

**IMPROVEMENTS AGREEMENT
FOR INFRASTRUCTURE FOR
MEADOWLARK RANCH SUBDIVISION, PHASE V
Conditions 5, 9, 10, 19, and 23**

THIS AGREEMENT is made and entered into this 21 day of June, 2023, by and between Meadowlark Ranch, Inc. (“Subdivider”) and the City of Belgrade, Montana (“City”), 91 East Central Avenue, Belgrade, Montana 59714.

WHEREAS, it is the intent and purpose of the Subdivider to meet the conditions of approval for the Preliminary Plat allowing the creation of Meadowlark Ranch Subdivision, Phase V (the “Subdivision”), as approved by the Belgrade City Council; and

WHEREAS, the preliminary plat approval for the subdivision requires the Subdivider to complete certain infrastructure items, which must substantially comply with the Preliminary Plat conditions of approval as approved by the City of Belgrade. All conditions of approval have been satisfied, except the portions of infrastructure required with Conditions 5, 9, 10, 19, and 23.

WHEREAS, it is the intent and purpose of the Subdivider to meet the requirements of the conditions of approval in order to obtain final plat approval for the Subdivision; and

WHEREAS, it is the intent and purpose of the Subdivider and City to enter into this Agreement which will guarantee the full and satisfactory completion of improvements serving the property described in this Agreement; and it is the intent of this Agreement, and the parties hereto, to satisfy the improvements guarantee requirements for the conditions of approval.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. **Subdivisions Description.** This Agreement pertains to and includes that property, which is designated and identified as the Meadowlark Ranch Subdivision, Phase V located in City of Belgrade, Gallatin County, Montana.
2. **Improvements.** Subdivider shall, at their sole cost and expense, install the improvements outlined in Conditions 5, 9, 10, 19, and 23, and as described on Exhibit “A” attached hereto and incorporated herein (the “Improvements”)

The estimated cost of the bonded Conditions 5, 9, 10, 19, and 23 improvements is \$730,303.80 increased by 125 percent to the amount of \$912,879.75, as shown on said Exhibit “A”, attached hereto and incorporated herein.

3. **Timing and Completion of the Improvements.** The improvements related to Conditions 5, 9, 10, 19, and 23 must be completed by the Subdivider with the construction of the next phase of Meadowlark Ranch Subdivision, or by June 1, 2025. If improvements are not completed by this date, the Subdivider shall have the right to negotiate an extension of this agreement so long as it does not extend more than three years from the date of final plat approval.

4. **Inspection.** Representatives of the City shall have the right to enter upon the property at any reasonable time to inspect and to determine if the Subdivider is in compliance with this Agreement. The Subdivider shall permit Belgrade and its representatives to enter upon and inspect the property at any reasonable time.

5. **One-Year Warranty of the Improvements.** The Subdivider hereby warrants the prompt and satisfactory correction of all material defects and deficiencies in the improvements that occur or become evident within one year after acceptance of the improvements by the City ("Warranty Period"). If any such defect or deficiency occurs or becomes evident during such period, then the Subdivider shall, within 10 days after receipt of written demand from City to do so, correct it or cause it to be corrected. The warranty provided by this Section 5 shall be extended for one full year from the date of repair or replacement of any improvement repaired or replaced pursuant to such demand.

6. **Financial Security Guaranty.** As security to City for the performance by the Subdivider of the Subdivider obligations to complete the improvements pursuant to and in accordance with this Agreement, the Subdivider shall deposit with City security in the amount of \$912,879.75, which is 125 percent of the estimated cost of the improvements as stated on Exhibit "A". The LOC shall remain in effect until such time as the City has accepted the improvements and issued a written release of the LOC. The LOC shall continue to guarantee 10 percent of the total amount of the security under the LOC after acceptance of the improvements by the City as Warranty Security. The Warranty Security shall remain in effect for the Warranty Period plus an additional 90 days.

