

LINCOLN COUNTY SUBDIVISION REVIEW SUBDIVISION IMPROVEMENTS AGREEMENT

All conditions imposed by the Lincoln County Board of Commissioners (BOCC) at the time of approval of the preliminary plat shall be completed prior to the approval of the final plat. However, the BOCC, at its discretion, may allow a subdivider to defer completion of certain required improvements, in which case the following procedures and requirements shall apply:

SIA-1-1: Subdivision Improvements Agreements Process

1. The subdivider shall enter into a Subdivision Improvements Agreement (SIA) with the County, which guarantees the outstanding conditions will be completed.
2. All conditions of approval shall be completed within the time schedule provided in the subdivision improvements agreement. The initial term of an agreement shall not exceed twelve (12) months from date of BOCC approval however, the Planning Director, upon request by the subdivider may extend the agreement in increments not to exceed twelve (12) months if:
 - The subdivider demonstrates a reasonable hardship exists which is not solely financial; and
 - The conditions do not place a health or safety burden on existing lots;
 - The improvements are not necessary for the convenient enjoyment or use of lots which are in the process of developing or being utilized.
3. The subdivider shall submit plans, specifications and cost estimates, prepared by a registered professional engineer, for the completion of all remaining improvements.
4. The projected improvements cost shall be one hundred twenty-five percent (125%) of the current costs for completing the improvements.
5. Upon completion of required improvements, the subdivider shall file with the County a statement certifying that:
 - All required improvements are complete;
 - The improvements are in compliance with the minimum standards specified by the Lincoln County Subdivision Regulations;
 - The subdivider knows of no defects in these improvements;
 - The improvements are free and clear of any encumbrance or liens;
 - All applicable fees and surcharges have been paid.

6. The subdivider shall also file with the County:
 - Copies of final construction plans, road profiles, proposed grades, certifications, and specifications for improvements; and
 - Copies of final as-built plans, profiles, grades and specifications for improvements, if applicable;
 - A two (2) year warranty bond guaranteeing all new County infrastructure.
7. The subdivider will provide for inspection of all required improvements by a registered professional engineer before the County releases the subdivider from the subdivision improvements agreement.
8. Upon completion of the inspection, the inspecting engineer shall file with the County a statement certifying that the improvements have been completed in the required manner.
9. Only after the inspecting engineer certifies that improvements are complete and free from defect, and after receipt of other statements detailed above, the County shall release the subdivider from the subdivision improvements agreement.

SIA-1-2: Failure to Satisfactorily Complete Improvements

10. If the County determines that any improvements are not constructed in compliance with the specifications, it shall furnish the subdivider with a list of specific deficiencies and may withhold collateral sufficient to ensure proper completion.
11. If the Lincoln County Board of Commissioners determines that the subdivider will not construct any or all improvements to required specifications, or within the time limits, it may withdraw collateral and use these funds to construct the improvements and correct any deficiencies to meet specifications. Unused portions of these funds shall be returned to the subdivider or crediting institution.

SIA 1-3: Acceptable Forms of Improvements Guarantees

The following are acceptable means of guaranteeing subdivision improvements agreements, although others may also be acceptable. The irrevocable letter of credit is often the preferable guaranty because it is usually feasible for a subdivider to secure, and the local government can readily obtain funds to complete the required improvements should the subdivider fail to install the required the improvements. A suggested irrevocable letter of credit and commentary are included as part of this Appendix. The other common guaranties are also explained below. The subdivider shall provide one or more of the following financial security guarantees in the amount of 125 % of the estimated total cost of installing all required improvements.

1. Letter of Credit

Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:

- That the creditor guarantees funds in an amount equal to 125% of the cost, as approved by the governing body, of completing all required improvements.
- That if the subdivider fails to complete the specified improvements within the required period, the creditor shall 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.
- That this letter of credit may not be withdrawn, or reduced in amount, until released by the governing body.

2. Escrow Account

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the governing body or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where funds are to be deposited must be approved by the governing body.

Where an escrow account is to be used, the subdivider shall give the governing body an agreement with the bank guaranteeing the following:

- That the funds in the escrow account are to be held in trust until released by the governing body and may not be used or pledged by the subdivider as security for any obligation during that period.
- That, should the subdivider fail to complete the required improvements, the bank shall immediately make the funds in escrow available to the governing body for completing these improvements.

3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:

- Enter an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
- File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the governing body.

4. Sequential Development

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 % 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. 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.

