

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FURTURE SPECIAL IMPROVEMENT
DISTRICTS
YELLOWSTONE LANDING COMMERCIAL PARK SUBDIVISION**

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(City of Billings)**

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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS**

YELLOWSTONE LANDING COMMERCIAL PARK SUBDIVISION

This agreement is made and entered this 6th day of October, 2021, by and between *Aviation Properties, LLC*, whose address for the purpose of this agreement is **6309 Jellison Road, Billings, Montana, 59101**, 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 *Yellowstone Landing Commercial Park Subdivision*; and

WHEREAS, at a regular meeting conducted on ___ day of _____, 20___, the City Council conditionally approved a preliminary plat of *Yellowstone Landing Commercial Park Subdivision*; 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 *Yellowstone Landing Commercial Park Subdivision* 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

Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City’s Subdivision Regulations (Section 23.1101, BMCC):

1. *No variances are requested as part of this Subdivision.*

II. Property Conditions and Information for Lot Purchasers

- A.** Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. If sidewalk is not constructed within 5 years from the date of each subdivision phase opening, the City has the right to construct the sidewalk and assess the property owners.
- 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 lot owners will experience problems with damage to 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.** 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. Additional geotechnical studies may be required by the City of Billings Building Department and Engineering Division at the time of individual lot development to acquire a Building Permit.
- D.** No water rights have been transferred to the lot owners.
- E.** There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which 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.
- F.** The subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) 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.
- G.** 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.

- H. Lot owners should be aware of Agreement between Subdivider and Neighboring Property Owners entered into September, 2016, of which a copy shall be provided by the Subdivider prior to property closing and an abstract is recorded under Document No. 3790799 at the Yellowstone County Clerk and Recorder's Office. Terms and duration of the Agreement are binding to Lot Owners and include requirements pertaining to building color, lighting, noise, and landscaping. Any requirements not explicitly addressed in said agreement shall comply with the current City of Billings Zoning Code.
- I. Lot owners shall be aware of and comply with Federal Aviation Administration requirements pertaining to building requirements as agreed to in the Perpetual Air Rights Easement for the Property.

III. Transportation

A. Streets

- Subdivider will execute a private contract to construct public streets, curb and gutter, and some sidewalks within the public Right-of-Way (ROW) dedicated in conjunction with the Subdivision (60' along AJ Way, 70' along Supercub Way and Huey Way) as well as adjacent properties (14' along Tract 1B of COS 1889 Amended and Tract 2 of COS 1889). The improvements will consist of constructing a collector roadway (45' TBC-TBC) from State Highway 3 to the Subdivision extents along AJ Way, and a local commercial roadway (45' TBC-TBC) along the interior of the Subdivision. Dedicated ROW widths will be per the City of Billings Subdivision Regulations.
- Standard curb and gutter will be installed along roadways within the Subdivision. Extent of curb and gutter within Montana Department of Transportation (MDT) Right-of-Way will be determined based on findings from the Traffic Impact Study and MDT approval.
- All streets will be provided with asphalt concrete driving surface.

B. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks along their lot frontages at the time of lot construction 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. Subdivider will install, within the private contract, corner intersection handicap ramps and aprons.
- An 8-foot sidewalk along the north side of State Highway 3 will be constructed in the future. Subdivider 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 lots within *Yellowstone*

Landing Commercial Park Subdivision can be assessed for installation of the sidewalk/trail along the State Highway 3 frontage of the subdivision. The Subdivider shall be responsible for the maintenance of the sidewalk/trail after construction.

C. Street Lighting

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

D. Traffic Control Devices

- Subdivider will install necessary traffic control devices within or adjacent to the Subdivision in conformance with the City of Billings and Montana Department of Transportation standards.
- Street name signs for streets within the Subdivision, or located immediately adjacent thereto, shall be furnished and installed by the subdivider in accordance with the specifications of the City of Billings standards.
- Subdivider shall provide a Traffic Impact Study (TIS) to MDT and City Engineering for review and approval, identifying any off-site contributions. Subdivider is responsible for the cost of the TIS and any off-site contributions identified in the TIS.

E. Access

- The Subdivision will be accessed via two approaches off State Highway 3. The approaches will be located at, or in the immediate vicinity of, the existing paved approaches accessing the Subdivision. A 1-foot no-access easement is proposed along the south property line of those lots adjacent to State Highway 3.
- Approaches will be designed to comply with MDT rules and regulations and shall be approved and permitted by MDT prior to construction.
- Improvements to State Highway 3 and approach sizing will be determined based on a TIS prepared for the Subdivision by the Subdivider and submitted to the City of Billings and MDT for review and approval.
- The Subdivider will construct a center turn lane on State Highway 3 to serve AJ Way that will be inspected and approved by the City of Billings and MDT prior to the release of deed restrictions for Phase II of the subdivision. The Subdivider will construct a center turn lane on State Highway 3 to serve Huey Way that will be inspected and approved by the City of Billings and MDT prior to the release of deed restrictions for Phase III of the subdivision. The subdivider is responsible for all costs associated with the improvements and for obtaining all necessary permits.

F. Billings Area Bikeway and Trail Master Plan

- The Billings Area Bikeway and Trails Master Plan does not identify any pathways or trails internal or connecting to the Subdivision.

G. Public Transit

- Met Transit provides service to the City of Billings, with the closest route including a pick-up and drop-off area located in the Airport, approximately 1.85 miles from the Subdivision. No improvements are required to ensure public transit service.

IV. Emergency Service

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the 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 the 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 fire apparatus access and water supply.
- Should a terminated roadway during Subdivision phasing exceed 150' in length and there be no other approved means for apparatus turnaround on individual lots, a fire apparatus turnaround shall be installed at the termination point of roadways between each Subdivision phase.
- No fire apparatus turnaround is required along AJ Way as the roadway extends as a private road north of the Subdivision and fire apparatus' are able to turnaround outside Subdivision extents.

