

Return to:  
Sanderson Stewart  
1300 North Transtech Way  
Billings, MT 59102

**DEVELOPMENT AGREEMENT  
108 NALL AVENUE  
BOYER GSA BILLINGS**

**THIS AGREEMENT** is made and entered into this 3<sup>rd</sup> day of JANUARY, 2012, by and between **BOYER GSA BILLINGS**, hereinafter referred to as "Owner" and **THE CITY OF BILLINGS**, hereinafter referred to as "City".

**WITNESSETH:**

**WHEREAS**, the Owner owns and desires to develop certain properties described as follows:

Tract 2A of Amended Tract 2, Certificate of Survey 1404 (tax ID #D01749) and portions of Lots 4 and 13, Clark Subdivision, less highway right-of-way (tax ID #D01767), located in the City of Billings, Yellowstone County, Montana.

**WHEREAS**, at a regular meeting conducted on the \_\_\_ day of \_\_\_\_\_, 2012, the City Council conditionally approved the annexation of said property, and,

**WHEREAS**, a development agreement is required by the city of Billings as a condition of said annexation approval, and,

**WHEREAS**, this development agreement shall define what public improvements are required as part of the development.

**WHEREAS**, the provisions of this agreement shall be effective and applicable to the properties described herein, upon the execution of this agreement.

**NOW, THEREFORE**, the undersigned agree as follows:

**I. SITE IMPROVEMENTS**

All site improvements within the above-described property will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, the *Stormwater Management Manual*, and Section 23-407, BMCC and all other applicable City, State, and Federal Codes, Rules, and Regulations.

**II. STREET IMPROVEMENTS**

The City and the owner agree that construction of the street improvements fronting the property as a stand-alone project is not feasible at this time due to lack of storm drain facilities and a comprehensive street design for Nall Avenue.

The Owner will participate in a future Special Improvement District or Private Contract for the construction of the required improvements for that portion of Nall Avenue fronting the property at such time as the City deems it appropriate to construct said improvements. Participation by the owner in the street improvements shall be a fair and equitable cost share of said improvements fronting the property.

The costs of these improvements will be based on current construction costs at the time of the proposed Special Improvement District or Private Contract. Further, these costs include all construction, administrative, engineering, design, construction inspection and administration, permitting, legal and bonding fees associated with the future Special Improvement District or Private Contract.

**III. SANITARY SEWER**

Owner shall extend a sanitary sewer lateral main within the Nall Avenue frontage of the property. Said lateral main shall connect to the existing 54-inch trunk main in Nall Avenue. Owner shall be solely responsible for the cost of sanitary sewer service lines serving Owner's property.

The sanitary sewer lateral main shall be constructed at the time of development of the property.

The property is subject to water and waste water system development and service fees in effect at the time of obtaining said services.

**IV. WATER**

There is an existing 6-inch diameter County owned water main within Nall Avenue. The owner shall replace that portion of the existing 6-inch water main

fronting the property with a new 8-inch water main. A fire hydrant shall be installed near the southerly boundary of the property. Said water main replacement shall include necessary valves and fittings as required by the City of Billings, Public Works department. Owner shall be solely responsible for the cost of water service lines serving Owner's property.

The water main shall be constructed at the time of development of the property.

The property is subject to water and waste water system development and service fees in effect at the time of obtaining said services.

**V. WAIVER OF RIGHT TO PROTEST**

The Owner does hereby waive the right to protest the formation of one or more Special Improvement District or Districts, for the construction of streets, curbs and gutters, sidewalks, driveways, street lights, water lines, sanitary sewer lines, storm sewer lines either within or without the area and other improvements which are required by the City of Billings.

**VI. LEGAL PROVISIONS**

The parties to this development agreement by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.

This agreement is independent from all other agreements and does not supersede or nullify any previous agreements, requirements or obligations. The provisions of any other written agreement between the parties remain in full force and effect, unless specifically modified herein.

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 and shall run with the land.

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.

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.

Owner shall comply with all applicable Federal, State and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations. Owner 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.

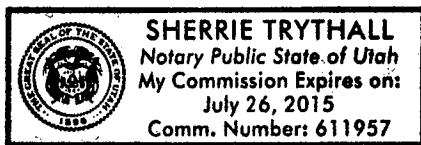
"OWNER"

BOYER GSA BILLINGS

By: *Jacob L. Boyer*  
Its: *Manager*

STATE OF *Utah* )  
County of *Salt Lake* : SS

On this *3rd* day of *January*, <sup>*2012*</sup>~~2011~~, before me, a Notary Public for the State of *Utah*, personally appeared *Jacob L Boyer*, known to me to be the *Manager* of BOYER GSA BILLINGS, who executed the foregoing instrument and acknowledged to me that they executed the same.



*Sherrie Trythall*  
Notary Public for the State of *Utah*  
Residing at *Salt Lake County*  
My commission expires *7/26/15*

