

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 Highlands ZHP Subdivision, LLC, 2116 Broadwater Avenue, Suite 101, Billings, MT 59102 and L&L ZHP Subdivision, LLC, 2116 Broadwater Avenue, Suite 101, Billings, MT 59102 and Ludwig Consulting, LLC, 5445 Green Teal Drive, Billings, MT 59106 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:

Lot 1, Block 1, Lot 1, Block 2, and Lot 1, Block 3 of Zimmerman Home Place Subdivision First Filing, situated in the SW1/4 of Section 34, T 01N, R 25E, P.M.M., in the City of Billings, Yellowstone County, 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, 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 Green Valley Drive and Avenue E.
2. Sanitary Sewer. DEVELOPER is required to extend a sanitary sewer main in Green Valley Drive and Avenue E along the Developer Tracts frontage. Size of sanitary sewer mains to be determined by the City.

DEVELOPER shall be responsible for payment of the City wastewater system development fee prior to the issuance of any building permits.

3. Water. DEVELOPER is required to extend a water main in Green Valley Drive and Avenue E along the Developer Tracts frontage and connect both water mains into the existing water main in Colton Boulevard to provide a looped system. Size of water mains to be determined by the City.

DEVELOPER shall be responsible to reimburse the City for their proportionate share of the existing water line in Zimmerman Trail. Developer is responsible for payment of the current City water system development fee prior to the issuance of any building permits.

4. Storm Drain. DEVELOPER will manage storm drainage for the public right-of-way and the Developer Tracts in accordance with the City of Billings Stormwater Management Manual (2018). There is an existing 15-inch storm drain pipe located at the intersection of Avenue E and Green Valley Drive. DEVELOPER is required to extend the storm drain piping in the right-of-way as needed in order manage the storm drainage for the public right-of-way.

5. Irrigation. DEVELOPER has the right to analyze alternatives for irrigation purposes (ditches or wells) for Blocks 1 and 2. Should the DEVELOPER elect to utilize municipal water, City Engineering may require an additional system development fee for irrigation to be paid by the DEVELOPER at the time of lot development based on current Water and Wastewater Regulations.

6. Right-of-Way. Public Right-of-Way will be dedicated to the City of Billings in accordance with the 2018 Billings Urban Area Long Range Transportation Plan and in accordance with the City of Billings Subdivision Regulations.

7. Street Construction, Widening and Sidewalks. DEVELOPER is required to construct and widen the south half of Colton Boulevard to a collector width. Construction shall include street widening, grading and filling, curb and gutter, storm drain, piping of ditch if needed, and a 10-foot-wide multi-use

path along the Colton Boulevard frontage of the Developer Tract at the expense of the DEVELOPER.

Prior to development of the lots, DEVELOPER is required to construct Green Valley Drive. Boulevard sidewalk is required to be constructed along Green Valley Drive at the time of lot developments.

Prior to development of the lots, DEVELOPER is required to construct Avenue E. Boulevard sidewalk is required to be constructed along Avenue E at the time of lot developments.

8. Multi-use Trail. A multi-use trail shall be constructed at the expense of the DEVELOPER. A 10-foot-wide trail shall be constructed along south side of Colton Boulevard along the frontage of the Developer Tracts. The trail shall be constructed at the time of lot development.

DEVELOPER shall be responsible for the maintenance and replacement of the trail after construction.

9. 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 if development exceeds 500 trips/day. The preparation of the traffic impact study and any fees to mitigate impacts to future intersection improvements will be at the expense of the DEVELOPER.

10. 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, construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, multi-use trails, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, parks and parks 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 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.

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”

Highlands ZHP Subdivision, 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 Highlands ZHP Subdivision, 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: _____

“DEVELOPER”

L&L ZHP Subdivision, 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 L&L ZHP Subdivision, 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: _____

“DEVELOPER”

Ludwig Consulting, 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 Ludwig Consulting, 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, multi-use trails, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, parks and parks 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:

Lot 1, Block 1, Lot 1, Block 2, and Lot 1, Block 3 of Zimmerman Home Place Subdivision 1st Filing, situated in the SW1/4 of Section 34, T 01N, R 25E, P.M.M., in the City of Billings, Yellowstone County.

“DEVELOPERS”

Highlands ZHP Subdivision, 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 Highlands ZHP Subdivision, 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: _____

“DEVELOPERS”

L&L ZHP Subdivision, 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 L&L ZHP Subdivision, 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: _____

“DEVELOPERS”

Ludwig Consulting, 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 Ludwig Consulting, 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: _____