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Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
CHERRY ISLAND SUBDIVISION
CITY OF BILLINGS
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CHERRY ISLAND SUBDIVISION**

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between **CHERRY ISLAND, LLC**, whose address for the purpose of this agreement is 5855 Elysian Road; Billings, MT 59101, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, at a meeting held by the Yellowstone County Board of Planning on the ____ day of _____, 20____ the Board recommended for approval, subject to certain conditions, an area known as the Cherry Island Subdivision; and

WHEREAS, at a regular meeting held on the ____ day of _____, 20____ the City Council approved, subject to certain conditions, a preliminary plat of Cherry Island Subdivision; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to approval of the final plat; and

WHEREAS, the provisions of this agreement shall be effective and applicable to the plat of Cherry Island Subdivision, upon 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

No variances are being requested with this subdivision.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A.** Lot owners will be required to construct that segment of the required five-foot- wide boulevard-style 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 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 geotechnical investigation report for this property, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical investigation prior to construction. Assessment and mitigation, if any, of these conditions shall be the responsibility of the lot owner.
- D.** 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.
- E.** 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.

- F. 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.
- G. Lot owners should be aware that agricultural activities could be present on surrounding properties. Any impacts associated with agricultural activities, and any issue arising therefrom, is the responsibility of the lot owners.

III. TRANSPORTATION

A. Streets

Cherry Island Drive within the subdivision shall be public and shall be located within a 56-foot right-of-way and have a street width of 34-foot back of curb to back of curb. This internal access road shall be built to grade with a standard crown and a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings site development ordinance, Subdivision Regulations, and Uniform Building Code.

B. Sidewalks

City and the Subdivider agree that the developer will install accessibility ramps at time of private contract construction. Individual lot owners will be responsible for the construction of the five-foot wide boulevard sidewalks adjacent to their lot at the time of lot construction. The City reserves the right to construct any missing sidewalk and assess the property owners three years after construction of a phase.

A boulevard sidewalk along the south side of North Cherry Creek Loop Road from Bitterroot Drive to Cherry Island Drive is required to be built with this subdivision.

C. Street Lighting

Construction or installation of street lights within the public rights-of-way shall not be required at this time. If street lights are installed, a maintenance district will be formed for future maintenance of the street lights.

D. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices adjacent to the subdivision. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction. All traffic control devices shall be subject to review and approval by the City Engineering office.

Street Name signs are required at the new intersections with Cherry Island Drive. No further signage is anticipated.

E. Access

Two accesses will be provided for the subdivision from Bitterroot Drive along North and South Cherry Creek Loop Road. Location of these accesses shall be subject to review and approval by the City Engineering Office.

F. Billings Area Bikeway and Trail Master Plan

No bikeway or trail requirements are anticipated for this specific area.

G. Public Transit

There are no MET Transit routes that service this subdivision at this time. No improvements with regard to MET Transit vehicles are anticipated at this time.

IV. EMERGENCY SERVICES

Access is provided to this subdivision from Bitterroot Drive along North and South Cherry Creek Loop Road. The City will provide emergency service. Fire hydrants shall be provided at each street intersection, and at intermediate locations where distances exceed 500 feet. Appropriate turn arounds will be located on any street in excess of 150 feet.

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 of the *Stormwater Management Manual* and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division. Because the City of Billings storm drain system is not available in the area of the subdivision, stormwater will be handled on site through surface flow on the streets, inlets, and piping and through the existing Cherry Creek Estates Subdivision system in accordance with that previously prepared and approved Storm Water Drainage Report for Cherry Creek Estates Subdivision of which this parcel was a part. The stormwater design for Cherry Island Subdivision, will conform to the current City of Billings Stormwater Management Manual.

An irrigation drain/waste ditch traverses the site. Provisions shall be made to continue conveyance of the seasonal flows that may occur in this ditch.

VI. UTILITIES

Water and sanitary sewer lines shall be sized and installed in conformance with the City design standards and specifications, and the rules and regulations of the

City of Billings and the County Water District of Billings Heights.

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, Distribution and Collection Division, and the County Water District of Billings Heights. The extension/connection of/to water mains and sanitary sewers are 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 appropriate water and wastewater fees in effect shall be submitted with the applications.

It is acknowledged that the properties subject to the Subdivision Improvements Agreement shall be subject to the appropriate buy-in fee for the County Water District of Billings Heights in effect at the time of payment. Fees shall be paid as applied for in the extension application and as per the first paragraph above.

The developer/owner acknowledges that the subdivision shall be subject to the applicable system development fees in effect at the time new 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, County Water District of Billings Heights, Fire Department, and the Montana Department of Environmental Quality.

A. Water

The subdivision will be served by making connections to an existing water main located in North Cherry Creek Loop Road and connection to the main located at the corner of South Cherry Creek Loop Road and Bitterroot Drive. The existing water main in these streets is an 8-inch diameter main and is a part of the County Water District of Billings Heights water distribution system. A new 8-inch water main will be installed in the local interior streets. The water main within the subdivision will make looped connections whenever possible. Fire hydrants will be provided at all appropriate locations and will be subject to approval by the City of Billings Fire Department. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. Each lot shall be provided with its own separate water service. All water construction improvements shall

be installed in conformance with the design standards, specifications, and rules and regulations of the County Water District of Billings Heights and Montana Department of Environmental Quality and will be approved by the County Water District of Billings Heights.

B. Sanitary Sewer

The subdivision will be served by one connection to an existing 8-inch sanitary sewer main located in North Cherry Creek Loop Road. The subdivision shall be serviced by low pressure sewer lines that collect and discharge to the existing gravity main in North Cherry Creek Loop Road. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. All sanitary sewer construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department, Distribution, and Collection Division.

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, where possible, 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

The park land required for this subdivision is 0.78 acres. Park Dedication shall be met by cash-in-lieu contribution.

VIII. SOILS/GEOTECHNICAL STUDY

The Subdivider has performed a preliminary geotechnical analysis for this property dated April 27, 2021.

It is recommended that owners, purchasers, realtors, builders or developers fully familiarize themselves with the information contained in this report prior to any design or construction.

IX. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district 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 special improvement district or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

X. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- A.** The 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 provision of the 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 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. The Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

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: _____

**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:

CHERRY ISLAND SUBDIVISION

SUBDIVIDER/OWNER

CHERRY ISLAND, LLC

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the person who executed the foregoing instrument as the _____ of **CHERRY ISLAND, LLC**. 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.

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