

SUBDIVISION IMPROVEMENTS AGREEMENT
Zimmerman Home Place Subdivision, Second Filing
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City of Billings

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SUBDIVISION IMPROVEMENTS AGREEMENT

Zimmerman Home Place Subdivision, Second Filing

This agreement is made and entered into this ____ day of _____, 20__, by and between *BILLINGS OPPORTUNITIES, LLC*, whose address for the purpose of this agreement is **P.O. Box 6000; Butte, Montana 59702**, 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 ____ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of *Zimmerman Home Place Subdivision, Second Filing*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *Zimmerman Home Place 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 *Zimmerman Home Place 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. No variance request is being made as part of this development.

II. CONDITIONS THAT RUN WITH THE LAND

- A. 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. Currently all permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

- B.** 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 may need to protect young 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.** No water shares have been transferred to the individual 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 unless otherwise noted herein. All water shares associated with the property will be transferred to the Owner's Association.
- D.** There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts (SID) 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.** The Subdivider and subsequent contractors/builders acknowledge that a Stormwater Pollution and Prevention Plan (SWPPP) may be required to be filed with the City and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- F.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- G.** Lots 1 and 10, Block 5 of Zimmerman Home Place Subdivision, Second Filing will be responsible for landscaping the boulevard along Grand Avenue at the time of lot development in accordance with the City of Billings' Unified Zoning Regulations.

III. TRANSPORTATION

A. Streets

- Right-of-Way widths of 56 feet, 70 feet and 80 feet have already been dedicated for Avenue D, Avenue E and Green Valley Drive as part of Zimmerman Home Place Subdivision, 1st Filing (Document No. 3811344). No additional right-of-way is being dedicated as part of this filing.

- The Subdivider will execute a private contract to construct the public streets within the Subdivision.
 - Avenue D shall be 34 feet back-of-curb to back-of-curb;
 - Avenue E shall be 45 feet back-of-curb to back-of-curb west of Green Valley Drive. Subdivider shall complete the construction of the southern half of the existing road surface of Avenue E contained within Certificate of Survey 3457;
 - Green Valley Drive shall be 45 feet back-of-curb to back-of-curb.
- These internal access roads shall be built to grade with a satisfactory subbase, base course, curb and gutter and asphalt surface. All streets shall be built in accordance with the City of Billings' site development ordinance and City Subdivision regulations.
- Grand Avenue is designated by the City as a Principal Arterial and has been built to these standards including utilities. Zimmerman Trail is designated by the City as a Principal Arterial and has been built to these standards including utilities. Widening of Zimmerman Trail is not required at the time of this agreement, however, future widening is included in the waiver of right to protest.

No other off-site street widening will be required by the Subdivider.

B. Sidewalks

- The Subdivider will install, within the private contract, corner intersection handicap ramps and aprons and sidewalk adjacent to the stormwater detention property. Subdivider will grade all street frontages for sidewalk finished grades.
- Individual lot owners will be responsible for the construction of the sidewalks within the public right-of-way adjacent to their lot at the time of lot development and shall be included in each building permit. Sidewalks shall be 5-foot wide with a 5-foot boulevard planting strip between the sidewalk and the curb.

C. Street Lighting

- No street lighting is proposed for the internal roads within the development, however, street lighting is included in the waiver of right to protest.

D. Traffic Control Devices

- The Subdivider shall furnish and install street name signs for streets within the subdivision or located immediately adjacent thereto in accordance with the specifications of the City of Billings Public Works and Fire Department.

- No traffic signals are required within this subdivision at the time of development. However, future intersection improvements are include with the waiver of right to protest.
- The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.
- A traffic accessibility study has been completed for Zimmerman Home Place Subdivision and submitted as part of this filing. Based on the additional lots created with Zimmerman Home Place Subdivision, Second Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

| | | |
|-----------------------------------|--------------|---------------------|
| Rimrock Road/Zimmerman Trail | 6.69% | \$16,736.00 |
| Poly Drive/Zimmerman Trail | 10.37% | \$25,924.00 |
| Grand Avenue/Zimmerman Trail | 10.04% | \$25,104.00 |
| Broadwater Avenue/Zimmerman Trail | 6.69% | \$16,736.00 |
| Poly Drive/Rehberg Lane | 2.56% | \$6,399.00 |
| Grand Avenue/Rehberg Lane | 2.30% | \$5,743.00 |
| Grand Avenue/Shiloh Road | 5.51% | \$13,783.00 |
| | Total | \$110,425.00 |

It has been assumed that improvements at each intersection will cost \$250,000.00. The Subdivider shall contribute \$110,425.00 to these intersections. These cash contributions for the intersection improvements will be made prior to final plat approval.

- Impacts at the internal intersection of Green Valley Drive and Avenue E are unknown at the time of this agreement. However, if at a future date intersection improvements at Green Valley Drive and Avenue E are warranted, each lot will be required to participate in their proportionate share of improvement costs as part of the waiver of right to protest.

E. Access

- Access to the subdivision is provided by Grand Avenue, Zimmerman Trail, Avenue E, Green Valley Drive and a potential future connection to Avenue D.
- A no access strip shall be provided along Grand Avenue, with an opening at the existing approach location, as indicated on the final plat.
- A controlled access strip will be provided along the frontage of Zimmerman Trail, with openings at the approach locations as indicated on the final plat.

