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SUBDIVISION IMPROVEMENTS AGREEMENT
Lipp Subdivision, 2nd Filing
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(Yellowstone County)

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SUBDIVISION IMPROVEMENTS AGREEMENT

Lipp Subdivision, 2nd Filing

This agreement is made and entered into this ____ day of _____, 2022, by and between Jerry L. Brey, whose address for the purpose of this agreement is **8905 Lipp Road; Billings, MT 59106**, hereinafter referred to as “Subdivider,” and YELLOWSTONE COUNTY, Montana, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, the plat of *Lipp 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 _____, 2022, the Board of Planning recommended conditional approval of a preliminary plat of *Lipp Subdivision, 2nd Filing*, and

WHEREAS, at a regular meeting conducted on ____ day of _____, 2022, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *Lipp Subdivision, 2nd Filing*, and

WHEREAS, a Subdivision Improvements Agreement is required by the County prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Lipp 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 Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of Yellowstone County, 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.** A variance has been requested from the conditions of Section 4.14, C, 2 of the Yellowstone County Subdivision Regulations. The minimum 30,000 gallon underground storage tank requirements will be waived for Lipp Subdivision, 2nd Filing. There is an existing 20,000 gallon tank to the north in Brey Subdivision. Future Filings of Lipp Subdivision will be required to install storage tanks at the time of subdivision and will follow regulation in place at that time.

II. CONDITIONS THAT RUN WITH THE LAND

- A.** 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.
- B.** 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.
- C.** 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.
- D.** 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.
- E.** Culverts and associated drainage swales shall not be filled in or altered by the Subdivider or subsequent lot owners.
- F.** When required by road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way at no cost to the County and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
- G.** Future maintenance of all public improvements shall be done through an RSID created as part of this subdivision.
- H.** Lot owners or their agent will obtain an Access Permit from County Public Works prior to any construction on any lot within the subdivision. The application will include a site plan showing the desired location of the access and show that it meets the requirements outlined by the DEQ storm water requirements for the subdivision. Failure to do so will result in the lot owner or

their agent removing what has been installed and location the access in an approved location at the owners expense.

III. TRANSPORTATION

The Subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by Yellowstone County.

A. Streets

1. The subdivision will connect to Lipp Road and S 89th Street West, which are classified as Rural Principal Arterials.
2. All roads within the subdivision shall be built to grade with a satisfactory subbase, base course and asphalt surface. The design cross-section shall be a 24-foot asphalt width street with 2-foot wide gravel shoulders. An RSID will be created for future maintenance of all public (or common) constructed improvements prior to final plat approval.
3. All internal roads shall have 60-foot wide dedications.

B. Traffic Control Devices

1. Street name and stop signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the Yellowstone County Public Works Departments. A stop sign will be placed at the intersection of Arnie Avenue and South 88th Street West and at Lipp Road and South 89th Street West.
2. No traffic signals are anticipated within this subdivision.
3. 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 Yellowstone County Public Works Department.

C. Access

Access to the subdivision is provided from the internal, Public Roads, South 89th Street West and Arnie Avenue, and all new lots will be accessed from those internal streets. A 1-foot wide No Access Strip has been shown on the plat along Lipp Road and South 88th Street West and at the intersection of South 89th St West with Arnie Avenue. Lot 1, Block 2 has one approach to service the three buildings. An access easement has been provided detailing use and maintenance of the common driveway.

D. Billings Area Bikeways & Trail Master Plan (BABTMP)

This subdivision is outside of the BABTMP. No lane striping is proposed at this time.

IV. EMERGENCY SERVICE

Fire protection will be provided by the Laurel City Fire Department. An existing 20,000-gallon water storage tank/dry hydrant can be found to the north in Brey Subdivision north of Lot 1, Block 3. The dry hydrant system was installed by a previous project and was inspected and approved by the Laurel Fire Department. Maintenance of the dry hydrant is provided by the Brey Subdivision Homeowner's Association. Proportional reimbursement for the joint use of a dry hydrant system will be provided. The proportional reimbursement shall be determined based on the ratio of the number of lots in the subsequent subdivision to the total lots served by the fill site multiplied by the total cost of the water supply improvement. No further improvements are required at this time. Future filings of Lipp Subdivision will be subject to the Yellowstone County Subdivision Regulations in place at that time.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by the Montana Department of Environmental Quality (MDEQ), or its designee.

