

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 Aviation Properties, LLC, 6309 Jellison Road, Billings, MT 59101 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:

Tract 14A of Certificate of Survey No. 2037 Amended (Document No. \_\_\_\_\_), of which plat is on file and recorded at the Yellowstone County Clerk and Recorder's Office. Above referenced property is 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 to the City; and

**WHEREAS**, DEVELOPER is proposing to develop the Developer Tract in phases over time; and

**WHEREAS**, CITY has approved the Petition for Annexation by Resolution No. \_\_\_\_\_ for the Developer Tract contingent upon a Development Agreement being 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 approaches along Montana State Highway 3. Said approaches must be reviewed and approved by the Montana Department of Transportation (MDT) and City of Billings, who may require a traffic impact study at the time of development. The approach for AJ Way is existing but will be improved to meet City of Billings standards. The approaches must be meet current MDT and City codes and regulations at the time of construction.
2. Sanitary Sewer. The Developer Tract will be served by proposed sanitary sewer improvements that will discharge to the existing sanitary sewer collection system in Stoney Ridge Road. DEVELOPER will be responsible for connecting the discharge line into the existing sewer manhole. Should the City of Billings extend sanitary sewer along Tract 14A's State Highway 3 frontage in the future, DEVELOPER and/or individual lot owners waive the right to protest being included in a Special Improvement District (SID) for the proportionate share of said cost. All of Tract 14A can be assessed for installation of sanitary sewer along the State Highway 3 frontage of Tract 14A. DEVELOPER shall be responsible for payment of the City wastewater system development fee prior to the issuance of any building permits.
3. Water. The Developer Tract will be served by proposed water lines connecting to the existing 12" distribution line owned by the City of Billings along State Highway 3. Water line sizes will be determined at the time of development and submitted to the City of Billings for approval. DEVELOPER shall be responsible for payment of the City water system development fee prior to the issuance of any building permits.
4. Storm Drain. The DEVELOPER will manage storm drainage within the Developer Tract in accordance with the City of Billings Stormwater Management Manual (2018). If storm drain is extended along the frontage of Tract 14A in Highway 3, all of Tract 14A can be assessed for the proportionate share of storm drain.
5. Right-of-Way. Public Right-of-Way will be dedicated to the City of Billings per the 2018 Billings Urban Area Long Range Transportation Plan and in accordance with the City of Billings Subdivision Regulations. Said plan calls for a collector road along the western boundary line of Tract 14A of COS 2037 Amended. Right-of-Way outside that listed above will be dedicated at time of future subdivision or development.
6. Street Construction and Widening. DEVELOPER will be required at the time of development to widen the existing paved roadway (AJ Way) along the

western side of Tract 14A to meet the City of Billings standard requirements for roadways. A geotechnical report will be submitted to City Engineering to determine if the existing section of AJ Way meets City requirements. Similarly, at the time of development of each additional tract included in the Developer Tract, roadway conforming to the City of Billings standard requirements for roadways shall be constructed by the DEVELOPER.

An 8 to 10 foot sidewalk or trail along the north side of State Highway 3 will be constructed in the future. DEVELOPER and/or individual lot owners waive the right to protest being included in a Special Improvement District (SID) for the proportionate share of said cost. All of the Developer Tract can be assessed for installation of the sidewalk/trail along the State Highway 3 frontage of Developer Tract. The development shall be responsible for the maintenance of the sidewalk/trail after construction.

7. Future Intersection Contributions. A traffic impact study will be performed at the time of future subdivision and/or development to determine DEVELOPER contributions to 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, participation in a pedestrian underpass crossing State Highway 3, 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. All of the Developer properties can be included in a Special Improvements District for improvements identified in Development Agreement regardless of location of individual properties in relation to the improvements.
9. Compliance. Nothing herein shall be deemed to exempt the Developer Tract 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.
10. 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.

11. 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.
  
12. 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”

Aviation 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 Aviation 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, Highway 3 pedestrian crossing, and other 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:

Tract 14A of Certificate of Survey No. 2037 Amended (Document No. \_\_\_\_\_), of which plat is on file and recorded at the Yellowstone County Clerk and Recorder's Office.

"DEVELOPER"

Aviation 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 Aviation 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: \_\_\_\_\_