

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS
Ridgeline Subdivision
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(City of Billings)**

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

Ridgeline Subdivision

This agreement is made and entered this ____ day of _____, 20 __, by and between **TKJ Development, LLC**, whose address for the purpose of this agreement is **28121st Ave. North, Suite 500, Billings, MT 59101**, 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 _____, 20 __, the Board of Planning recommended conditional approval of a preliminary plat of **Ridgeline Subdivision**; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20 __, the City Council conditionally approved a preliminary plat of **Ridgeline 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 **Ridgeline Subdivision** 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. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners. Sidewalks shall be 5-foot boulevard style walk.
- 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

All internal access roads and site improvements within the subdivision shall be installed in accordance with the City of Billings' street standards. Subdivider will execute a private contract to construct public streets, and curb and gutter within the Subdivision.

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

1. Standard curb and gutter will be installed on all of the interior streets being constructed within the Subdivision.
2. All streets will be provided with an asphalt concrete driving surface.
3. A Traffic Impact Study (TIS) has been completed and submitted to City Engineering and the Montana Department of Transportation (MDT) for review and approval prior to final plat. Construction and/or financial contributions for improvements along King Avenue West and 48th Street West as well as contributions to future intersection improvements shall be in general accordance with that document and as specifically described herein.
 - a. King Avenue West is a Principal Arterial and requires a half right-of-way width of sixty feet. An additional thirty feet shall be dedicated as part of this Subdivision to reach the required right-of-way width.
 - b. 48th Street West is an arterial and requires a half right-of-way width of sixty feet. Sixty feet shall be dedicated as part of this Subdivision to reach the required right-of-way width.
 - c. Additional right-of-way shall be dedicated at the corner of King Avenue West and 48th Street West to accommodate a potential future roundabout as determined by the final design of intersection.
 - d. Open Range Road and Tandem Ridge Drive are classified as commercial access roads and shall be forty-four feet back-of-curb to back-of-curb and be located within a seventy-foot right-of-way.
 - e. Roof Tree Road and Trail Ridge Drive are classified as residential access roads and shall be thirty-four feet back-of-curb

to back-of-curb and be located within a fifty-six-foot right-of-way.

- f. The Subdivider shall construct sidewalk, curb and gutter, and a thirty-foot wide asphalt road along Georgina Drive from 48th Street West to the eastern property line of Lot 4, Block 2 of the Subdivision. A sixty-foot right-of-way shall be dedicated for Georgina Drive.

- g. No physical surface improvements to 48th Street West are anticipated at this time. In-lieu of construction improvements, the Subdivider shall make a cash contribution to the City of Billings for future improvements to 48th Street West. Said contributions shall be based on one-half of the required surface improvements for a residential street section, including curb and gutter, less a credit for existing surfacing. Subdivider shall construct the multi-use trail, due to this, no cash contribution for sidewalk is required. Said contributions and/or trail construction, shall be made at the time of development of Lots 1 and 4, Block 1; Lot 1, Block 3; and Lot 1, Block 4.

- h. King Avenue West improvements will be required in conjunction with the development of Phase 2 of the Subdivision. These improvements include the construction of a right turn-lane into Open Range Road. These improvements shall be made at the expense of the Subdivider at the time of development of Phase 2.

- i. Intersection contributions identified in the Traffic Impact Study are noted herein. Based on the Traffic Impact Study the following intersection contributions shall be paid at the time of initial lot development:

- i. Central Avenue and 48th Street West (3.8%) \$9,500

Based on trip generation estimates from the TIS, the costs associated with, and to be paid by, each lot at the time of development is as follows:

- Lot 1, Block 1 \$1,165
- Lot 2, Block 1 \$1,225
- Lot 3, Block 1 \$800
- Lot 4, Block 1 \$800
- Lot 1, Block 2 \$1,050

• Lot 2, Block 2	\$1,740
• Lot 3, Block 2	\$1,740
• Lot 1, Block 3	\$480
• <u>Lot 1, Block 4</u>	<u>\$500</u>
Total	\$9,500

4. The Montana Department of Transportation controls the right-of-way for King Avenue West. Any access locations and improvement installation shall be subject to their review and approval.

B. Sidewalks And Trails

1. Individual lot owners will be responsible for the construction of the sidewalks within public right-of-way or easements adjacent to or through their lot at the time of lot construction and shall be included in each building permit.
2. Multi-use paths shall be 10-foot wide with corner intersection handicap ramps and aprons. Multi-use trails shall be constructed by the Subdivider, within the private contract, at the time of each phase opening. A multi-use path shall be required to be constructed along 48th Street West and King Avenue West. Maintenance of the multi-use paths will be the responsibility of the HOA.
3. Sidewalks shall be 5-foot wide with a 5-foot boulevard planting strip between the sidewalk and the curb at corner intersection handicap ramps and aprons.
4. Subdivider will install, within the private contract, corner intersection handicap ramps and aprons.
5. Subdivider to install sidewalks and trails fronting parkland/open space areas.

