

# DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** is made this \_\_\_\_ day of June, 2019, by and between **Christopher P. Birkle**, whose address for the purpose of this agreement is 510 Pemberton Lane, Billings, MT, 59105, hereinafter referred to as “Landowner” and The **CITY OF BILLINGS**, Montana, a municipal corporation, c/o City Hall, Billings, Montana, 59101, hereinafter referred to as “City.”

**WHEREAS**, Landowner is the owner of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

1.59 acres, Holling Ranch Subd., S15 T01 N, R26 E, Lot A,  
Yellowstone County, MT, hereinafter referred to as “Property.”

**WHEREAS**, Landowner has indicated his wish to change the use of Property from its current native state to a for-profit open storage area, hereinafter referred to as “Business.” As requested by City, Landowner has submitted a Stormwater Management Plan for Property, hereinafter referred to as “Plan,” *attached hereto as Exhibit A*.

**WHEREAS**, City has approved Plan, contingent only upon execution of this Development Agreement between City and Landowner.

**WHEREAS**, Landowner has indicated to City that Business is designed to be a catalyst for future development of Property beyond Plan. More specifically, Landowner currently envisions mixed-use facilities, similar to the newly built apartments with retail on ground level, located at Shiloh and Central Avenue. The retail portion would cater to residential needs from residents on Property and surrounding areas, including from possible future residential developments North of Pemberton Lane.

**WHEREAS**, Considering Property’s proximity to Lake Elmo State Park, Landowner and City mutually agree that determining the ultimate development of Property should be done in the spirit of cooperation and good faith between the parties.

City and Landowner agree that the foregoing terms and recitals are material to this Development Agreement, and that each party has relied on the material nature of such terms and recitals in entering into this Development Agreement.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

- A. Term of Agreement.** This Development Agreement shall be effective for a period of Ten (10) years from the date it is fully executed, unless extended or shortened by mutual agreement of Landowner and City.
- B. Timeline.** On an annual basis starting from the date this Agreement is fully executed, Landowner and City shall, orally or in writing, discuss plans for the ultimate development

of Property. Except for items 1 and 2 below, Landowner shall have the right to develop Property in such order and at such rate and at such times as Landowner deems appropriate within the exercise of his subjective business judgment. The future installation of off-site improvements shall be completed as follows:

- 1) **Landscaping.** When Property is further developed beyond Plan, but no later than two (2) years from the date this Agreement is fully executed, landscaping shall be installed along the frontage of Property in accordance with City regulations in affect at the time of development.
  - 2) **Curb, Gutter, Sidewalks.** When Property is further developed beyond Plan, but no later than four (4) years from the date this Agreement is fully executed, curb and gutter, necessary street widening and a 5-foot boulevard sidewalk meeting City standards shall be constructed along the frontage of Property. Landowner shall be responsible for associated costs; City may share cost of construction of a multi-use path along Pemberton Lane.
  - 3) **Sanitary Sewer.** When Property is further developed beyond Plan and a connection to the City sanitary sewer system is desired or required, Landowner shall be responsible for associated costs of connection, including payment of system development fees and connection permit fees at the time of sewer connection.
  - 4) **Water.** When Property is further developed beyond Plan and a connection to the Billings Heights Water District system is desired or required, Landowner shall be responsible for associated costs of connection, including payment of system development fees and connection permit fees at the time of water connection.
  - 5) **Storm Water.** City acknowledges that Plan is in full compliance with all federal, state, and local statutes, regulations and requirements of the City of Billings Stormwater Management Manual (2018). Any future development shall have to be in compliance with the City of Billings Stormwater Management Manual in affect at the time of development.
- C. **Other Public Improvements.** For any other improvement not specifically listed in this Agreement, Landowner shall execute a Waiver waiving the right to protest the creation of one or more Special Improvement District(s).
- D. **Vested Rights of Landowner.** During the term of this Development Agreement, in developing Property consistent with Plan, Landowner, his successors and assigns, is assured, and City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in Landowner, his successors and assigns, and may not be changed or modified by any legislative act by City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement,

including the Exhibits hereto, or as expressly consented thereto by Landowner, his successors and assigns.

- E. **Compliance.** Nothing herein shall be deemed to exempt the Property from compliance with any current or future City laws, rules, regulations, or policies that are applicable to the development, redevelopment, or use of Property.
- F. **Covenant of Good Faith and Fair Dealing.** Each Party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other Party can be enjoyed and no Party shall take any action that will deprive the other Parties of the enjoyment of the rights secured through this Agreement.
- G. **Minor Modifications.** Minor modifications from the approved permits or the Exhibits attached hereto or to future developments may be approved by City staff and shall be entitled to administratively approve minor amendments to this Agreement without an amendment to this Agreement.
- H. **Runs with Land.** The covenants, agreements, and all statements in this Agreement and in the incorporated and attached Waiver shall run with the land for the term of the Agreement and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties.
- I. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.
- J. **Attorney's Fees.** 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, then the prevailing party shall be entitled to reasonable attorney fees and costs, including those fees and costs of in-house counsel and fees and costs if Landowner is self-represented, self-representation fees to be based on eighty dollars (\$80) per hour.
- K. **Termination.** Landowner only shall have the right to terminate this Agreement, without liability, by giving written notice to City within two (2) years after this Agreement is fully executed.
- L. **Effect of Termination.** If Landowner elects to terminate this Agreement, Landowner shall install curb, gutter, and necessary street widening and a 5-foot boulevard sidewalk meeting City standards along the frontage of Property prior to one (1) year from the date of Landowner's written termination. Landowner shall be responsible for associated costs.
- M. **Amendments and Modifications.** Any amendments or modifications of this Agreement 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.

- N. **Transfer of Ownership.** In the event of transfer of ownership of all or any portion of the Property, the benefits accruing to, and the obligations placed upon the Landowner under this Agreement shall run with the land and title to Property and inure to the benefit of, and be binding upon each person having any right or title or other legal interest in Property with respect to that party's interest in Property. This Agreement shall be deemed to create privity of contract and estate with and among all persons and entities acquiring any interest in the Property subsequent to the date hereof.
- O. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the state of Montana.
- P. **Counterparts.** This Agreement may be executed in counterparts, with each Party sending a .pdf of its signature to the other Party via email transmission. This Agreement, when fully executed and signature pages exchanged as provided herein shall be effective as the original document.
- Q. **Entirety.** This Agreement constitutes the entire Agreement between City and Landowner, and any other Agreements between the parties, unless reduced to writing and executed by the parties shall be null and void.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

“Landowner”

By: \_\_\_\_\_  
Christopher P. Birkle

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the persons who executed the foregoing instrument as the Landowner of 510 Pemberton Lane, Billings, Montana and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at Billings, Yellowstone County,  
Montana  
My commission expires: \_\_\_\_\_

This agreement is hereby approved and accepted by the City of Billings, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

“CITY”

CITY OF BILLINGS, MONTANA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public 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 in 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 for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at Billings, Yellowstone County,  
Montana  
My commission expires: \_\_\_\_\_

