

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
LEGACY SUBDIVISION, 2nd FILING
CITY OF BILLINGS
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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS**

LEGACY SUBDIVISION, 2ND FILING

This agreement is made and entered into this ____ day of _____, 20__, by and between **LEGACY LLC**, whose address for the purpose of this agreement is **353 Old Hays Road, POB 470, Hays, MT 59527**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of Legacy Subdivision, 2nd 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 Board of Planning recommended conditional approval of a preliminary plat of Legacy Subdivision, 2nd Filing; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of Legacy Subdivision, 2nd 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 Legacy Subdivision, 2nd 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

There are no variances requested by the Subdivider from the City's Subdivision Regulations.

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 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. It is recommended that a lot specific geotechnical report be obtained prior to home 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.
- H. Due to the potential flood waters from the Cove Creek Drainage, the main finish floor of each house is recommended to be a minimum of 18 inches above the top of curb elevation in the front of each lot.

III. TRANSPORTATION

A. Streets

- A 56-foot right-of-way for Rich Lane and Camp Lane will be dedicated with this subdivision. 40-feet of right-of-way for 52nd Street West was dedicated in the previous filing, and an additional 40-feet of right-of-way was dedicated by Oak Ridge Estates Subdivision, for a total of 80-feet of right-of-way. Only 40-feet of right-of-way is dedicated from the previous filing adjacent to Parcel 2C of Certificate of Survey 2990 as no right-of-way has been dedicated from said Parcel.
- Private Contract P-788 shall construct public streets and curb and gutter with the subdivision. All roads shall be 34 feet back-of-curb to back-of-curb. These access roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings site improvement ordinance and shall be reviewed and approved by the City Engineer prior to construction.
- A traffic accessibility study has been completed for the subdivision as part of the original SIA. As general layout of the improvements did not change enough to alter traffic analysis, prior SIA conclusions shall be utilized. All required improvements and permits identified therein shall be completed by the Developer at the Developer's expense. These are more specifically identified as follows:
 - i. 52nd Street West shall be constructed with curb and gutter with a 30-foot half street asphalt section along the property frontage where 80-feet of right-of-way is dedicated. A 28-foot half street asphalt section shall be constructed where 40-feet of right-of-way is dedicated, including transition areas where the road deviates

from the platted centerline. A "ROAD CLOSED" sign shall be installed on 52nd Street West at the northeastern corner of the property.

- ii. The Subdivider agrees to contribute up to fifty percent (50%) cost share for the design, permitting, and construction of a culvert, 30-foot half street, curb and gutter, and sidewalk at the Big Ditch and 52nd Street West crossing, said crossing will extend from the northern line of Legacy Subdivision, 2nd Filing to the northern line of the existing 60' Big Ditch right-of-way. The financial contribution will be received by the City, as part of the Final Plat of Legacy Subdivision, 2nd Filing

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-feet wide with 5-foot wide boulevard along Rich Lane and Camp Lane.
- Sidewalks shall be 5-feet wide with 10-foot wide boulevard along 52nd Street West where 80-feet of right-of-way is dedicated.
- Sidewalks shall be 5-feet wide with 5-foot wide boulevard along 52nd Street West where 40-feet of right-of-way is dedicated, if applicable, including transition areas where the road deviates from the platted centerline.

C. Street Lighting

- No street lighting is proposed for this development. However, street lighting is included in the Waiver of Right to Protest.

D. Traffic Control Devices

- No traffic signals are anticipated within this development but 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 the lot development.

- A 2-foot No Access Easement is dedicated along 52nd Street West with this development includes the east line of the following lots:
 - Lot 9A, Block 5
 - Lot 8A and 9A, Block 4
 - Lot 6A, Block 2

F. Billings Area Bikeway and Trail Master Plan (BABTMP)

- This development is located within the jurisdiction of the BABTMP but there are no trails proposed with this development.

G. Public Transit

- This development does not require improvements to ensure public transit service. The nearest public transit stop is at the intersection of Shiloh Road and Broadwater and Shiloh Road and Grand Avenue.

