

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

***The Timbers Subdivision***

***First Filing***

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**(City of Billings)**

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

***The Timbers Subdivision  
First Filing***

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *Ali Mitchell* and *David Mitchell*, whose address for the purpose of this agreement is **1655 Valley Heights Rd., Billings, MT 59105**, 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 *The Timbers Subdivision, First Filing*; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of *The Timbers Subdivision, First 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 *The Timbers Subdivision, First 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):

A variance has been submitted regarding the construction of Timbers Boulevard North. This variance requests to install Timbers Boulevard North using a 20’ foot

wide gravel surface within a 60' foot right-of-way. This road shall be marked a secondary access and built to withstand 40 tons in all weather conditions. The construction of the road, including curb and gutter and utility construction, will be monetarily secured for 50% of an engineer's estimate as reviewed by the City. The construction of the remainder of Timbers Boulevard North will be completed with a future filing. This includes construction of curb and gutter, street paving, water, sanitary sewer, and storm drain. If Timbers Boulevard North is not constructed within two years of final plat, the City reserves the right to create a Special Improvement District to construct the remaining portion of Timbers Boulevard North back to Alkali Creek Road.

## **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, 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 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.** 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. The Timbers Subdivision, First Filing had an overview geotechnical study completed by Rimrock Engineering. Below is the summary of the findings of this study. Individual lot owners are encouraged to complete their own geotechnical study to find lot specific information.
- The subsurface profile generally consists of variably stiff to very soft lean clay soils. Groundwater was encountered at approximately 6.5 feet below existing grades while drilling or for the short duration the boring was allowed to remain open.
  - Due to site conditions and concerns, we recommend support for the proposed structure using a deep foundation system such as rammed aggregate piers or helical piers extending into the more competent soils in order to bypass the compressible soil and alleviate concerns regarding foundation construction below or near the groundwater elevation.
  - Another viable foundation alternative, yet lower level of assurance against potential movements, would be to support the structure using a shallow

spread footing foundation system or thickened edge monolithic slab bearing on a zone of geotextile-reinforced structural fill.

- A structural floor on grade beams over a crawlspace should be considered for interior slabs. If a structural floor is not desired, in order to reduce the potential for movement related distress to concrete slabs, we recommend a minimum of 12 inches of structural fill reinforced with a layer of Mirafi RS580i be used for slab support.

- 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 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. The City of Billings is not liable for any damage to lots encompassing or near floodplain that would result from flooding.
- I.** Future installation of public (or common) improvements shall be constructed through one (1) or more SID(s) created or through a Private Contract as part of the SIA for this subdivision.

### **III. TRANSPORTATION**

#### **A. Streets**

The following roads exist surrounding the subdivision:

- Alkali Creek Road is designated as a Principal Arterial and is located within a 60' wide right-of-way. An addition of 30' of ½ right-of-way is being dedicated as part of this subdivision to conform with city requirements. It is required that Alkali Creek Road be constructed with a minimum standard width of 42 feet, back of curb to back of curb. That portion adjacent to the subdivision has been partially constructed. The existing street includes approximately 26 feet of asphalt. The subdivider will provide cash-in-lieu contribution for the construction of approximately an additional 6 feet of asphalt surface with a satisfactory sub-base, base course, standard curb and gutter. The cash-in-lieu contribution will also include engineering design and construction administration.

The Subdivider will enter into a private contract for the construction of all required improvements for those streets within the subdivision, as follows:

- Timbers Boulevard South, Sugar Pine Road, Angel Oak Lane, Georgia Pine Lane, Olive Lane, and Black Fig Court will be constructed within a 60' foot right-of-way using curb and gutter and full-width pavement (34 feet back of curb to back of curb). Curb and Gutter will be installed per the City of Billings Standards in place at time of construction.
- Timbers Boulevard North will be installed using a 20' foot wide gravel surface within a 60' foot right-of-way. This road shall be marked a secondary access and built to withstand 40 tons in all weather conditions. The construction of the road, including curb and gutter and utility construction, will be monetarily secured for 50% of an engineer's estimate as reviewed by the City. The construction of the remainder of Timbers Boulevard North will be completed with a future filing. This includes construction of curb and gutter, street paving, water, sanitary sewer, and storm drain. If Timbers Boulevard North is not constructed within two years of final plat, the City reserves the right to create a Special Improvement District to construct the remaining portion of Timbers Boulevard North back to Alkali Creek Road.

#### **B. Sidewalks**

- All roads within the subdivision will have a 5' wide boulevard sidewalk with a 5' minimum boulevard. The sidewalk will be composed of concrete and be completed within the road's right-of-way.