VI. UTILITIES

A. Water

In accordance with Section 4.9 Yellowstone County Subdivision Regulations, all proposed water systems must obtain approval by the MDEQ, or its designee.

Individual cisterns will be permitted for all lots within the subdivision.

B. Septic System

In accordance with Section 4.8 Yellowstone County Subdivision Regulations, all proposed sanitary sewer systems must obtain approval by the MDEQ, or its designee.

The proposed septic systems are all individual systems. An approval letter from the MDEQ will be submitted with the final plat. There is an existing approval for the septic system on Lot 1, Block 2.

C. Power, Telephone, Gas, and Cable Television

The private utilities shall be installed within the provided easements. 8-foot wide utility easements have been shown on the plat adjacent to all streets within the subdivision per the request of the utility companies.

VII. PARKS/OPEN SPACE

According to 76-3-621(3)(a-e) MCA there is no parkland requirement for this subdivision as all of the lots are non-residential.

VIII. IRRIGATION

Cove Ditch is located generally to the northwest of the proposed subdivision. The property was historically irrigated using this water. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners unless otherwise noted herein. No water rights will be transferred to the lot owners. All water shares associated with the property will be held by the Subdivider.

IX. WEED MANAGEMENT

All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties in the subdivision.

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record.
- A revegetation plan shall be submitted as part of the management plan. A seeding recommendation can be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.

X. SOILS/GEOTECHNICAL STUDY

A geotechnical study is not required for the subdivision.

XI. CONDOMINIUM AND TOWNHOMES

The approval of this subdivision of land expressly contemplated the construction of condominiums, townhomes, or townhouses.

- XII.** Lot 1, Block 2 of this subdivision has been created with this intent. A Declaration of Unit Ownership will be filed with the Clerk and Recorder. Other Lots within the subdivision will have the ability to complete a Condominium in the future. **FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Planning Board and Board of County Commissioners. 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 designed by and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the state of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvements have been completed in accordance with approved, seal stamped, record drawings, along with all required post-construction certification per Section 4.6.C. of the Yellowstone County Subdivision Regulations.

(In the event that all required improvements are not installed and constructed prior to final plat approval, the Subdivider shall provide a monetary security guarantee in the amount of 125% of the estimated total cost by one (1) of the methods listed in Chapter 5 of the Yellowstone County Subdivision Regulations. If using a security, describe the method in this section)

XIII. LEGAL PROVISIONS

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.
- 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 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 in 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.

- G.** Subdivider agrees to create any required RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

Jerry L Brey:

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2022, before me, a Notary Public in and for the State of Montana, personally appeared _____, 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 Yellowstone County, this ____ day of _____, 2022.

“COUNTY”
COUNTY OF YELLOWSTONE
MONTANA

County of Yellowstone
Board of County Commissioners

By: _____
Chairman

Commissioner

Commissioner

Attest: _____
County Clerk and Recorder

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 2022, before me, a Notary Public in and for the State of Montana, personally appeared _____, _____, and _____, known to me to be the Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

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

Waiver of Right to Protest

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 Rural Special Improvement Districts (RSID’s), which Yellowstone County may require for a period of twenty years from the date of this document’s recording.

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.

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

Lipp Subdivision, 2nd Filing

Signed and dated this ____ day of _____, 2022.

Jerry L. Brey

STATE OF MONTANA)
: ss
County of Yellowstone)

On this ____ day of _____, 2022, before me, a Notary Public in and for the State of Montana, personally appeared _____, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

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

Notary Public in and for the State of Montana

Printed name: _____
Residing in Billings, Montana
My commission expires: _____