

Return to:
Performance Engineering, LLC
608 N 29th Street
Billings, MT 59101

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this ____ day of _____, 20____, by and between BCJM Properties, LLC, 2409 Nina Clare Rd., Billings, MT 59102 hereinafter referred to as "DEVELOPER," and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, 210 North 27th Street, Billings, Montana, 59101, hereinafter referred to as the "CITY." DEVELOPER and CITY are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties."

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

The remainder of Tract 2A-1, of Certificate of Survey No. 2317, 2nd Amended, recorded June 9, 2005, under Document No. 3335995, on file and of record in the Records of Yellowstone County, also being Yellowstone County islands wholly surrounded by the City of Billings city limits created by Resolution No. 85-14995, as approved by the City of Billings City Council August 5, 1985, Resolution No. 93-16756, as approved by the City of Billings City Council October 4, 1993 and Resolution No. 03-18013, as approved by the City of Billings City Council August 25, 2003 hereinafter referred to as "Developer Tract"

WHEREAS, DEVELOPER has submitted to the City a Petition for Annexation to the City for Developer Tract; and

WHEREAS, DEVELOPER desires to annex Developer Tract into the City; and

WHEREAS, DEVELOPER is proposing to develop the Developer Tract in one phase as shown in Exhibit A of this document: and

WHEREAS, CITY has approved the Petition for Annexation by Resolution No. _____ for the Developer Tract contingent that a Development Agreement,

be executed between CITY and DEVELOPER to identify required off-site infrastructure improvements and guarantees of those improvements.

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

1. Roads and Access. The Developer Tract will be accessed by way of one existing approach along Bitterroot Drive (Empire Drive). The Developer Tract will also be accessed by way of one proposed approach off Mary Street via Hawthorne Lane at the time that the City deems it necessary during subdivision review. All internal roads within Developer Tract will be paved and public.
2. Sanitary Sewer. The Developer Tract will be served by extending an existing sanitary sewer main located in the 2nd Filing of Bitterroot Heights Subdivision. Developer will be responsible for this construction. Sanitary sewer system development fees shall be paid at the time of building permits are issued to each individual residence.
3. Water. The Developer Tract will be served by extending an existing water main along Strapper Lane operated and maintained by the County Water District of Billings Heights.
4. Storm Drain. The DEVELOPER will manage storm drainage within the Developer Tract in accordance with the City of Billings Stormwater Management Manual (2018).
5. Right-of-Way. No dedication of right-of-way is required from the Developer Tracts.
6. Street Widening. Hawthorne Lane shall be widened to a 30-foot asphalt road at the time of development of Development Tracts.
7. Future Intersection Contributions. If subdivided in the future, DEVELOPER will be required to submit a traffic impact study in accordance with the City of Billings Subdivision Regulations. This will determine, if necessary, any cash-in-lieu contributions toward the improvement costs associated with any future intersection improvements.
8. Other Public Improvements. For any other improvements not specifically listed in this Agreement, the CITY shall rely on the attached Waiver filed concurrently herewith, to ensure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, street

construction and paving, curb, gutter, sidewalks, driveways, storm drainage, and street lighting. The attached Waiver, waiving the right to protest the creation of one or more Special Improvement Districts, by this reference is expressly incorporated herein and part hereof.

8. Compliance. Nothing herein shall be deemed to exempt the Developer Tracts from compliance with any current or future City laws, rules, regulations, or policies that are applicable to the development, redevelopment, or use of the subject property.
9. Runs with Land. The covenants, agreements, and all statements in this Agreement and in the incorporated and attached Waiver shall run with the land and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.
10. 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 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, including those fees and costs of in-house counsel.
11. 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.

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

“DEVELOPER”

BCJM Properties, LLC

By: _____

Title: _____

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 _____, known to me to be the person who signed the foregoing instrument as the _____ of BCJM Properties, LLC, and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of Montana

Printed name: _____

Residing at: _____

My commission expires: _____

WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, Owner of the hereinafter described real property, does hereby waive the right to protest the formation of one or more Special Improvement Districts (SID) for the construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area and other incidental improvements which the City of Billings may require.

The Waiver and Agreement shall run with the land and shall be binding upon the undersigned, its successors and assigns, and shall be recorded in the office of County Clerk and Recorder of Yellowstone County, Montana.

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

The remainder of Tract 2A-1, of Certificate of Survey No. 2317, 2nd Amended, recorded June 9, 2005, under Document No. 3335995, on file and of record in the Records of Yellowstone County, also being Yellowstone County islands wholly surrounded by the City of Billings city limits created by Resolution No. 85-14995, as approved by the City of Billings City Council August 5, 1985, Resolution No. 93-16756, as approved by the City of Billings City Council October 4, 1993 and Resolution No. 03-18013, as approved by the City of Billings City Council August 25, 2003, Yellowstone County, Montana.

“DEVELOPER”

BCJM Properties, LLC

By: _____

Title: _____

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 _____, known to me to be the person who signed the foregoing instrument as the _____ of BCJM Properties, LLC, and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of Montana

Printed name: _____

Residing at: _____

My commission expires: _____