

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 Torgerson's Real Estate Holdings, LLC, 4701 River Drive North, Great Falls, MT 59405 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:

Lots 2 & 3 of Certificate of Survey No. 2394, of which plats are on file and recorded at the Yellowstone County Clerk and Recorder's Office. Above referenced properties are hereinafter referred to as "Developer Tracts"

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

WHEREAS, DEVELOPER desires to annex Developer Tracts to the City; and

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

WHEREAS, CITY has approved the Petition for Annexation by Resolution No. _____ for the Developer Tracts 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 Tracts will be accessed by way of approaches along South Frontage Road. Said approaches must be reviewed and approved by the Montana Department of Transportation (MDT) and City of Billings, who will require a traffic impact study at the time of development. The traffic study shall be prepared and paid for by DEVELOPER. The approaches must meet current MDT and City codes and regulations.
2. Sanitary Sewer. The Developer Tracts will be served by the existing sanitary sewer main in South Frontage Road. DEVELOPER will be responsible for connecting sewer services to the sanitary sewer main in South Frontage Road. DEVELOPER shall be responsible for payment of the City wastewater system development fee prior to the issuance of any building permits. Improvement plans must be submitted to the City of Billings and Montana Department of Transportation for approval.
3. Water. The Developer Tracts will be served by a proposed water line extension connecting to the existing 12-inch distribution line owned by the City of Billings on located in the northeast and northwest corners of the Developer Tracts. The proposed water line extension will be 12-inch distribution line across the frontage of the Developer Tracts in South Frontage Road. Improvement plans must be submitted to the City of Billings and Montana Department of Transportation for approval.
4. Storm Drain. The DEVELOPER will manage storm drainage within the Developer Tracts in accordance with the City of Billings Stormwater Management Manual (2018). Stormwater services will be connected to the City-County Storm Drain located in South Frontage Road. Improvement plans must be submitted to the City of Billings and Montana Department of Transportation for approval.
5. Right-of-Way. 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.
6. Street Construction and Widening. DEVELOPER will be required to complete a traffic impact study at the time of development that will determine required improvements to South Frontage Road. Traffic impact study will be submitted for review and approval by the City of Billings and Montana Department of Transportation. The traffic study shall be prepared and paid for by DEVELOPER.

7. Multi-use Trail. DEVELOPER will be required to construct a 10-foot wide multi-use trail along the Frontage Road. This can be located within or outside of the Frontage Road right of way. The path shall be constructed at the time of lot development. The development shall be responsible for the maintenance of the sidewalk/trail after construction. DEVELOPER will be required to grant the City of Billings a 20-foot wide easement along the western portion of the property for a future multi-use trail. DEVELOPER will be required to grant the City of Billings a 30-foot wide easement along the southern portion of the property that is buildable for a future multi-use trail. The easement would allow the construction of a multi-use trail along with amenities associated with the trail.
8. Future Intersection Contributions. A traffic impact study will be performed at the time of development to determine DEVELOPER contributions to future intersection improvements.
9. 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.
10. Building Code Compliance. Where lot lines conflict with code compliance a Certificate of Occupancy shall not be issued until the permitted building meets all code requirements which may necessitate a Boundary Line Relocation which shall be filed with the Yellowstone County Clerk and Recorder.
11. 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.
12. 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.
13. 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.

14. *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”

Torgerson’s Real Estate Holdings, 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 Torgerson’s Real Estate Holdings, 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: _____

This Agreement is hereby approved and accepted by 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 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: _____

Approved as to Form:

City Attorney

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 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:

Tracts 2 & 3 of Certificate of Survey No. 2394, of which plats are on file and recorded at the Yellowstone County Clerk and Recorder's Office.

"DEVELOPER"

Torgerson's Real Estate Holdings, 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 Torgerson's Real Estate Holdings, 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: _____