

**Draft**

**PRELIMINARY**

**SUBDIVISION IMPROVEMENTS AGREEMENT**

**AMENDED LOT 2B-1A, BLOCK 2  
SOUTHGATE SUBDIVISION, SECOND FILING**

**CITY OF BILLINGS**

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Draft

## SUBDIVISION IMPROVEMENTS AGREEMENT

### AMENDED LOT 2B-1A, BLOCK 2 SOUTHGATE SUBDIVISION, SECOND FILING

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between **BILLINGS LODGING INVESTORS, LLC**, whose address for the purpose of this agreement is 14 Carriage Way, Missoula, Montana, 59802, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

#### WITNESSETH:

**WHEREAS**, at a regular meeting conducted on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, the City Council conditionally approved a preliminary plat of Amended Lot 2B-1A, Block 2 of Southgate Subdivision, Second Filing; 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 Amended Lot 2B-1A, Block 2 of Southgate Subdivision, Second 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 City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, 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 Council from the strict interpretation of the City's Subdivision Regulations (Section 23.1401, BMCC):

1. None

**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.

C. 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.

D. 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.

E. 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.

### **III. TRANSPORTATION**

#### **A. Streets**

The subdivision fronts the existing Southgate Drive. Southgate Drive has an existing 70-foot-wide right-of-way dedication and is constructed to a paved width of 49 feet from back of curb to back of curb.

No street improvements are required with this subdivision, but are included in the Waiver.

#### **B. Sidewalks**

The right-of-way of Southgate Drive has existing 5-foot-wide curbside along the subdivision frontage.

No sidewalk improvements are required with this subdivision, but are included in the Waiver.

#### **C. Street Lighting**

No street lighting in the Southgate Drive right-of-way exists or is proposed, but is included in the Waiver.

#### **D. Traffic Control Devices**

No traffic control devices are required with this subdivision but are included in the Waiver.

#### **E. Access**

Access to the Subdivision will be from Southgate Drive via the two existing drive approaches located on Lot 2B-1C. A Reciprocal Access Easement will be filed concurrent with the plat for access between the lots. At the time of this Subdivision there are no agreements of record for reciprocal access or parking between the Subdivision and adjacent properties.

#### **F. Billings Area Bikeway and Trail Master Plan (BABTMP)**

The City and Subdivider agree that no BABTMP improvements are required as part of this subdivision.

**G. Public Transit**

No improvements to public transit service are proposed for the subdivision but are included in the Waiver.

**IV. EMERGENCY SERVICE**

Emergency Access to the subdivision is provided by Southgate Drive.

No improvements to emergency access are proposed for this subdivision but are included in the Waiver.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

As a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus and water supply.

**V. STORM DRAINAGE**

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Chapter 28, BMCC, and shall be in accordance with the recommendations of the approved storm drain study to be submitted to the Engineering Division at the time of site development.

No new storm drain service connections to the City system will be allowed for this Subdivision.

## **VI. UTILITIES**

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Developer/Owner acknowledges that the Subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

It is acknowledged that all fees stated above are subject to the Franchise Fee in effect at the time of payment.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

### **A. Water**

The subdivision is currently served by a public water main located in Southgate Drive.

Lot 2B-1C has an existing 4-inch domestic water service to the lot from the main located in Southgate Drive.

Lot 2B-1D will receive domestic water service and fire water service from connections to the City of Billings 12-inch water main in Southgate Drive.

No new improvements to the existing water mains are proposed at this time but are included in the Waiver.

### **B. Sanitary Sewer**

The subdivision is currently served by a sanitary sewer main located in Southgate Drive.

Lot 2B-1C has an existing 6-inch sanitary sewer service to the lot from the existing main.

Lot 2B-1D will receive sanitary sewer service by a proposed connection to the existing 12-inch main in Southgate Drive.

No new improvements to the existing sanitary sewer mains are proposed at this time but are included in the Waiver.

**C. Power, Telephone, Gas, and Cable Television**

Power, telephone, gas and cable television service currently exists to the subdivision. Appropriate utility easements will be provided across the subdivision lots for service to the proposed development.

**VII. PARKS/OPEN SPACE**

Pursuant to Section 76-3-621(3)(b), M.C.A. and the City of Billings subdivision regulations, there is no parkland requirement for this non-residential subdivision.

**VIII. SOILS/GEOTECHNICAL STUDY**

A geotechnical study is not required at the time of this subdivision. Site specific geotechnical studies will be required prior to any new construction on the lots.

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.

**IX. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender. 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 Engineer and Utility Department Manager.

**X. LEGAL PROVISIONS**

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- 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.