The financial security guaranty/Letter of Credit ("LOC") shall guaranty the construction costs of the Condition 24 improvements, and the Warranty Security during the Warranty Period plus an additional 90 days, and substantially satisfy the requirements of the following Preliminary Plat conditions of approval as approved by the City of Belgrade (see list of specific Conditions below).

7. **Reduction of Security.** If during the term of this Agreement the City reduces the financial assurance requirements commensurate with the completion of improvements, such reduction shall be subject to 10 percent of the cost of the completed improvements to be held as Warranty Security for the Warranty Period provided in this Agreement. At the time of acceptance of the completed Subdivision Improvements, City will issue a written release of the remaining amount of the security, less 10 percent of the total costs of the Improvements, which shall be withheld by the City as Warranty Security. The Warranty Security shall remain in effect for the Warranty Period plus an additional 90 days.

8. Default.

8.1 *Default.* If the Subdivider defaults in or fails to fully perform any of its obligations in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the improvements required by this Agreement and such default or failure shall continue for a period of thirty (30) days after written notice specifying the default is deposited in the United States mail addressed to the Subdivider without being completely remedied, satisfied and discharged, City shall have, and the Subdivider hereby grants to City, in addition to all other rights afforded to City in this Agreement and by law, the right, at City's option, to complete the construction of the improvements or to correct such defect or deficiency, using either its own forces or contractors hired for that purpose. City shall have the right to draw from the financial security guarantee pursuant to this Agreement, as well as the right to demand payment directly from the Subdivider, based either on costs actually incurred or on City's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire cost of the work, including legal fees and administrative expenses. City may enforce any other remedy provided by law. These remedies are cumulative in nature.

8.2 *Liquidated Damages.* Subdivider and City recognize that time is of the essence of this Improvements Agreement. Subdivider recognizes that failure to timely complete improvements agreements results in the City Attorney and staff, Planning staff, Road Department Staff, and often the City Commission and staff, taking valuable time to monitor and manage the completion of the agreement. The parties also recognize that the same City officers and employees must take valuable time should a default of an improvements agreement be taken. Accordingly, instead of providing any such proof, Subdivider and City agree that as liquidated damages for delay (but not as a penalty) Subdivider shall pay City \$150.00 (one hundred fifty dollars) per day for each day that Subdivider fails to fully complete all the required improvements. The sum of \$150.00 per day is exclusive of and in addition to any other remedy to which the City may be entitled pursuant to the default provisions of this agreement.

9. Liability and Indemnity of City.

9.1 *No Liability for City Approval.* The Subdivider acknowledge and agree (1) that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's issuance of any approvals or acceptances of the improvements or use of any portion of the improvements, and (2) that the City's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Subdividers, or any of its heirs, successors, assigns, tenants, or licenses, or any third party, against damage or injury of any kind at any time.

9.2 *Indemnification.* To the fullest extent permitted by law, Subdivider agrees to, and does hereby, hold harmless and indemnify the City, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims, costs and liability of every kind and nature ("Claims") that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in

connection with (1) the City's review and approval of any plans for the improvements, (2) the issuance of any approval or acceptance for the improvements, (3) the development, construction, maintenance or use of any portion of the improvements, and (4) the performance by the Subdivider of its obligations under this Agreement and all related agreements. The Subdivider further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the improvements provided by this Agreement. The Subdivider is not an agent or employee of the City.

10. **No Waiver of City Rights.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuing waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Subdividers or the acceptance of any improvement.

11. **Governing Law.** This Agreement shall be construed according to the laws of the State of Montana.

12. **Changes of Law.** Any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they have been, or they may hereafter, be amended.

13. **Time of Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

14. **Assignment.** It is expressly agreed that the Subdivider shall not assign this Agreement in whole or in part, without prior written consent of the City.

15. **Successors.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, successors, and assigns.

