



Return to:
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1300 North TransTech Way
Billings, MT 59102

SUBDIVISION IMPROVEMENTS AGREEMENT
WHISPER RIDGE SUBDIVISION
CITY OF BILLINGS
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SUBDIVISION IMPROVEMENTS AGREEMENT

WHISPER RIDGE SUBDIVISION

THIS AGREEMENT is made and entered into this 13th day of August, 2012, by and between **DOUGLAS AND JOANN DAHLBERG LIVING TRUST AND BUSCHER CONSTRUCTION & DEVELOPMENT, INC.**, whose address for the purpose of this agreement is 3671 Spalding Avenue; Billings, Montana 59106, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the preliminary plat of Whisper Ridge Subdivision, located in the City of Billings, Yellowstone County, Montana, was submitted to the Planning and Community Services Department which recommended its approval to the Yellowstone County Board of Planning; and

WHEREAS, at a meeting held on the 26th day of July, 2011, by the Yellowstone County Board of Planning, the Board recommended for approval, subject to certain conditions, an area known as the Whisper Ridge Subdivision, and

WHEREAS, at a regular meeting held on the 22nd day of August, 2011, the City Council approved, subject to certain conditions, a preliminary plat of Whisper Ridge 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 Whisper Ridge 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

Subdivider requests no variances.

II. CONDITIONS THAT RUN WITH THE LAND

A. Lot owners should be aware that this subdivision could contain wildlife migratory routes. Consequently, owners are advised that wildlife indigenous to this area could be found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also experience problems with damage to landscaped shrubs, flowers, and gardens. Any impacts associated with wildlife and any damage arising therefrom is the responsibility of the lot owners.

B. Lot owners should be aware that a geotechnical investigation and report was completed on May 23, 2011, for the property which identifies foundation recommendations for individual lots prior to house construction. The following general recommendations are included in the geotechnical report:

- The best option for foundations include helical piers or driven piles
- Where shall bedrock is relatively shallow, soils may be over-excavated to shale and replaced back up to the footing elevation with compacted structural fill.
- Footings should be placed at or below the frost depth of 42-inches
- Foundation drains should be evaluated on a lot by lot basis by the geotechnical engineer once final buildings are developed
- Roof drains should discharge a minimum of 5-feet away from foundation walls
- Construction of footings for structures should not be less than 16-inches in width and isolated footings should not be less than 32-inches square.
- Allowable bearing capacity on over-excavated and replaced compacted granular structural fill is 2,500 per square foot.

A copy of the entire geotechnical report is available for review at the City Building and/or Planning Division offices. If the foundation type or loading is different than indicated in the said report, GEOSCIENCE



should be notified prior to construction and provided an opportunity to modify recommendations as needed.

- C.** 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.
- D.** 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.
- E.** Lot owners should be aware that the installation of an E-one grinder pump will be required for Lots 7 and 8, Block 1; Lots 1-3, inclusive, Block 2; and Lots 6-8, inclusive, Block 3 at time of lot development. Lot owners should be aware that there is the possibility of periodic maintenance and replacement of the grinder pumps.
- F.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- G.** The developer and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Section 28-201, BMCC and the Billings Stormwater Management Manual.
- H.** Lot owners should be aware that a sanitary sewer main runs on the common lot line between Lots 4 and 5, Block 3 and that periodic maintenance of this main may occur without notice.



III. TRANSPORTATION

A. Streets

1. Audubon Way, Ridgefield Drive, and Ridge Top Way shall be 34 feet wide as measured from back of curb to back of curb. These internal 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 development ordinance, city subdivision regulations, and Uniform Building Code.
2. According to the *Billings Urban Area 2009 Transportation Plan Update*, Rimrock Road is classified as a principal arterial. The Subdivider and City agree that the development of said subdivision would trigger improvements to the north half of the Rimrock Road right-of-way. These improvements shall include curb and gutter, 5-foot wide boulevard sidewalk, and asphalt and base course for the difference between the existing half-street width of Rimrock Road (a residential half width). The City and Subdivider agree that no improvements to Rimrock Road shall be constructed at this time. Because these improvements will not be constructed, the developer agrees to give a cash-in-lieu contribution for Phase I improvements adjacent to each Phase I lots based on a cost estimate submitted to the City prior to final plat approval. In addition, developer agrees to give a cash-in-lieu contribution for Phase II improvements adjacent to each Phase II lots based on a cost estimate submitted to the City prior to Phase II lots being released by the City.

