

Remit to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS HUNTER'S POINTE SUBDIVISION

Table of Contents

I.	Variances	SIA-2
II.	Property Conditions and Information for Lot Purchasers	SIA-2
III.	Transportation	SIA-3
	A. Streets	SIA-3
	B. Curb, Gutter and Sidewalks	SIA-3
	C. Street Lighting	SIA-4
	D. Traffic Control Devices	SIA-4
	E. Access	SIA-4
	F. Billings Area Bikeway and Trail Master Plan	SIA-4
	G. Public Transit	SIA-5
IV.	Emergency Services	SIA-5
V.	Storm Drainage	SIA-6
VI.	Utilities	SIA-6
	A. Water	SIA-6
	B. Sanitary Sewer	SIA-7
	C. Power, Telephone, Gas, and Cable Television	SIA-7
VII.	Parks/Open Space	SIA-7
VIII.	Irrigation	SIA-7
IX.	Soils/Geotechnical Study	SIA-7
X.	Financial Guarantees	SIA-7
XI.	Legal Provisions Applying to Subdivider	SIA-8

Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST
FUTURE SPECIAL IMPROVEMENT DISTRICTS
HUNTER'S POINTE SUBDIVISION**

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between **BACH HOMES**, whose address for the purpose of this agreement is 11650 S State Street, Suite 300, Draper, Utah, 84020, hereinafter referred to as "Subdivider", and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the plat of Hunter's Pointe Subdivision, being Tract 1C of Certificate of Survey No. 2991, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on the ____ day of _____, 20____, the City Council conditionally approved a preliminary plat of Hunter's Pointe Subdivision; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to Hunter's Pointe Subdivision 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

- A.** 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. None 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.
- B.** Lot owners should be aware that a geotechnical investigation will be required prior to future construction. Assessment and mitigation of any conditions shall be the responsibility of the lot owner.
- 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.** 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.
- E.** 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.

III. TRANSPORTATION

A. Streets

Subdivider and City agree that the required street improvements are as follows:

1. All future site improvements within the subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, the Uniform Building Code, the most current *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. A Traffic Impact Study shall be required to be submitted to the Engineering Division for review and approval prior to final plat approval. Construction and/or financial contribution for improvements along adjacent streets, and within the subdivision, shall be in accordance with that document and as generally described herein.
3. Intersection contributions are also identified within the Traffic Impact Study and noted herein. The costs for these intersection improvements shall be paid for at time of initial development of any lot within the subdivision.

Based on the Traffic Impact Study, the intersection contributions shall be paid at the time of initial development of any lot within the subdivision and are as follows:

•	<u>List intersection</u>	\$
	Total Contribution	\$

B. Curb, Gutter and Sidewalks

Curb, gutter and sidewalks do not currently exist along the Central Avenue frontage of the subdivision. Lots 1 and 2 front Central Avenue, and at the time of development of either of these lots, the Subdivider will install curb, gutter and sidewalk along the frontage. The sidewalk width and style shall be as specified by the City.

Internal sidewalks will be required to comply with 50-60-213, MCA.

C. Street Lighting

No street lighting exists along Central Avenue in the vicinity of this subdivision. No new street lighting will be required as a result of this subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

D. Traffic Control Devices

No street traffic control devices are anticipated at this time for the subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

E. Access

Access to the lots will be provided from two access points off of Central Avenue, along with a reciprocal access easement with the existing Hunter's Pointe Apartments to the west (Lot 2 of Summer Ridge Subdivision).

The first access on Central Avenue is existing and is through a Reciprocal Access Easement executed by and between Lydia Kramer Real Estate Management and Legacy Homes, Inc., recorded the 9th day of June 2008, under Document No. 3469479 between Tract 1C and 1B of Certificate of Survey 2991, according to the official plat on file in the Office of the Clerk and Recorder of Yellowstone County, under Document No. 3033373.

The second access will be a new access on the common lot line of Lots 1 and 2 and is intended to provide reciprocal access between these two lots and lot 3.

Lot 4 will have a reciprocal access easement with Lot 2 of Summer Ridge Subdivision which is west of the subject lot.

F. Billings Area Bikeway and Trail Master Plan

No segment of the Bikeway and Trail Master Plan is located in this subdivision.

G. Public Transit

There are existing MET Transit routes in the vicinity of this Subdivision. No additional improvements are required for the subdivision relating to public transit.

IV. EMERGENCY SERVICES

Emergency services will be provided by the City of Billings. Access will be provided by the adjacent roadway of Central Avenue, along with secondary access through the existing Hunter's Pointe Apartments to the west (Lot 2 of Summer Ridge Subdivision) by a reciprocal access easement.

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.
- Paved emergency access roads and a looped private fire line system with hydrants exists within the development.

The roads and hydrants shall be maintained in accordance to the currently adopted fire code requirements by the Subdivider.

V. STORM DRAINAGE

Stormwater will be handled through surface flow and piping within the subdivision. 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 of each individual lot.

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, Fire Department and the Montana Department of Environmental Quality.

A. Water

Currently, the property is provided with an existing 8-inch City water service from a 12-inch water main in Central Avenue. At the time of development, each lot will be required to install an individual water service for domestic water supply from the main in Central Avenue. Water service easements shall be recorded with the subdivision plat to allow the water service for Lot 4 to cross Lot 1, and for the water service for Lot 3 to cross Lot 2.

B. Sanitary Sewer

Currently, the property is served by an existing 8-inch sanitary sewer main that is contained within a Perpetual Right-of-Way Easement, dated June 9, 2008, executed by Hunter's Pointe Apartments, LLC, Lydia Kramer Real Estate Management and Legacy Homes, Incl, granted to the City of Billings and recorded June 17, 2008 under Document No. 3469480.

At the time of development, each lot will be required to install an individual sanitary sewer service from this main. At the time of development of Lot 4, which is currently contemplated as a multi-family residential land use, each building will be provided an individual sanitary sewer service connection from the main.

C. Power, Telephone, Gas, and Cable Television

Power, telephone, gas, and cable television lines already exist within the public right of-way. Appropriate utility easements will be provided across the subdivision lots for service to the proposed development.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Hunter's Pointe Subdivision, as this is a minor subdivision [MCA 76-3-621(3)(a)].

VIII. IRRIGATION

No irrigation ditches are located on this property.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical investigation shall be provided as part of a building permit application for any new structure within this subdivision.

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 Engineer and Utility Department Manager.

XI. 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.

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: _____