16. **Notices.** All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third day after being deposited in the United States mail, for delivery by being properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices to the City shall be addressed to, and delivered at, the following address:

City Manager
C/O City of Belgrade
91 East Central Avenue
Belgrade, MT 59714

Notices to the Subdivider shall be addressed to, and delivered at, the following address:

Meadowlark Ranch, Inc.
175 North 27th Street, Suite 900
Billings, MT 59101

With a copy to:

Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

17. **Enforcement.** The parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation: specific performance, enforce or compel the performance of this Agreement; provided, however, that the Subdividers agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the City or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

18. **Amendments.** All amendments to this Agreement shall be in writing and shall be approved by the Subdividers and the City.

19. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

20. **Authority to Execute.** The City and the Subdivider hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the City with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The City hereby warrants and represents to the Subdivider that the persons executing this Agreement on its behalf have been properly authorized to do so by the City Commission. The Subdivider hereby warrants and represents to the City (1) that it is the record owner of fee simple title to the Subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Subdivider hereunder will (i) result in a breach or default under any agreement to which the Subdivider is a party or to which it

or the Subdivision is bound or (ii) violate any statute, law, restriction, court order, or agreement to which the Subdivider or the Subdivision is subject.

21. **Filing.** The Subdivider shall have this Agreement filed with the security with the City of Belgrade at the same time the final plat is recorded.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

SUBDIVIDER:

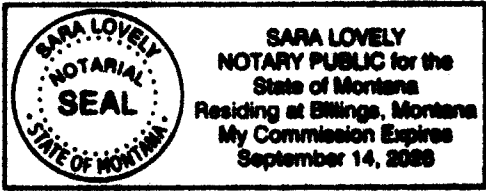
Meadowlark Ranch, Inc.

Gary Oakland
By: Gary Oakland

STATE OF MONTANA)
 :SS
County of Yellowstone)

This instrument was signed or acknowledged before me on this 15th day of June, 2023, by Gary Oakland, President of Meadowlark Ranch, Inc.

Sara Lovely
NOTARY PUBLIC FOR THE STATE OF MONTANA



Dated this 21 day of June, 2023.

BELGRADE:

CITY MANAGER
BELGRADE, MONTANA

Neil Cardwell
Neil Cardwell

ATTEST:

Camille Gregory
Camille Gregory
City Clerk
Belgrade, Montana



Stockman Bank

2700 King Ave W • PO Box 80850 • Billings MT 59108-0850
406.655.2700 • Fax 406.655.2727

Issue Date: June 20, 2023

Expiration Date: June 20, 2024 (Can be extended at or near this date for Warranty Purposes)

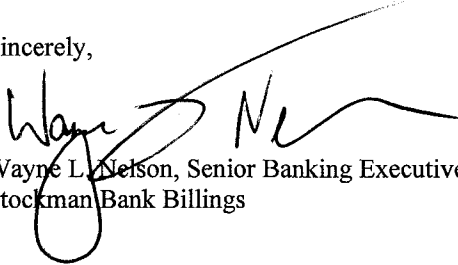
Irrevocable Standby Letter of Credit No. **4090022576**

Account party's name: **Meadowlark Ranch, Inc.**
175 N. 27th St., STE 900
Billings, MT 59101

To: **City of Belgrade**
91 East Central Ave
Belgrade, MT 59714

1. We hereby establish in the favor of the City of Belgrade our Irrevocable Letter of Credit for the account of Meadowlark Ranch, Inc. Available by your drafts at sight up to an aggregate amount of \$912,879.75 US Dollars.
2. Each draft so drawn must be marked "Drawn under Stockman Bank, 2700 King Ave West, Billings, MT Letter of Credit #4090022576 and be accompanied with a signed statement by the beneficiary accompanied with a signed statement by the beneficiary outlining that the account party has failed to complete the required improvements per the Developer Agreement for Phase V Infrastructure.
3. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of Montana.
4. If this Letter of Credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,



Wayne L. Nelson, Senior Banking Executive
Stockman Bank Billings



Member FDIC