IV. EMERGENCY SERVICES

- Emergency service access to the Subdivision will be provided via Beringer Way, Dovetail Avenue, and a small portion of 52nd Street West, all of which were constructed as part of Private Contract Number P-752 improvements.
- 52nd Street West is a dead-end route along the northern edge of the property and will provide proper signage and blockades approved by the City of Billings Engineering Department. All roads as part of the Legacy Subdivision, 2nd Filing improvements will have signage and blockades reviewed and approved by the City of Billings Engineering Department.
- At the time of future lot development 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

- Storm drainage shall be provided by a combination of surface drainage, curb and gutters, and underground storm pipe. Stormwater detention, constructed under Private Contract Number P-752, is provided on Lot 1 of Block 1 of Legacy Subdivision. Said pond shall be extended to provide additional volume for Legacy Subdivision, 2nd Filing. Stormwater for Private Contract Number P-752 and Legacy Subdivision, 2nd Filing will ultimately be provided on Lots 1 and 2 of Block 1 of Legacy Subdivision and storm easements shall be provided over said lots, or on other Subdivision lots provided the requisite detention volume is provided and the stormwater plan is approved by the engineering department. All drainage improvements, including the sizing of storage, will be subject to review and approval by the engineering department and in conformance with the *Stormwater Management Manual* in place at the time of platting and Section 23-706, BMCC.
- Stormwater detention facilities, including internal pond piping, inlets, structures, pond slopes and vegetation, shall be maintained through the Legacy Subdivision HOA as outlined in the HOA Stormwater Maintenance Agreement.

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.

- It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase 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 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

- As part of Private Contract Number P-752, an 8-inch water main is installed in Beringer Way and stubbed to the Legacy Subdivision, 2nd Filing boundary along Rich Lane and Camp Lane. A 12-inch main is stubbed north from Dovetail Avenue along 52nd Street West to the Legacy Subdivision, 2nd Filing boundary. An 8-inch water main will tie into the 8-inch water main in Rich Lane and Camp Lane. Provisions shall be made for the looping of the interior Legacy Subdivision, 2nd Filing water mains to connect to the main in Beringer Way. Interior mains will be 8-inch along Rich Lane and Camp Lane, and a 12-inch along 52nd Street West. Private Contract Number P-752 and Legacy Subdivision, 2nd Filing will be looped to the 8-inch main feeding the entire subdivision at the south edge of Vintage Estates. A temporary dead end 12-inch main will be located at the north edge of Legacy Subdivision, 2nd Filing on the north end of 52nd Street West, which will be extended at the same times as the 52nd Street road extension crossing Big Ditch. Water services will be installed for all lots within the subdivision.

B. Sanitary Sewer

- Currently, an 8-inch sanitary sewer main runs in Beringer Way to a lift station located near the southern boundary of Private Contract Number P-752. Existing mains are extended from the Beringer Way main into Legacy Subdivision, 2nd Filing along Rich Lane and Camp Lane. The Subdivider will extend 8-inch lateral sanitary sewer lines from the existing mains in Rich Lane and Camp Lane to the east, and Rich Lane will continue north in 52nd Street West. Subdivider and City also agree provisions shall be made to the sewer main in 52nd Street West to allow for future flows from Parcel 2C of C.O.S. 2990. Sewer services will be installed for all lots within the subdivision.

C. Power, Telephone, Gas, and Cable Television

- Private utility facilities (power, natural gas, telephone, and cable) will be installed during construction and located within the right-of-way and utility easements shown on the plat.

VII. PARKS/OPEN SPACE

- There is no parkland dedication with this subdivision. The parkland requirements were previously met by Legacy Subdivision.

VIII. IRRIGATION

- The lateral supply ditch running north-south through the property is piped as part of Private Contract Number P-752 and no additional improvements are required. All irrigation rights associated with this property shall be terminated and no longer transferred to any properties undergoing residential development.
- An existing 60-foot right-of-way granted to Big Ditch is located along the northern edge of Legacy Subdivision, 2nd Filing.

IX. SOILS/GEOTECHNICAL STUDY

- A preliminary geotechnical analysis was performed for this property by Rimrock Engineering in 2019. This preliminary investigation does not include testing for foundations design and settlement analysis.
- According to the International Building Code, most of the soils classified on this site would require foundation drainage. This issue would be addressed at the time the foundation elevation is determined for each

specific site. Because of these potential soil and foundation issues. the lot owner, prior to constructing structures on this site, will complete a design level geotechnical investigation.

X. PHASING OF IMPROVEMENTS

- There will be no phasing for the improvements.

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.

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.

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: _____