V. Storm Drainage

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 complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

- Stormwater runoff from all of the right-of-way and all of Lot 1, Block 2, within the Subdivision shall be directed and conveyed via pipes, curbs and gutters to a detention facility located on Lot 3, Block 2 where it will be detained and pumped in accordance with the Stormwater Management Manual and the approved Subdivision Comprehensive Drainage Plan.

Said improvements are collectively referred to as the Subdivision Collection and Storage System.

- All other lots within the subdivision, including Lot 3, Block 2 will be required to size and construct onsite stormwater facilities in accordance with the Stormwater Management Manual in effect at the time of individual lot development. If any lot within the Subdivision other than Lot 1, Block 2 wishes to utilize the Subdivision Collection and Storage System for stormwater purposes, the capacity of the Subdivision Collection and Storage System shall be reevaluated and resized as necessary.
- The Subdivision Collection and Storage System shall be maintained by a Homeowner's Association (HOA). Subdivider shall provide a HOA Storm Water Facility Maintenance Agreement for review and approval prior to acceptance of the Subdivision. This Agreement shall outline the maintenance responsibilities of the Subdivision Collection and Storage System.

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 Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development in effect at the time building permits are issued.

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

- 12-inch water mains to serve the Subdivision shall be installed by the Subdivider along AJ Way, Supercub Way, and Huey Way, and connect to the existing 12-inch water main located in State Highway 3.

B. Sanitary Sewer

- The sanitary sewer system for the Subdivision will be installed by the Subdivider and will consist of a low-pressure sanitary sewer force main (size to be determined by Subdivider and approved by the Public Works Engineering Division) and 8-inch gravity sewer main. The 8-inch gravity

sewer main will be constructed along AJ Way from a new connection to the existing manhole in Stoney Ridge Road to the point where depth of cover of the pipeline becomes infeasible. From this point, low-pressure sanitary sewer force main will be constructed along AJ Way to the northern extent of the subdivision and Supercub Way to the extent necessary to serve Lot 7 of Block 1.

- Should the City extend a sanitary sewer main along the subdivision frontage on State Highway 3 east of AJ Way, the Subdivider waives the right to protest inclusion in a Special Improvement District to assess the proportionate cost of those improvements.

C. Power, Telephone, Gas, and Cable Television

- Existing power, natural gas, and communication utilities exist within the Subdivision boundary. Mainlines for each utility will be installed by the private utility companies within the dedicated 10' utility easements on the front of each lot.

VII. Parks/Open Space

There is no parkland requirement for proposed Yellowstone Landing Commercial Park Subdivision, as this is a commercial subdivision [MCA 76-3-621(3)(b)].

VIII. Irrigation

No irrigation rights, infrastructure, or amenities are affected by the Subdivision.

IX. Soils/Geotechnical Study

At the time of individual lot development, the City of Billings may require a geotechnical investigation or study per Building Permit requirements.

X. Phasing of Improvements

Phasing of the Subdivision is proposed. The improvements made during each phase, and the anticipated schedule of each phase, are as follows:

Phase I - Lots 1, 2, and 3 of Block 1, and Lot 1, Block 2 (2021)

- Roadway, curb and gutter, water main, fire hydrants, gravity sanitary sewer, and low-pressure force main shall be constructed to the northern extents of the Subdivision and to the eastern boundary of Lot 1, Block 2.
- The Subdivision Collection and Storage System, minus inlets within portions of Subdivision roadway not being constructed, shall be constructed during Phase 1.

Phase II – Lots 4 & 5 of Block 1, and Lot 2 of Block 2 (2025)

- Roadway, curb and gutter, water main, fire hydrants, and low-pressure force main shall be constructed to the eastern boundary of Lot 2, Block 2.

- Center turn lane for AJ Way on State Highway 3 to be designed and constructed by Subdivider. Construction plans for the center turn lane for AJ Way on State Highway 3 to be reviewed and approved by MDT, and all necessary permits issued by MDT prior to the release of deed restrictions for Phase II.

Phase III – Lots 6 & 7 of Block 1, and Lot 3 of Block 2 (2029)

- Roadway, curb and gutter, water main, and fire hydrants, shall be constructed along Supercub Way and Huey Way to its access point and approach onto State Highway 3.
- Low-pressure force main shall be constructed to the extents necessary to provide service to Lot 7 of Block 1.
- Center turn lane for Huey Way on State Highway 3 to be designed and constructed by Subdivider. Construction plans for the center turn lane for Huey Way on State Highway 3 to be reviewed and approved by MDT, and all necessary permits issued by MDT prior to the release of deed restrictions for Phase III.

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 Applying to Subdivider

- A. Subdivider agrees to guarantee all public improvements for a period of two years 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 run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees 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, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENT DISTRICTS

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, for 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 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:

Yellowstone Landing Commercial Park Subdivision

Signed and dated this 06th day of October, 2021.

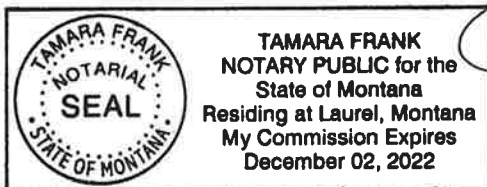
Aviation Properties, LLC

By: [Signature]

Title: Representative

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 6th day of October, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Erin Heringer, known to me to be the Representative of Aviation Properties, LLC, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.



Tamara Frank
Notary Public in and for the State of Montana
Printed Name: TAMARA FRANK
Residing at: Laurel MT
My commission expires: 12-02-2022