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**SUBDIVISION IMPROVEMENTS AGREEMENT**  
for  
**AMENDED PLAT OF LOT 9A OF THE AMENDED PLAT OF**  
**LOTS 10-16 OF BLOCK 4, LOTS 3 & 4 OF BLOCK 5, LOTS**  
**2-13 OF BLOCKS 10 & 11, AND BLOCKS 12 & 13 OF**  
**HILLTOP SUBDIVISION, SECOND FILING**

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

**FOR  
AMENDED PLAT OF LOT 9A OF THE AMENDED PLAT OF  
LOTS 10-16 OF BLOCK 4, LOTS 3 & 4 OF BLOCK 5, LOTS  
2-13 OF BLOCKS 10 & 11, AND BLOCKS 12 & 13 OF  
HILLTOP SUBDIVISION, SECOND FILING**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **SHAUN MARKS**, whose address for the purpose of this agreement is 2424 1st Avenue South, Billings, MT, 59101, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the Amended Plat of Lot 9A of the Amended Plat of Lots 10-16 of Block 4, Lots 3 & 4 of Block 5, Lots 2-13 of Blocks 10 & 11, and Blocks 12 & 13 of Hilltop Subdivision, Second Filing, hereafter referred to as “the subdivision”, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council conditionally approved a preliminary plat of the Subdivision; 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 the subdivision upon the filing of the amended 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**

None requested

**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. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.
- B.** Lot owners should be aware that this subdivision is being built near 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.** 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 within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

### **III. TRANSPORTATION**

#### **A. Streets**

The subdivision is adjacent to Crestline Drive and Sapphire Avenue. Both streets are developed rights-of-way. No street improvements are anticipated at this time for the subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

#### **B. Sidewalks**

No sidewalk improvements are anticipated at this time for the subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

#### **C. Street Lighting**

No street lighting exists along South Frontage Road in the vicinity of the subdivision. No new street lighting will be required as a result of the subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

**D. Traffic Control Devices**

No street traffic control devices are anticipated at this time for the subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

**E. Access**

Lot 9A-1 has an existing access from Sapphire Avenue, being adjacent along the entire east line of Lot 9A-1.

Lot 9A-2 requires an access from Crestline Drive, being adjacent along the entire south line of Lot 9A-2.

**F. Billings Area Bikeway and Trail Master Plan**

No additional improvements are anticipated at this time for the subdivision relating to the Billings Area Bikeway and Trail Master Plan.

**G. Public Transit**

No additional improvements are anticipated at this time for the subdivision relating to public transit.

**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.

## **V. STORM DRAINAGE**

No additional improvements are anticipated at this time for the subdivision relating to storm drainage.

## **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 or the Heights Water District. 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 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 and the County Water District of Billings Heights.

### **A. Water**

Lot 9A-1 has an existing service connection to the main water line in Sapphire Avenue.

At the time of development, the owner of Lot 9A-2 shall install a 1” water service connection to the main water line in either Sapphire Avenue or Crestline Drive.

**B. Sanitary Sewer**

Lot 9A-1 has an existing service connection to the main sanitary sewer line in Sapphire Avenue.

At the time of development, the owner of Lot 9A-2 shall install a 6” sanitary sewer service connection to the main line in Sapphire Avenue.

**C. Power, Telephone, Gas, and Cable Television**

Lot 9A-1 has existing service already provided.

Service to Lot 9A-2 will be provided from existing facilities.  
No additional new easements are required for the private utilities.

**VII. PARKS/OPEN SPACE**

Pursuant to MCA 76-3-621(3)(d), there is no parkland requirement for a subdivision in which only one additional parcel is created.

**VIII. IRRIGATION**

There are no active agricultural facilities within the subdivision.

**IX. SOILS/GEOTECHNICAL STUDY**

Lot 9A-1 is already developed at this time. A project/building specific Geotechnical report may be required at the time of development of Lot 9A-2.

**X. PHASING OF IMPROVEMENTS**

No public improvements are required at this time by the Subdivider.

**XI. FINANCIAL GUARANTEES**

All required improvements will be financially guaranteed or constructed prior to recording of the final plat.

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 two years 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”

\_\_\_\_\_  
Shaun Marks

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 Shaun Marks, known to me to be the person who executed the foregoing instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public in and for the State of Montana



**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 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:

The Amended Plat of Lot 9A of the Amended Plat of Lots 10-16 of Block 4, Lots 3 & 4 of Block 5, Lots 2-13 of Blocks 10 & 11, and Blocks 12 & 13 of Hilltop Subdivision, Second Filing

“SUBDIVIDER”

\_\_\_\_\_  
Shaun Marks

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 Shaun Marks, known to me to be the person who executed the foregoing instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public in and for the State of Montana