#### **C. Street Lighting**

- There is no proposed street lighting, but it is included as an item in the waiver of right to protest.

#### **D. Traffic Control Devices**

- One stop sign will be installed on Timbers Boulevard South at the intersection with Alkali Creek Road.
- One stop sign will be installed on Timbers Boulevard North at the intersection with Alkali Creek Road.
- Two stop signs will be installed at the intersection of Angel Oak Lane and Timbers Boulevard South. The stop signs will be on both sides of Timbers Boulevard South.
- One stop sign will be installed at the intersection of Sugar Pine Road and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Georgia Pine Lane and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Black Fig Court and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Georgia Pine Lane and Olive Lane.
- One stop sign will be installed at the intersection of Olive Lane and Black Fig Court.

#### **E. Access**

- All of the lots will access off of the internal subdivision road network.
- The subdivision will connect to Alkali Creek Road.

#### **F. Billings Area Bikeway and Trail Master Plan**

- There is a proposed short-range bike and pedestrian trail proposed within the parkland adjacent to Alkali Creek Road. This trail will be 10' wide and paved to the standard for pedestrian facilities within the City of Billings.

### **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. Lot 21 of the Timbers, First Filing must have its entire structure within 600 feet of the nearest fire hydrant.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

**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 acceptance at the time of development.

Storm Drainage for The Timbers Filing One will be provided by a combination of surface drainage swales, curb and gutter, and underground piping. Off-site Stormwater will be routed through surface swales/ditches and will discharge directly to Alkali Creek. On-site stormwater will be routed through swales, curb and gutter, and underground piping to on-site detention ponds that are sized to only allow pre-development flow rate to be discharged from the site as required by the Stormwater Management Manual. The stormwater improvements will be constructed per the submitted Stormwater Management Design report as reviewed and accepted by the City Engineering Division.

All of the on-site stormwater infrastructure will be located within public easement or public right-of-way. Stormwater pipes located in the public right of way will be maintained by the City and all facilities including swales, piping, and ponds not in the right of way will be maintained by The Timbers HOA.

Due to the large quantity of stormwater passing through the development and the severe slopes located in some areas, minimum finish floor elevations for all lots within the development will be established by the Stormwater Management Plan and will be incorporated in the final version of the recorded SIA.

**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 extension applications and the conditions of approval. Water Main and Sanitary Sewer extension applications shall be submitted for processing prior to the start of any construction for review and approval of any project plans and specifications.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development fees in effect at the time new water and/or sanitary sewer service connections are made.

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**

Each lot is to be served by City of Billings water through a water main extension. As required by City Engineering, a 12” Water Main will be extended along Timbers Boulevard South which will serve as the future City Trunk Line through the development. All additional water lines within Filing 1 will be 8” water mains and are located in Angel Oak Lane, Sugar Pine Road, Georgia Pine Lane, Olive Lane, and Black Fig Court. Compensation for required water main upsize can be requested by the developer.

**B. Sanitary Sewer**

Each lot is to be served by City of Billings sewer through a sewer main extension. As required by City Engineering, a 21” Sewer Main will be extended along Timbers Boulevard South which will serve as the future City Trunk Line through the development. All additional sewer lines within Filing 1 will be 8” sewer mains and are located in Angel Oak Lane, Sugar Pine Road, Georgia Pine Lane, Olive Lane, and Black Fig Court. All sewer infrastructure is proposed to be gravity. Compensation for required sewer main upsize can be requested by the developer.

**C. Power, Telephone, Gas, and Cable Television**

These utilities will be provided within the 60-foot Public Road Easement, or the Utility Easements created as part of this subdivision.

**VII. PARKS/OPEN SPACE**

The Timbers Subdivision, First Filing proposes parkland dedication to satisfy parkland requirements. The Park will be maintained by City of Billings Parks, Recreation and Public Lands. Operation and maintenance of the public park areas shall be by a park maintenance district (PMD) created and/or expanded for this and all subsequent filings of the Timbers Subdivision by the Subdivider as approved by the Parks and Recreation Department and administered by the City of Billings.

The parks and trail within the park(s) will be constructed or bonded for by the Developer prior to final plat filing. A park master plan for the 4.64 acres of parkland within the Timbers Subdivision, First Filing may be submitted and approved by the City of Billings Parks, Recreation and Public Lands. A park master plan for the public parkland within the Timbers Subdivision will be funded

by the Subdivider in Consultation with the Parks and Recreation Department. This plan will meet the requirements and specifications of the Parks and Recreation Department.