B. Sidewalks

City and Subdivider agree that developer will install handicap accessibility ramps at time of private contract construction. However, no sidewalks will be installed by the developer as part of construction improvements, with the exception of 5-foot boulevard walk along the north side of Audubon Way from the east boundary of the subdivision to the east property line of Lot 1, Block 3, which will be constructed with the private contract construction improvements. Boulevard sidewalks will be installed on Rimrock Road when the City improves the streets. Said boulevard sidewalks will be guaranteed as stated in Section III (A) (2).

Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction. Sidewalks



shall be 5-foot wide boulevard sidewalks. Lot 1, Block 1 is responsible for sidewalks along its Audubon Way frontage as well as its Clear View Drive frontage.

C. Street Lighting

Construction or installation of street lights shall not be required at this time; provided, however, that in the contract for the street improvements required hereunder, the Subdivider shall include conduits at street crossings at the time of street and sidewalk construction to accommodate the future wiring of street lights for the development. If street lights are installed, a street light maintenance district will be formed for the entire subdivision to accommodate 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.

E. Access

One access will be provided for the subdivision from Rimrock Road at Ridgefield Drive. In addition, one access will be provided off of Clear View Drive at Audubon Way. Location of these accesses shall be subject to review and approval by the City Engineering office and the Montana Department of Transportation

F. Off-Site Intersections

City and Subdivider agree that Subdivider will make no cash contributions to improvements at any area intersections.

G. Billings Area Bikeway and Trails Master Plan (BABTMP)

The BABTMP identifies Rimrock Road, adjacent to the site, as an arterial bikeway. Because the BABTMP adjacent to the subdivision has already been constructed as part of a previous project, City and Subdivider agree that no further trail improvements are required as part of this subdivision.



H. 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 one location on Rimrock Road and one location on Clear View Drive. It is anticipated this subdivision will be constructed in two phases, with the first phase accessing off of Clear View Road. As part of Phase I improvements, a 43.5-foot radius gravel cul-de-sac will be installed for emergency vehicle turnaround at the west terminus of Phase I improvements. This cul-de-sac will be reviewed by the City of Billings Engineering and Fire Departments for approval. In addition, fire hydrants will be installed at the required locations as reviewed and approved by the city of Billings Fire Department.

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 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 an 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 20-foot 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 storm drainage improvements shall comply with the provisions of Section 23-407, BMCC, and the provisions of the City of Billings Stormwater Management Manual, February 2011. 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 will be routed to a stormwater detention pond in the southwest corner and along the south end of Lots 2 through 8, inclusive, Block 1. City and Subdivider agree these ponds will be located on City of Billings right-of-way and will be maintained by the City of Billings. A discharge to Rimrock Road in accordance with the City of Billings Stormwater Management Manual shall be allowed. All stormwater facilities will be designed in accordance with the City of Billings Stormwater Management Manual and will be reviewed and approved by the City Engineering Department.

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.

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/to water mains and sanitary sewers to the Public Works Department, Engineering Division. 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 developer/owner acknowledges that the subdivision shall be subject to the applicable system development fees and franchise fee 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 and regulations of, and as approved by, the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.



A. Water

Service to the subdivision will be provided from the existing water main stub at the Clear View Drive-Audubon Way intersection. It is anticipated that the main will tie into the water main in Rimrock Road to provide a looped system for the subdivision. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. It is anticipated that 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 City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department, Distribution and Collection Division.

