

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

Bitterroot Heights Subdivision, 3rd Filing

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(City of Billings)**

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**SUBDIVISION IMPROVEMENTS AGREEMENT
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IMPROVEMENT DISTRICTS**

Bitterroot Heights Subdivision, 3rd Filing

This agreement is made and entered this ____ day of _____, 20____, by and between ***BCJM Properties, LLC***, whose address for the purpose of this agreement is **2409 Nina Clare Rd., Billings, MT 59102**, 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 *Bitterroot Heights Subdivision, 3rd Filing*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, the City Council conditionally approved a preliminary plat of *Bitterroot Heights Subdivision, 3rd Filing*; 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 *Bitterroot Heights Subdivision, 3rd Filing* 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 have been requested at this time.

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. Sidewalks shall be 5-foot boulevard style walk.
- 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 homeowners 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.** Much of the area of this subdivision was previously mined for gravel and has since been reclaimed. There exists the potential for variable soils conditions and groundwater levels within the subdivision area. Assessment and mitigation of these conditions, if necessary, shall be the responsibility of the lot owner. Additional geotechnical studies may be necessary at the time of individual lot development.
- 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 by the completion of the conditions set forth in the Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- F.** A Park Maintenance District has been created for the maintenance of the boulevard improvements, maintenance of drainage channels and detention facilities, and future park maintenance. The maintenance of the park, drainage, and boulevard improvements will be performed by the City, but paid for by funds received through the Park Maintenance District. The overall master plan for Bitterroot Heights Subdivision anticipates that approximately 380 lots will be created at full build-out. Development (construction) of the subdivision park will be required when at least 51% of the proposed lots are sold. Development of the park will be the responsibility of the Subdivider.
- G.** 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.

- H. 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 with Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- I. Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted on the FEMA maps for this area. Please be advised that special development restrictions may apply within these specified areas.
- J. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.

III. TRANSPORTATION

A. Streets

- Subdivider will execute a private contract to construct public streets, and curb and gutter within the Subdivision. The improvements will consist of 34-foot from back of curb to back of curb residential streets with 56-foot rights-of-ways.
- Standard curb and gutter will be installed on all of the interior streets being constructed within the Subdivision.
- All streets will be provided with an asphalt concrete driving surface.
- Hawthorne Lane will be improved by increasing the paved width from 26 feet to 30 feet.

B. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot 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 at corner intersection handicap ramps and aprons.
- Subdivider will install, within the private contract, corner intersection handicap ramps and aprons.
- Subdivider to install sidewalks and trails fronting parkland/open space areas.

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 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.

E. Access

- Subdivision access is limited to a single access to Bitterroot Drive via a public street (Empire Drive) located approximately 1,500 feet north of Mary Street and a single access to Mary Street via a public street (Hawthorne Lane) located approximately 2,600 feet west of Bitterroot Drive. Hawthorne Lane will be improved by increasing the paved width from 26 feet to 30 feet.
- An update to the Traffic Accessibility Studies submitted for the 1st and 2nd Filings shall be performed.

F. Billings Area Bikeways and Trail Master Plan

- The Bitterroot Heights Subdivision, 3rd Filing is within the planning area for the Billings Area Bikeway & Trail Master Plan. The Trail Plan indicates a proposed multi-use trail along the south side of Five Mile Creek with a connection to Mary Street within the old railroad right-of-way. The Plan designates Mary Street as a “primary bikeway” and designates Bitterroot Drive as an “arterial bikeway”.
- Parklands dedicated with Bitterroot Heights Subdivision, 1st and 2nd Filings have been master-planned to include provisions for necessary connections through subdivision property. Construction of the multi-use path through parklands dedicated with Bitterroot Heights Subdivision, 1st and 2nd Filings will be undertaken with development of the park and will commence when 51% of the total planned lots in all the filings are platted. In addition, 8-foot wide gravel maintenance paths have been constructed in the Public Open Space dedicated with the 2nd Filing.
- Ownership of trail corridor through Bitterroot Heights Subdivision, 1st and 2nd Filings will be by the City of Billings Parks Department. Maintenance will be the responsibility of the City of Billings Parks Department through establishment of a Park Maintenance District.