Plans and Specifications for the development of the 10' wide trail will be reviewed and approved by the Parks and Recreation Department. During construction, the Department will make periodic inspections to assure the parkland is developed according to the plans and specifications. When construction is complete, the Parks and Recreation Department will conduct a final inspection to assure all aspects of the park development meets the plans and specifications. Once verified, the Parks and Recreation Department will issue a letter of acceptance and only then will they take over maintenance operations. The parkland may be developed at any time prior to the final filing at the discretion of the Subdivider

Required parkland for The Timbers Filing One is 3.45 acres per the City of Billings Subdivision Regulation guidelines. As part of The Timbers Filing One 4.64 acres of parkland are being provided.

**VIII. IRRIGATION**

Irrigation rights for the subdivision will not be utilized for irrigation within the subdivision. No surrounding irrigation ditches exist.

**IX. FLOODPLAIN**

Floodplain boundaries are shown on the subdivision plat. Any work proposed in the floodplain will require a floodplain permit. All homesites are to be constructed outside of the floodplain boundary. The City of Billings is not liable for any damages within the floodplain.

**X. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study was completed by Rimrock Engineering, Inc. Due to the Geotechnical Study it is suggested that individual geotechnical reports be completed prior to construction of homes within the subdivision.

**XI. PHASING OF IMPROVEMENTS**

A. Improvements for the subdivision are to be developed in three (3) phases. The phases are defined as follows:

- a. Phase I
  - i. Lots 1-31, 51-54
  - ii. Completed roads: Timbers Boulevard South, Angel Oak Lane, and Black Fig Court
- b. Phase II
  - i. Lots 32-50
  - ii. Completed roads: Olive Lane, Georgia Pine Road
- c. Phase III
  - i. Lots 55-56

- ii. Completed roads: Sugar Pine Road
- B. The Subdivider does not desire to commence development of phase 2 and 3 improvements within the subdivision at this time, but does desire to file the approved final plat for The Timbers Subdivision, 1<sup>st</sup> Filing. In accordance with the foregoing, the Subdivider and the City agree as follows:
  - a. Improvements for Phase 2 and Phase 3 shall be installed by the Subdivider in the future. The Subdivider agrees not to sell or convey lots encumbered by Phase 2 or Phase 3 without the improvements being completed.
  - b. If any adjacent property to or in the Timbers Subdivision requests access to Olive Lane, Georgia Pine Lane, or Sugar Pine Road, Subdivider shall immediately construct the improvements to requested road (either Olive Lane, Georgia Pine, or Sugar Pine Road) through a Special Improvement District or Private Contract.
  - c. At any time, the Developer may choose to secure or complete Phase 2 or Phase 3 through any of the following alternatives:
    - i. Petition for the creation of a Special Improvement District to complete the road and utility improvements to Olive Lane, George Pine Road, and Sugar Pine Road. All lots within Phase 1 and Phase 2 and Phase 3 will be included in the Special Improvement District.
    - ii. Financially guarantee the improvements in accordance with the City of Billings Subdivision Regulations through a letter of credit;
    - iii. Enter into a private contract with the City for the Phase 2 or Phase 3 improvements.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, lots in Phase 1 or to sell and convey, as one unit, all lots in the Subdivision, however, the sale and transfer of individual lots in Phase 2 and Phase 3 will be restricted until the conditions within this agreement have been met. Pursuant to this agreement, the Subdivider shall execute and record a Declaration of Restrictions on Transfers and Conveyances for said lots identified in Phase 2 and Phase 3. Said declaration notifies all third parties that said lots may not be legally sold, conveyed or transferred (except as provided above)

iv.

**XII. 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.

### **XIII. 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.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

By: \_\_\_\_\_  
Ali Mitchell

\_\_\_\_\_   
David Mitchell

STATE OF \_\_\_\_\_ )  
: ss  
County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared Ali Mitchell, who executed the foregoing instrument and acknowledged to me that she executed the same.

SS \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss  
County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared David Mitchell, who executed the foregoing instrument and acknowledged to me that she executed the same.

SS \_\_\_\_\_

This agreement is hereby approved and accepted by the 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 in and 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.

SS \_\_\_\_\_

# 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.

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

The real property hereinabove mentioned is more particularly described as follows:

*The Timbers Subdivision, First Filing*

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Subdivider/Owner

By: \_\_\_\_\_  
Ali Mitchell David Mitchell

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 Ali Mitchell known to me to be Subdivider/Owner Name, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

SS \_\_\_\_\_