B. Sanitary Sewer

Service to the subdivision will be from the existing sanitary sewer manhole located just south of Lot 1, Block 1, in the Rimrock Road right-of-way. 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 service. It is anticipated that Lots 7 and 8, Block 1; Lots 1-3, inclusive, Block 2; and Lots 6-8, inclusive, Block 3 shall be provided with its own separate low-pressure sanitary sewer service and each said lot will need to use an E-one grinder pump. All other lots will utilize gravity mains and services. 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.

Improvements noted herein shall include, but not be limited to, any and all interim improvements that may be deemed necessary due to phased or partial construction.

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 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

Section 76-3-621 of the Montana Code Annotated covers the park dedication requirement. Additionally, Section 23-1002.B.1 of the City of Billings municipal code covers parkland dedication requirements for major subdivisions. The Subdivider and City agree that this parkland dedication will be met through a cash-in-lieu payment to the development of Cottonwood Park. City and Subdivider agree the cash payment in lieu of parkland dedication shall be made prior to final plat approval for Phase I improvements. This amount shall be _____ ~~\$9,798.00~~. A comparative market analysis shall be used to determine the parkland dedication amount in accordance with Section 23-1006, BMCC. Future phase cash-in-lieu payments for parkland dedication shall be made at time of future phase development. Said payment shall use an updated comparative market analysis to determine the parkland dedication amount

VIII. SOILS/GEOTECHNICAL STUDY

The Subdivider has performed a geotechnical analysis for this property. A copy of the entire geotechnical report is available for review at the City Building and/or Planning Division offices. General geotechnical recommendations are as follows:

- The best option for foundations include helical piers or driven piles
- Where shall bedrock is relatively shallow, soils may be over-excavated to shale and replaced back up to the footing elevation with compacted structural fill.
- Footings should be placed at or below the frost depth of 42 inches
- Foundation drains should be evaluated on a lot by lot basis by the geotechnical engineer once final buildings are developed
- Roof drains should discharge a minimum of five feet away from foundation walls
- Construction of footings for structures should not be less than 16-inches in width and isolated footings should not be less than 32-inches square.
- Allowable bearing capacity on over-excavated and replaced compacted granular structural fill is 2,500 per square foot.

IX. PHASING OF IMPROVEMENTS

The Subdivider does not desire to commence development of all lots within the subdivision, but does desire to file the approved plat for Whisper Ridge Subdivision and to sell and convey lots in said subdivision in phases. In accordance with the foregoing, the Subdivider and the City agree as follows:

**A. Phase I**

The Phase I improvements shall be constructed utilizing a private contract. The Phase I improvements shall include construction of those portions of Audubon Way adjacent to the Phase I lots, including all necessary utilities within said streets. Phase I construction will also include construction of a 43.5-foot radius, gravel cul-de-sac for emergency vehicle turnaround at the west terminus of Audubon Way.

The Subdivider and City agree that the Subdivider will construct or provide a monetary guarantee as outlined herein for Phase I improvements prior to final plat approval. The Phase I improvements referred to herein shall be installed using a private contract, which shall be secured as a letter of credit or a letter of commitment to lend funds from a commercial lender. The letter of credit or letter of commitment to lend funds shall be in place prior to recording the final plat of commencement of the private contract. As used herein, the lots to be served by Phase I are more particularly described as follows:

Lots 1 and 2, Block 1; and Lots 1 and 2, Block 3; all in Whisper Ridge Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (4 lots total).

B. Future Phases

Future phase improvements shall be constructed utilizing a private contract. The future phase improvements shall include construction of those portions of Audubon Way, Ridgefield Drive, and Ridge Top Way adjacent to the future phase lots, including all necessary utilities within said streets.

The Subdivider will install the future phase improvements in the future. The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the future phase improvements, and the Subdivider further acknowledges that no building permits for lots within future phases shall be issued until a private contract has been executed for the construction and installation of the public improvements to serve said lots, and to provide necessary access and traffic circulation for the traffic generated by those lots. As used herein, the lots to be served by the said future phases are more particularly described as follows:



Lots 3 through 8, inclusive, Block 1; Lots 1 through 6, inclusive, Block 2; Lots 3 through 10, inclusive, Block 3; and Lot 1, Block 4; all in Whisper Ridge Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (21 lots total).