G. Public Transit

- Met Transit provides service to the Billings Heights, with the closest route at the intersection of Bench Boulevard and Pemberton Lane, approximately 1 mile from the 3rd Filing. 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.
- The Subdivider shall provide a permanent 2nd access to the Subdivision by improving Hawthorne Lane to a 30-foot asphalt road.

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.

In accordance with the Stormwater Management Plan developed for Bitterroot Heights Subdivision 1st, Filing, a stormwater detention facility for Bitterroot Heights Subdivision has been constructed in the north-central portion of the property to serve ultimate build-out of all of Bitterroot Heights Subdivision. The detention facility is located on lands dedicated as parks and will be maintained by a Park Maintenance District.

Existing natural drainages that traverse the Bitterroot Heights Subdivision will be retained and improved for conveyance of stormwater runoff to the detention facility. The existing west drain has been re-routed with the 2nd Filing to drain to the existing detention facility, in accordance with the Stormwater Management Plan developed for the 1st Filing. The improved natural drainages will be contained within Public Open Space dedicated as parks and will be maintained by a Park Maintenance District.

Where not contained within street rights-of-way, storm drainage facilities will be located within dedicated rights-of-way or on public property. Where storm drain outfalls run between residential lots, a 20-foot wide right-of-way will be provided and a 5-foot concrete pathway will be constructed within the right-of-way.

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 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, County Water District of Billings Heights, Fire Department and the Montana Department of Environmental Quality.

A. Water

Subdivider shall enter into a private contract to extend water mains from those that are existing in the Subdivision. Water will be provided by County Water District of Billings Heights. Each water main will be 8 inches with services stubbed to each lot. Construction drawings shall be reviewed and approved prior to installation.

B. Sanitary Sewer

Subdivider shall enter into a private contract to extend sanitary sewer mains from those that are existing in the Subdivision. All sanitary sewer mains will be 8 inches with services stubbed to each lot. Construction drawings shall be reviewed and approved prior to installation.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines within the public right-of-way shall be installed prior to surface improvements. 8-foot utility easements are provided along the front lot lines of selected lots for utility services as shown on the plat of Bitterroot Heights Subdivision, 3rd Filing.

VII. PARKS/OPEN SPACE

- The parkland requirement for the Bitterroot Heights Subdivision, 3rd Filing is 2.051 acres (11% of net area). The parkland requirement for the anticipated build-out of Bitterroot Heights Subdivision (all filings) is 7.96 acres (11% of net area). A total of 12.441 acres of parkland has been dedicated to the City with Bitterroot Heights Subdivision, 1st and 2nd Filings. Additional parklands will be dedicated with future filings.
- The City and the Subdivider agree that the requirement for park dedication is satisfied by the conveyance of parklands to the City.
- The overall master plan for Bitterroot Heights Subdivision anticipates that approximately 380 lots will be created at full build-out. Development of the subdivision Park Master Plan, adopted by City Council, will be required when at least 51% of proposed lots are sold. The development of the park will be the responsibility of the Subdivider.

VIII. IRRIGATION

- No irrigation facilities are affected by the development of Bitterroot Heights Subdivision, 3rd Filing.
- No water rights have been transferred to the lot owners. Irrigation ditches that exist near this development are for the benefit of other properties. Ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

IX. SOILS/GEOTECHNICAL STUDY

- A geotechnical investigation was performed for the area of Bitterroot Heights Subdivision, 2nd Filing and can be obtained from the City Engineering Department office.

X. PHASING OF IMPROVEMENTS

- Phasing is not proposed for this Subdivision.

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.