5. Surety Performance Bond

The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable Lincoln County. The bond must be in effect until the completed improvements are accepted by the governing body.

6. 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 shall 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 board of county commissioners 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 county clerk and recorder and shall be deemed to run with the land.

Lincoln County Subdivision Improvement Agreement

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the Lincoln County Board of Commissioners, Party of the First Part and hereinafter referred to as the "BOCC", and _____,

(Name of Developer)

an Individual Company Corporation located at the physical address of _____,

Party of the Second Part and hereinafter referred to as "DEVELOPER".

THAT WHEREAS, the Developer is the owner and developer of a new subdivision known as _____ being located at _____; and

WHEREAS, the County has conditioned its approval of the final plat for the _____ subdivision, upon the conditions as set forth in the Preliminary Plat of the Subdivision being completed and all improvements, as cited in "**Exhibit _____**" have not been completed at this time, and the Developer wishes to bond for the completion of those improvements set forth in "**Exhibit _____**"; and

WHEREAS, the County's Subdivision Regulations require that a subdivider shall provide a financial security of 125% of the estimated total cost of construction of said improvements as evidenced by an estimate prepared by a licensed professional which is included herewith as "**Exhibit _____**"; and

WHEREAS, the estimated total cost of construction of said improvements is the sum of

\$ _____.

NOW THEREFORE, in consideration of the approval of the final plat of said Subdivision by the County, the Developer hereby agrees as follows:

The Developer shall deposit as collateral with the County a Letter of Credit, Escrow Account; Sequential Development; Special Improvements District (SID); Surety Performance Bond; or Other; _____ in the amount of \$_____. The item of acceptable collateral shall have an expiration date of at least sixty (60) days following the date set for completion of the improvements, certifying the following:

That the creditor guarantees funds in the sum of \$_____, which is the estimated cost of completing the required improvements for the _____ Subdivision; and if the Developer fails to complete the specified improvements within the required period, the creditor will pay to the County immediately, and without further action, such funds, that are guaranteed, to finance the completion of those improvements;

Developer guarantees that said required improvements shall be fully completed by _____; and that upon completion of the required improvements, the Developer shall cause to be filed with the County a statement certifying that:

- All required improvements are complete;
- That the improvements are in compliance with the minimum standards specified by the County for their construction and that the Developer warrants said improvements against any and all defects for a period of two (2) years from the date of acceptance of the completion of those improvements by the County;
- That the Developer knows of no defects in those improvements;
- That these improvements are free and clear of any encumbrances or liens; and
- All applicable fees and surcharges have been paid.

The Developer shall cause to be filed with the County copies of final plans, profiles, grades and specifications of said improvements, with the certification of the registered professional engineer responsible for their preparation that all required improvements have been installed in conformance with said specifications.

IT IS ALSO AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS, TO-WIT: That if the County determines that any improvements are not constructed in compliance with the specifications, it shall furnish the Developer with a list of specific deficiencies and may withhold collateral sufficient to insure such compliance. If the County determines that the Developer will not construct any or all of the improvements in accordance with the specifications, or within the required time limits, it may withdraw the collateral and employ such funds as may be necessary to construct the improvement or improvements in accordance with the specifications. The unused portions of the collateral shall be returned to the Developer or the crediting institution, as is appropriate.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year hereinbefore written.

Print Name of Developer

by _____
Developer Signature

STATE OF MONTANA
COUNTY OF

LINCOLN

On this _____ day of _____, 20____, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, whose name is subscribed to 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 this day and year first above written.

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My Commission Expires: _____

IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. _____

Date: _____

Expiration Date: _____

Amount: _____

Lincoln County Commissioners
512 California Ave.
Libby, MT. 59923

Dear Lincoln County Board of Commissioners:

We hereby establish in your favor an irrevocable letter of credit up to the aggregate amount of \$ _____ at the request of _____.

Name of Subdivider

If _____ fails to complete the specified improvements in the
Name of Subdivider

_____ within the time period set forth in the attached
Name of Subdivision

Improvements Agreement, we will pay on demand your draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements. All drafts must indicate the number and date of this letter of credit and be accompanied by a signed statement of an authorized official that the amount is drawn to install improvements not installed in conformance with the Improvements Agreement and specifying the default or defect in question. All drafts must be presented prior to the expiration date stated above, and this letter of credit must accompany the final draft for payment. This letter may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.

(Name of Lending Institution)

(Signature and Title of Authorized Official)