

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

Wild Rose Subdivision First Filing

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(City of Billings)

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

Wild Rose Subdivision First Filing

This agreement is made and entered into this ____ day of _____, 20____, by and between *Regal Land Development, Inc.*, whose address for the purpose of this agreement is **P.O. Box 80445, Billings, MT 59108**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Wild Rose Subdivision First 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 *Wild Rose Subdivision First Filing*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, the City Council conditionally approved a preliminary plat of *Wild Rose Subdivision First 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 *Wild Rose Subdivision First 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 are 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 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. Lot owners shall follow the recommendations from the geotechnical study prepared by Rimrock Engineering, Project No. G20085, August 19, 2020.
- 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

54th Street West is classified as a minor arterial street and has an existing 90-foot right-of-way width. Subdivider is required to dedicate an additional 10 feet of right-of-way along 54th Street West. A cash contribution for 2' curb and gutter for this subdivision's 272' frontage along 54th Street West shall be made to the City.

Trail Creek Drive, Sweetbriar Avenue, Blueberry Lane, Plum Lane, Cider Street, Apple Rose Way, Honeydew Avenue, and Apricot Avenue shall have a 56-foot right of way width with 30 feet of asphalt and 2' curb and gutter on each side (34' back-to-back). Improvements to Deer Creek Lane are required along Lot 1, Block 1 including curb and gutter and 30 feet of asphalt. Street Improvements on Deer Creek Lane, Sweetgrass Creek Drive, and 58th Street West shall be done with future filings of Wild Rose Subdivision that abut each of those streets' frontages (re-subdivision of Lot 6, Block 1 of this plat) and will be set forth in the Subdivision Improvements Agreements for each of those future filings.

B. Sidewalks

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.

Sidewalks shall be 5-foot wide with a 5-foot boulevard planting strip between the sidewalk and the curb.

Subdivider will install, within the private contract, corner intersection ADA ramps and aprons.

Subdivider will install, within the private contract, 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

A traffic impact study (TIS) has been completed for Wild Rose Subdivision. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. The percent of traffic contributions to the following intersections shall be in accordance with the traffic accessibility study:

- 46th Street West and Rimrock Road (1.86% contribution)
- Shiloh Road and Rimrock Road (1.77% contribution)
- 54th Street West and Rimrock Road (1.49% contribution)
- 58th Street West and Rimrock Road (1.13% contribution)
- 54th Street West and Grand Avenue (0.83% contribution)
- 48th Street West and Grand Avenue (0.79% contribution)

The cash contributions shall be based on the percent of traffic contributions to the intersections based on the total cost of an intersection as determined by Engineering for the year in which the contribution is made.

The cash contribution shall be made prior to final plat approval.

E. Access

One access to this subdivision shall be provided by way of Trail Creek Drive with a new right-of-way width of 56 feet.

A second access to this subdivision shall be provided by way of Sweetbriar Avenue with a right-of-way width of 56 feet.

A 2-foot No Access Easement shall be dedicated along 54th Street West with this development, which will include the east line of the private parks fronting 54th Street West.

Access to the lots will be from drive approaches installed at the time of the lot development.

F. Billings Area Bikeway and Trail Master Plan

This subdivision is adjacent to the Billings Area Bikeway and Trail Master Plan.

There is an existing shared use trail along this subdivision's frontage on 54th Street West

G. Public Transit

The nearest Met Transit Route to this subdivision is on Shiloh Road from Rimrock Road to Grand Avenue.

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

- Emergency vehicles shall access this subdivision by way of the two permanent accesses described in Section III.E above.
- This subdivision is not situated in or adjacent to an Urban Wildland Interface.

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.

- A retention pond shall be built on the land adjacent to this subdivision to the south, which is also owned by the Subdivider.
- The retention facility is located on Home Owner’s Association (HOA) owned lot(s) and shall be operated and maintained by the HOA.
- No storm drainage facilities exist in this area; therefore, this subdivision’s discharge shall be limited to 1 cfs per 10 acres.

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 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

- A connection to the existing 12” PVC water main in 54th Street West shall be made to provide water for this subdivision.
- A reimbursement fee shall be paid to the city for connection to the existing water main in 54th Street West as stipulated in the Annexation Development Agreement.
- A connection to the existing 8” PVC water main stub in Trail Creek Drive shall be made to provide water for this subdivision.

- 8” PVC water mains shall be constructed throughout all streets within this filing with a 1” water service provided to each lot.
- All water lines shall be installed to City of Billings Public Works Standards.

B. Sanitary Sewer

- A connection to the existing 15” PVC sanitary sewer main in 54th Street West shall be made to provide for the sanitary sewer for this subdivision.
- A reimbursement fee shall be paid to the city for connection to the existing sanitary sewer main in 54th Street West as stipulated in the Annexation Development Agreement.
- 8” PVC sanitary sewer mains shall be constructed throughout all streets within this filing with a 6” sanitary sewer service stubbed to each lot.
- All Sanitary Sewer lines shall be installed to City of Billings Public Works Standards.

C. Power, Telephone, Gas, and Cable Television

- Services to be provided within the public right-of-way, existing or to be installed
- 8’ public utility easements shall be provided along the street frontages of all lots.

VII. PARKS/OPEN SPACE

- The parkland requirement shall be met with a combination of private parks and cash-in-lieu.
- Required park land = 1.224 acre
- 0.782 acre of private parkland is a part of this plat. The basis for cash in lieu of park land is 0.442 acre, which shall be earmarked for Cottonwood Park.
- Parks are privately owned and maintained by HOA.

VIII. IRRIGATION

- No Irrigation ditches exist within this subdivision filing.

IX. SOILS/GEOTECHNICAL STUDY

1. A geotechnical study was done for this subdivision by Rimrock Engineering, Project No. G20085, August 2020. A copy may be obtained from the Subdivider and Rimrock Engineering.
 - Recommendations of this study shall apply to construction within this subdivision including home construction.

X. PHASING OF IMPROVEMENTS

- This is the first filing of Wild Rose Subdivision. Public improvements for this Filing shall be secured by a letter of credit and executed through a private contract. Future filings will be re-subdivisions of Lot 1, Block 6, and future public improvements will be set forth with the review of those future filings.

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”

Regal Land Development, Inc.

By: _____

Title: _____

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 *Regal Land Development, Inc.*, 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: _____