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

The Traffic Impact Study completed and submitted to City Engineering and the Montana Department of Transportation for review prior to final plat indicates intersection improvements are warranted at the intersection King Avenue West and 48th Street West. Intersection improvements (not limited to traffic signal or roundabout), signage, and striping shall be installed as part of Phase 1 in accordance with the Traffic Impact Study and conform to the City of Billings

and Montana Department of Transportation standards. The developer may be responsible for full intersection costs as determined by the Montana Department of Transportation and the City of Billings.

Street name signs for streets within the Subdivision, or located immediately adjacent thereto, shall be furnished and installed by the subdivider in accordance with the specifications of the City of Billings standards.

E. Access

The Subdivision will be accessed by way of internal roads and driveway approaches as approved by the Montana Department of Transportation and the City. There will be three accesses off 48th Street West and a single access off King Avenue West. An internal road will access onto King Avenue West approximately 680 feet east of the intersection with 48th Street West with allowable turning movements as approved by Montana Department of Transportation. Two internal road approaches will access onto 48th Street West approximately 550 and 1,400 feet north of the intersection with King Avenue West. An additional internal road access point to 48th Street West will be provided via the existing Georgina Drive.

Road improvements along King Avenue West and 48th Street West, including a roundabout at the intersection, are anticipated at an unknown future date. To facilitate the movement of traffic leaving the subdivision in the interim, Tandem Ridge Drive shall be allowed full turning movements. At the time of redevelopment of 48th Street West and the installation of a roundabout, approaches within 1,000 feet of the 48th Street West and King Avenue West intersection will be restricted to a maximum of three-quarter ($\frac{3}{4}$) access turning movements as determined by City Engineering.

F. Billings Area Bikeways and Trail Master Plan

The proposed subdivision is within the planning area for the Billings Area Bikeway & Trail Master Plan. The Trail Plan indicates a proposed multi-use path along the north side of King Avenue West and the east side of 48th Street West. Portions of the 10-foot multi-use path shall be constructed by the Subdivider, within a private contract, at the time of phase development.

G. Public Transit

MET Transit provides service along King Avenue West with the closest route at the intersection of King Avenue West and Montana Sapphire Drive, approximately 0.5 miles east of the Subdivision. No improvements are required to ensure public transit service.

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

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 complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

Where not contained within street rights-of-way, public storm drainage facilities will be located within public easements or on public property.

Developer shall install dry storm drain pipe from storm drain retention facilities to the drain ditch along 48th Street West. This pipe can be utilized in the future to drain the retention facilities with a pumping system.

Maintenance of the developments storm retention facilities shall be the responsibility of the Home Owners Association(s).

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, Billings Fire Department and the Montana Department of Environmental Quality.

A. Water

The Subdivision will be served by extending 24-inch water main along King Avenue West to 48th Street West. The Subdivider has the option to enter into a compensation agreement with the City to pay the difference in the upsizing of a 12-inch main to a 24-inch. The Subdivider will be required to construct a public 12-inch water main from King Avenue West through the Subdivision to the intersection of 48th Street West and Georgina Drive to be located in a public easement or public right-of-way.

B. Sanitary Sewer

The Subdivision will be served by extending sanitary sewer main along King Avenue West to 48th Street West. The Subdivider will be required to provide a cash contribution for half of the cost of installation of a 12-inch sanitary sewer main extension in 48th Street West for the extent of the property.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines within the public right-of-way shall be installed prior to surface improvements. 8-foot utility easements are provided along the front lot lines of selected lots for utility services as shown on the plat.

VII. PARKS/OPEN SPACE

Parkland/open space requirements will be met via private parkland/open space areas. The subdivision regulations require 11% of the net residential lot area be provided as parkland/open space area which equates to 5.310 acres. A total of 5.334 acres of parkland/open space is provided.

All parkland spaces within the subdivision will be private. Private parkland areas will be constructed by the Subdivider and maintained by the Home Owners Association(s).

VIII. IRRIGATION

No water rights have been transferred to the lot owners. Irrigation ditches that exist near this development are for the benefit of other properties. Ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical investigation was performed for the area and can be obtained from the City Engineering Department office.

X. PHASING OF IMPROVEMENTS

The Subdivision is proposed to be constructed in phases as defined below. Public improvements associated with these phases shall be constructed or monetarily guaranteed prior to opening the phase.

Phase 1: Lots 3-4, Block 1; Lots 1-2, Block 2; and Lot 1, Block 3.

Phase 2: Lots 3-8, Block 2 and Lot 1, Block 4.

Phase 3: Lots 1-2, Block 1

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 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”

TKJ Development, 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 *TKJ Development, 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: _____

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 20__.

“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
Printed Name: _____
Residing at: _____
My commission expires: _____