F. Billings Area Bikeway and Trails Master Plan (BABTMP)

- This subdivision is located within the jurisdictional area of the BABTMP. There is an existing multi-use trail along the east side of Zimmerman Trail. No improvements are required at this time for the subdivision.

G. Public Transit

- This subdivision does not require improvements to ensure public transit service. The nearest transit stop is at the intersection of Grand Avenue and Golden Valley Circle.

IV. EMERGENCY SERVICES

The Billings Fire Department currently provides fire protection services for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to meet fire suppression requirements. Prior to 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.

At 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 an 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 apparatus access and water supply.

Private fire hydrants may be required to satisfy the distance requirements as stated above. Should private fire hydrants be required, the subdivision HOA will be responsible for the maintenance of the hydrants.

V. STORM DRAINAGE

A complete stormwater management plan shall be submitted to the City Engineering Division for review and approval at the time of development. The storm drainage system shall consist of a curb and gutter surface collection and curb inlets that drain into storm drainage piping. The storm drain piping will discharge into a detention facility located in Lot 1, Block 4 located in the southwest corner of the subdivision. The stormwater will be released from the detention facility into existing City storm drains located in Grand Avenue. All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development.

A Home Owners Associations (HOA) shall be responsible for the operation and maintenance of any flow-based treatment device and the detention facility. Operation and maintenance requirements and HOA maintenance and fiscal responsibilities shall be outlined within the Zimmerman Home Place Subdivision, Second Filing Operation and Maintenance Manual.

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 City of Billings Public Works Department – Engineering Division. The extension of/connection to water mains and sanitary sewers is subject to the approval conditions of the applications. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any plans and specifications. The appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

The Subdivider/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 or when a building permit is issued for new construction.

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 water system will consist of new 12-inch water mains in Green Valley Drive, Avenue E and an 8-inch water main in Avenue D. The 12-inch water mains will connect to existing stubs that terminate at the subdivision boundaries. New water services will be installed to the public right-of-way boundary for all lots in Block 4 and Lots 6-10 (inclusive) of Block 5. Individual lot owners will be responsible for extending these services to their properties/buildings at the time of development. Lot 4 of Block 5 will connect to the water main located in Zimmerman Trail and will be constructed by the individual lot owner at the time of development. Lots 1 and 3 of Block 5 will connect to the existing service stub outs along Grand Avenue and Zimmerman Trail.

B. Sanitary Sewer

Sanitary Sewer service to the subdivision will be provided by connecting to the existing 12-inch inch sanitary sewer main stub out at the intersection of Grand Avenue and Green Valley Drive. The subdivision sanitary sewer system will consist of new 10-inch sanitary sewer main in Green Valley Drive to the intersection of Avenue E and Green Valley Drive, and new 8-inch sanitary sewer mains in Avenue E and Avenue D. The 10-inch sanitary sewer main will connect to an existing 12-inch sanitary sewer main stub out located in Green Valley Drive that currently terminates at the southern edge of the proposed subdivision. New sanitary sewer services will be installed to the public right-of-way boundary for all lots in Block 4 and Lots 6-10 (inclusive) of Block 5. Individual lot owners will be responsible for extending these services to their properties/buildings at the time of development. Lots 4 and 5 of Block 5 will connect to the existing sewer main located in Zimmerman Trail or Avenue E and will be constructed by the individual lot owners at the time of development. Lots 1 and 3 of Block 5 will connect to the existing service stub outs along Grand Avenue and Zimmerman Trail.

C. Power, Telephone, Gas, and Cable Television

Private utility facilities currently exist to serve the subdivision. Power, natural gas, telephone, and cable will all be located within the right-of-way and utility easements shown on the plat.

VII. PARKS/OPEN SPACE

A parkland dedication is not required for this subdivision per 76-3-621(3)(b) MCA as all the parcels are nonresidential.

VIII. IRRIGATION

Irrigation laterals exist on the subdivision for use on the site. No water shares have been transferred to the individual 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 unless otherwise

noted herein. All water shares associated with the property will be transferred to the Owner's Association.

IX. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study has been performed for the subdivision. The report dated July 7, 2017 is available for review at the City of Billings Planning Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

X. PHASING IMPROVEMENTS

There are no intended phasing improvements.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract 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 private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. 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,

Waiver of Right to Protest

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings 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 Yellowstone County, Montana.

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

Zimmerman Home Place Subdivision, Second Filing

Signed and dated this 30th day of October, 20 18.

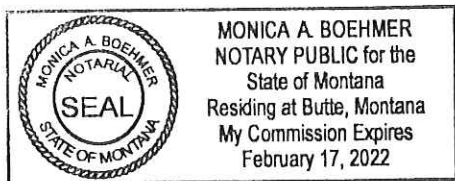
By: *Billings Opportunities, LLC*
[Signature]

Its: *Construction & Dev. Mgr*

STATE OF MONTANA)
 : ss
County of Silver Bow)

This record was acknowledged before me on this 30th day of October, 20 18 by *Dean Sampson*.

Monica Boehmer
Signature of notarial officer



Paralegal
Title of officer (if not shown in stamp)

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 20__.

“CITY”
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____, and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____