

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

Copper Square Subdivision

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(City of Billings)

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

Copper Square Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between *Rimrock and 60th, LLC*, whose address for the purpose of this agreement is **1248 Ponderosa Drive, Billings, MT 59102**, hereinafter referred to collectively as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Copper Square Subdivision*, 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 *Copper Square Subdivision*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *Copper Square Subdivision*; 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 *Copper Square 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

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 sidewalk along the segment of the existing access road(s) 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.
- 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 without written approval from upstream and downstream users.
- 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

- Rimrock Road is designated as an arterial street. The City of Billings is requiring a 120-foot right-of-way for Rimrock Road. The existing half right-of-way is between 50 and 60 feet along the property frontage. This subdivision will dedicate right-of-way to establish a full 60-foot half right-of-way adjacent to the subdivision. The Subdivider will be required to participate/contribute to either a Special Improvement District or Work Order for any future improvements along Rimrock Road including widening, curb and gutter, and sidewalk or trail.
- 60th Street West is designated as a residential local access road. The City of Billings is requiring a 56-foot right-of-way for 60th Street West. The existing right-of-way is 53-feet along the property frontage. This subdivision will dedicate an additional 3-feet to establish a full 56-foot right-of-way along the entire property frontage.
- Road A, Road B and Road C are private roads constructed within a 40-foot wide access easement.
- Road A, Road B and Road C are constructed to a width of 39-feet back-of-curb to back-of-curb, in accordance with City of Billings Subdivision requirements for commercial roads.
- 60th Street West will be constructed as part of Phase 2 of the Subdivision. Should 60th Street West not be constructed prior to such time, the Subdivider will be responsible to construct the west curb line and 30' of asphalt pavement. Should 60th Street West be constructed prior to Phase 2 of the Subdivision, the Subdivider will be responsible to construct the remaining asphalt width and west curb and gutter.
- A Traffic Impact Study has been completed for the *Copper Square Subdivision*. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense based on the additional lots created with the *Copper Square Subdivision*. The percentage of traffic contributions to the following intersections shall be in accordance with the approved traffic impact study:

- A. Rimrock Road & 58th Street West / Glynn Abbey Way – 4.00%
- B. Rimrock Road & 54th Street West – 3.83%

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 City Engineering for the year in which the contribution is made. These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage of contributions are as outlined within the Traffic Impact Study for *Copper Square Subdivision* as submitted with the preliminary plat.

B. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks adjacent to the public right-of-way, unless constructed as part of a City Work Order or SID, as well as the private roads fronting their lot at the time of lot construction and shall be included in each building permit.
- ADA ramps shall be installed by the Subdivider at the time of construction of public improvements.

C. Street Lighting

- Street lighting will be required along 60th Street West at the time it is constructed. A Street Light Maintenance District will be created in the future and is included in the waiver of right to protest.

D. Traffic Control Devices

- Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
- No traffic signals are required within this subdivision. Stop signs shall be installed on the northbound lane of Road A at the intersection of Rimrock Road, on the eastbound lane of Road C at the intersection of 60th Street West, as well as on the north and south legs of Road B's intersection with Road C. 60th Street West will be stop controlled in the north bound direction at its intersection with Rimrock Road.
- The Subdivider 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

- In Phase 1, the Subdivision will be accessed from Rimrock Road with a 40-foot wide access easement along the common property line of Tule Ridge Subdivision and *Copper Square Subdivision* (20' on each side of the common property line). A right turn lane is required to be installed for the eastbound lane of Rimrock Road for the approach as identified in the Traffic Accessibility Study and SIA for the Tule Ridge Subdivision as well as the TIS for *Copper Square Subdivision*.
- A second 40-foot wide access will be located off 60th Street West, both of which will be constructed as part of Phase 2 of the Subdivision. The centerline of the access being approximately 260-feet from the northeast corner of the subdivision.
- Private streets within the Subdivision shall allow public access through 40-foot wide access easement.

F. Billings Area Bikeway and Trail Master Plan

- The Billings Area Bikeway and Trail Master Plan identifies a future bike lane on Rimrock Road, to be constructed when the road is built or widened, adjacent to the subdivision.
- The Billings Area Bikeway and Trail Master Plan also identifies a shared-use path north of Rimrock Road, adjacent to the subdivision.

G. Public Transit

- No improvements to public transit service are proposed for this subdivision.

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.

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 private contract permitting for public facilities and as part of individual lot development.

Stormwater management of improvements within the 60th Street West rights-of-way will be collected via curb inlets and storm drain piping in accordance with the City's Stormwater Management Manual. Collected stormwater will be discharged to a temporary retention pond located on the south side of the constructed roadway within the existing 60th Street West rights-of-way, until such time in the future the roadway is extending to the south and storm drain is available to received the flows.

