

APPENDIX B

**SUBDIVISION IMPROVEMENTS
AGREEMENT
AND
IMPROVEMENTS
GUARANTEES**

APPENDIX B

SUBDIVISION IMPROVEMENTS AGREEMENT

The below is an example only, intended to provide guidance to subdividers and land owners. Individual subdivision may differ from the example provided based on specific cases. For subdivisions within the County jurisdiction, replace references to the City of Columbus with Stillwater County.

(Name of Subdivision)

This agreement is made and entered into this ____ day of _____, 20____, by and between *(Subdivider)*, whose address for the purpose of this agreement is **ADDRESS**, hereinafter referred to as “Subdivider,” and the City of Columbus, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *(Subdivision Name)*, located in Stillwater County, Montana, was submitted to the Stillwater County – City of Columbus City - County Planning Board; and

(for minor subdivisions insert the following)

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, the Planning Board recommended conditional approval of a preliminary plat of *(Subdivision Name)*; and

(for major subdivisions, exclude above and insert the following)

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, and following a public hearing, the Planning Board recommended conditional approval of a preliminary plat of *(Subdivision Name)*; and

(both minor and major subdivisions insert the following)

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, the City of Columbus City Council conditionally approved a preliminary plat of *(Subdivision Name)*; 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 *(Subdivision Name)* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Stillwater County, Montana. The Subdivision shall comply with all requirements of the City of Columbus Subdivision Regulations, the rules, regulations, policies, ordinances, and resolutions of Columbus, 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 of Columbus City Council from the strict interpretation of the City's Subdivision Regulations (*list applicable variances*):

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 Stillwater 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. Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted on the FEMA maps for this area. Please be advised that special development restrictions may apply within these specified areas.

F. Culverts and associated drainage swales shall not be filled in or altered by the subdivider or subsequent lot owners.

G. Acquisition of road signs and replacement of old road signs are the responsibility of the subdivider or subsequent lot owners/homeowners' association.

H. When required by future 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 and any relocation outside of the public right-of-way shall be subject to securing easements.

I. Sidewalk, curb, and gutter repairs, maintenance, and/or replacement is the responsibility of the adjacent lot owner, even if the aforementioned facilities are located within right-of-way.

III. TRANSPORTATION

The subdivider agrees to guarantee all improvements for a period of two years from the date of final acceptance by the City Public Works Department.

This section should include, but not be limited to, the following:

- A.** rights-of-way widths
- B.** pavement widths and surface types
- C.** sidewalk, curb, and gutter design
- D.** Trail width, surface, and design
- E.** other required street improvements
- F.** responsibility for construction and timeframe
- G.** location and type of proposed stop signs, signals, or other required traffic control devices
- H.** location and widths of proposed accesses
- I.** restrictions on access
- J.** other required access improvements

IV. EMERGENCY SERVICE

This section should include, but not be limited to the following:

- A.** location and specifications for emergency access road including width, base and surface material, blockade, and required signage
- B.** responsibility for construction and timeframe
- C.** High Fire Hazard Area Fire Plan (if necessary)

V. STORM DRAINAGE

All drainage improvements shall comply with the stormwater management plan submitted to and approved by the City Public Works Department/DEQ.

VI. UTILITIES

A. Water

This section should include, but not be limited to the following:

1. size/type of proposed systems
2. capacity of existing system
3. responsibility for construction and timeframe
4. DEQ application required information

B. Sewer/Septic System

This section should include, but not be limited to the following:

1. size of existing or proposed systems
2. capacity of existing system
3. responsibility for construction and timeframe
4. State Department of Environmental Quality application and approval
(letter submitted with final plat)

C. Power, Telephone, Gas, and Cable Television

This section should include, but not be limited to the following:

1. services to be provided within the public right-of-way or private easement existing or planned
2. width and location of easements shown on plat
3. responsibility for installation and timeframe

VII. PARKS/OPEN SPACE

This section should include, but not be limited to the following:

- A.** the parkland requirement for this subdivision
- B.** required park improvements and timing of construction
- C.** required formation of a Park Maintenance District, if any

For minor plats, where no parkland dedication is required, insert the following statement:

There is no parkland requirement for proposed (Subdivision Name), as this is a minor subdivision (MCA 76-3-621(3) (e)).

