

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

Harmony Meadows Subdivision, 3rd Filing

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(City of Billings)**

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

Harmony Meadows Subdivision, 3rd Filing

This agreement is made and entered this ____ day of _____, 20____, by and between **Harmony Meadows, LLC**, whose address for the purpose of this agreement is **2729 Aspen Way, Billings, MT 59106**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of **Harmony Meadows Subdivision, 3rd 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 **Harmony Meadows Subdivision, 3rd 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 **Harmony Meadows Subdivision, 3rd 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. 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. All private interior streets will be paved with a standard width of 34-feet from back of curb to back of curb as per the City of Billings Standard Modification Drawings.
2. All streets will be provided with an asphalt concrete driving surface.
3. The Developer agrees to contribute up to fifty percent (50%) cost share for the design, permitting, and construction of the Story Road crossing at Hogan's Slough. The crossing will be installed as part of the Phase IV improvements for the development or when interconnection is required as determined by the City of Billings. At the time of Phase IV construction, if interconnection is not required for the for the adjacent development. When constructed by the City, if the 50% contribution is not sufficient to cover any overages incurred the City retains the right to create an SID to recover the construction overages.
4. Upon construction of Phase IV, if Story Road/Sterns Circle is not paved, the developer is required to contribute his proportionate share to paving of Story Road/Sterns Circle to the standards that are in place at the time of Phase IV construction as determined by the Traffic Impact Study.

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. 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.
3. 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

1. 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.
2. Stop signs shall be placed at each intersection between a private and public roadway.
3. The Developer shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

E. Access

The development includes four primary access locations on Dodger Lane and Interstate Avenue. All approaches will meet design standards outlined in the City of Billings Modification Drawings. No access will be allowed onto Elysian Road.

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 multi-use path along the south side of Elysian Road, which has already been constructed.

G. Public Transit

No location for public transit connection will be provided within the development.

IV. EMERGENCY SERVICE

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

At the time of development, construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) 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 Billings Fire Department.

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.

Stormwater will be managed through the use of on-site detention facilities.

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 connecting to the existing 12-inch water main located within Dodger Lane, a public road. The installed water line will meet all requirements of the City of Billings Engineering Department upon development of future lots.

B. Sanitary Sewer

The Subdivision will be served by connecting to the existing 12-inch sanitary sewer main located within Dodger Lane, a public road. The installed sanitary sewer will meet all requirements of the City of Billings Engineering Department upon development of future lots.

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.

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 1.91 acres. A total of 2.185 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 as a single phase. This project is part of the original Phase I of Harmony Meadows Subdivision, 2nd Filing (Lots 7 & 8) and the original Phase II of Harmony Meadows Subdivision, 2nd Filing (Lots 1-6).

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”

Harmony Meadows, 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 *Harmony Meadows, 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: _____