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

- The Subdivision will extend a water main from Rimrock Road, south to the subdivision within Road A and Road C. Said waterline will

connect to the water main installed within 60th Street West at the time Phase 2 improvements are constructed. Said water main will be constructed in a public utility easement beneath Road A and Road C to the Road C intersection with 60th Street West.

- Lots 1-6 and 9 of the subdivision will be serviced from the public water main extended through the subdivision.
- Lots 7-8 and 10-11 will be serviced from the water main extended through 60th Street West right-of-way.
- The internal water main in Road A and Road C will be a 12” water main in compliance with City of Billings standards for commercial developments.
- The water main within 60th Street West will be an 8” water main as its primary use will be residential to the east and south.
- Subdivider will be responsible to reimburse the City of Billings for ½ of the water main costs within Rimrock Road, as calculated based on an average cost tabulated from the past two years.
- Should Subdivider install water line within 60th Street West as part of Phase 2 improvements, they will be reimbursed by the developer of the property to the east of 60th Street W. at the time it is connected onto. Should the development to the east construct the water line within 60th Street West prior to Phase 2, the Subdivider shall reimburse that developer for ½ the cost of the waterline as calculated based on an average cost tabulated from the past two years.
- Design/installation of fire hydrants shall be in accordance with the design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department and Fire Department. Location of fire hydrants shall be as follows:
 - At the southwest corner of the Road A and Rimrock Road intersection.
 - At the northeast corner of the Road A and Road C intersection.
 - At the southeast corner of the Road B and Road C intersection.
 - At the southeast corner of the Rimrock Road and 60th Street West intersection.
 - At the southeast corner of the Road C and 60th Street West intersection.
 - Along 60th Street West near the southern subdivision boundary.

B. Sanitary Sewer

- The Subdivision will be extending sanitary sewer main from Rimrock Road south into the subdivision. At the northern boundary of the subdivision, sanitary sewer main will be extended in a public utility easement under Road A to the intersection with Road C. From this intersection, water main will extend east, in a public utility easement beneath Road C to approximately the western property line of Lot 5.
- Sanitary sewer will also be extended from Rimrock Road through 60th Street West right-of-way along the eastern boundary of the subdivision.
- Lots 1-3 and 5 of the subdivision will be serviced from the public sanitary sewer main extended through the subdivision.
- Lots 4 and 6 will be serviced from the existing sanitary sewer main located in the Rimrock Road right-of-way.
- Lots 7-11 will be serviced from the sanitary sewer main extended through 60th Street West right-of-way.
- Subdivider will be responsible to reimburse the City of Billings for ½ of the sewer main costs within Rimrock Road, as calculated based on an average cost tabulated from the past two years.
- Should Subdivider install sewer line within 60th Street West as part of Phase 2 improvements, they will be reimbursed by the developer of the property to the east of 60th Street W. at the time it is connected onto. Should the development to the east construct the sewer line within 60th Street West prior to Phase 2, the Subdivider shall reimburse that developer for ½ the cost of the sewer line as calculated based on an average cost tabulated from the past two years.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines will be located within the easements shown on the plat. Any telephone, gas, electrical power, and cable television lines located within the private roads will be installed prior to surfacing.

VII. PARKS/OPEN SPACE

There is no parkland requirement for Copper Square Subdivision per 76-3-621(3)(b), MCA, when a land is subdivided into parcels that are all nonresidential.

VIII. IRRIGATION

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 without written approval from upstream and downstream users.

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 will be constructed phases as defined below. Public improvements associated with these phases shall be constructed or monetarily guaranteed prior to opening the phase.

- Phase I: Lots 1-6
 - Water main will be constructed from Rimrock Road through the subdivision to the intersection of Road C and Road B.
 - Sanitary sewer will be constructed from Rimrock Road through the subdivision to approximately the western property line of Lot 5.
- Phase II: Lots 7-11
 - West curb and gutter and 30-feet of asphalt will be constructed for 60th Street West from Rimrock Road along the eastern boundary of the subdivision.
 - Water main will be constructed from Rimrock Road through 60th Street West right-of-way along the eastern boundary of the subdivision.
 - Sanitary sewer main will be constructed from Rimrock Road through 60th Street West right-of-way along the eastern boundary of the subdivision.

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, or by SID. 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 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 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”

Rimrock and 60th, LLC.

By: _____

Title: _____

STATE OF MONTANA)

: ss

County of)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the _____ of *Rimrock and 60th, LLC*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public in and for the State of _____
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: _____

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, 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 which the City of Billings may require.

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

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

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

Copper Square Subdivision

Signed and dated this _____ day of _____, 20__.