X. 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 Engineering Department and Public Works Department, Distribution and Collection Division.

Subdivider agrees not to convey or transfer any lots within the subdivision, and no building permits shall be issued until the final plat has been recorded and a private contract, as required above, has been executed, or satisfactorily secured, to install or construct the improvements required and a construction contract has been executed. Occupancy permits shall not be issued for any lots until water and sewer mains and services and street improvements have been accepted and approved by the City.

The Subdivider shall execute and record a Declaration of Restriction on Transfers and Conveyances for all except Phase I of the subdivision lots, to be recorded concurrently with the recording of this Agreement. As used herein, the lots to be served by the said future phase improvements are more particularly described as follows:

Lots 3 through 8, inclusive, Block 1; Lots 1 through 6, inclusive, Block 2; Lots 3 through 10, inclusive, Block 3; and Lot 1, Block 4; all in Whisper Ridge Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (21 lots total).

Said Declaration notifies all third parties that said lots may not be legally sold, conveyed, or transferred until a Release executed by the City of Billings and substantially in the form of Exhibit A attached hereto has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No lots shall be released until a Certificate substantially in the form of Exhibit B attached hereto has been executed by the Department of Public Works stating that the



above conditions have been met, which Certificate must accompany any request for a Release. By the acceptance and recording of the Agreement, the City does hereby authorize the Department of Public Works and the Mayor and City Clerk of the City to review any request for release and to execute such Certificates and Releases as may be necessary to evidence a release from the restriction against sale, conveyance, and transfer of lots in the subdivision.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, as one unit, all lots in the subdivision, nor shall the requirements for installation of improvements become effective as a result thereof; provided, however, that such sale shall be subject to the restrictions herein provided against the transfer of individual lots until the conditions set forth above have been met.

XI. LEGAL PROVISIONS

- A.** Subdivider agrees to guarantee all public improvements for a period of one year 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 apply to and shall be binding on the heirs, personal representatives, successors, and assigns 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. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.



WAIVER OF RIGHTS TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and sole owner of the hereinafter described real property, do hereby waive for a period of 20 years after the date that the final subdivision plat is filed, the right to protest the formation of one or more special improvement district(s) 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 incident to the above which the City of Billings may require.

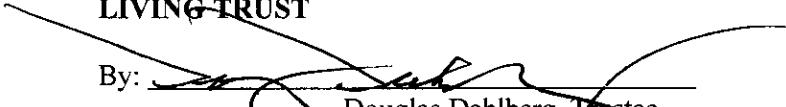
This Waiver and Agreement is independent from all other agreements and are supported by sufficient independent consideration to which the undersigned is a party, and shall run with the land and shall be binding upon the undersigned, its successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

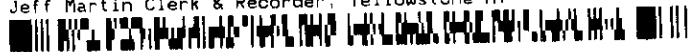
Whisper Ridge Subdivision

SUBDIVIDER”

**DOUGLAS AND JOANN DAHLBERG
LIVING TRUST**

By: 
Douglas Dahlberg, Trustee

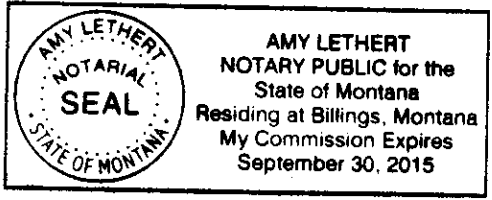
By: 
JoAnn Dahlberg, Trustee



STATE OF MONTANA)
 : SS
County of Yellowstone)

On this 9th day of July, 2012, before me, a Notary Public in and for the State of Montana, personally appeared Douglas Dahlberg and JoAnn Dahlberg, known to me to be the persons who signed the foregoing instrument as the trustees of the DOUGLAS AND JOANN DAHLBERG LIVING TRUST, and who acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.



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