VIII. IRRIGATION

This section should include, but not be limited to:

- A.** irrigation district affected by the proposed development
- B.** required mitigation efforts to protect the ditches during construction
- C.** location and width of existing and proposed onsite easements for ditches
- D.** water shares to be transferred

IX. WEED MANAGEMENT

All noxious weeds on the latest Stillwater County Noxious Weed List shall be controlled on all properties in the subdivision by the lot owners. A Weed Management Plan must be filed and updated as needed for approval by the Stillwater County Weed Department. Said weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds.

A revegetation plan for all areas disturbed by construction activities shall be submitted as part of the management plan and here described. A seeding recommendation can be obtained from the Stillwater County Weed Department pursuant to 7-22-2152, MCA. The Stillwater County Weed Department reserves the right to revise these recommendations based on the site inspection.

X. SOILS/GEOTECHNICAL STUDY

This section should include, but not be limited to:

- A.** results of geotechnical study, if one was required
- B.** construction restrictions and recommendations due to the results of the study

- C. required mitigation efforts

XI. PHASING OF IMPROVEMENTS

Description of each Phase including:

- A. required improvements
- B. timing of improvements
- C. reference to release of lots (documentation)
- D. restrictions on lot sales (documentation)
- E. financial guarantees for improvements

XII. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender (see list of guarantee types). All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be installed as approved by the City. 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 as-built plans.

(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 110% of the estimated total cost by one (1) of the methods listed in this Appendix. Construction of the improvements for which a monetary guarantee is provided must be completed within one year unless a longer timeframe is allowed by the governing body at the time of conditional approval of the preliminary plat.)

XIII. LEGAL PROVISIONS

- A. Subdivider agrees to guarantee all public improvements for a period of two years from the date of final acceptance by the City of Columbus.
- 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 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” (*Name of Subdivider*)

By:_____

Its:_____

STATE OF MONTANA)
) : ss
 County of Stillwater)

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 (*Subdivider*), 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 Stillwater County, this ____ day of _____, 20___.

“CITY”
 CITY OF COLUMBUS
 MONTANA

Mayor
 City of Columbus

By: _____
 Mayor

Attest: _____
 City Clerk

WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all 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) for the following purposes:

Street lights, street light energy, street light maintenance, and the construction and/or maintenance of streets, alleys, traffic control devices, curb, gutter, sidewalks, drive approaches, survey monuments, water mains, sanitary sewer mains, and storm drain line either within or without the area to provide drainage for runoff water from real property hereinafter described, parks and park maintenance, and any other incidental improvements which the City of Columbus 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 Stillwater County, Montana.

This Waiver of Right to Protest shall be valid for a time period not longer than twenty (20) years after the date that the final subdivision plat is filed with the County Clerk and Recorder.

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

Subdivision Description/Name

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

Subdivider/Owner

By: _____

Its: _____

STATE OF MONTANA)

: ss

County of Stillwater)

On this _____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be Subdivider/Owner Name, the person who executed the foregoing 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.

Montana

Notary Public in and for the State of

Printed Name: _____

Residing in _____, Montana

My Commission expires: _____

XVI. ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

The subdivider shall provide one or more of the following financial security guarantees in the amount of 110 percent of the estimated total cost of installing all required improvements. This estimate must be done by a contractor approved by the governing body designee who also must find the estimated cost acceptable.

A. Irrevocable Letter of Credit (ILOC)

Subject to approval of the Stillwater County Commission or Columbus City Council, as appropriate, the subdivider shall provide an irrevocable letter of credit from a Montana bank or related institution certifying the following:

1. that the creditor guarantees funds in the amount equal to 110 percent of the cost, as approved by the appropriate governing body through the County Planning Office, of completing all required improvements.

2. That if the subdivider fails to complete the specified improvements within the required period, the creditor will immediately pay to the governing body upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements up to the limit of credit stated in the letter.

3. That this letter of credit may not be withdrawn or reduced in amount until released by the governing body.

B. Reduction of ILOC

At the discretion of the appropriate governing body through the Planning Office, as the improvements guaranteed by the ILOC are constructed, the amount of the ILOC may be reduced. Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time, unless other provisions are made and approved. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

C. Special Improvements District

The governing body may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision will be sold, rented, or leased, and no contract for the sale of lots executed before the improvement district has been created.

If the proposed subdivision lies in an unincorporated area, the subdivider, or other owners of the property involved must also petition the governing body to create a rural improvement district pursuant to Section 7-12-2102, MCA.

An agreement to finance improvements through the creation of a special improvement district, or a petition to create a rural improvement district, constitutes a waiver by the subdivider or the other owners of the property of the right to protest or petition against the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the Clerk and Recorder and will be deemed to run with the land.