shall be reviewed and approved by CWDBH prior to installation.

B. Septic System

An existing 8” sanitary sewer main is located in the intersection of Clubhouse Way and Boca Raton Road. To service the new lots, the Developer will extend an 8” sanitary sewer line north along Clubhouse Way to allow for new services to be connected.

C. Power, Telephone, Gas, and Cable Television

Private utility facilities currently exist to serve the subdivision. Power, natural gas, telephone, and cable will all be located within the right-of-way and utility easements shown on the plat.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Lake Hills Subdivision, 38th Filing, as this is a minor subdivision [MCA 76-3-617(3)(a)].

VIII. IRRIGATION

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

IX. SOILS/GEOTECHNICAL STUDY

According to the Geotechnical Engineering Report for Lake Hills Road Extension prepared by Rimrock Engineering, Inc. (December 22, 2017), soils found in the vicinity of the subdivision consist of potentially expansive clays and shale. Maintaining surface drainage away from structures is critical. All permitted structures are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

X. PHASING IMPPHASING OF IMPROVEMENTS

There are no intended phasing improvements for this filing.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract 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.

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, 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”

Yellowstone Property Solutions, LLC

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of *Yellowstone Property Solutions, LLC*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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

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 describe as follows:

Lake Hills Subdivision, 38th Filing

Signed and dated this _____ day of _____, 20____

Yellowstone Property Solutions, LLC

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of)

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of *Yellowstone Property Solutions, LLC*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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