

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

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(City of Billings)**

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

***MICHELOTTI SUBDIVISION***

**This agreement** is made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between *Michelotti Sawyers & Nordquist Mortuary Incorporated*, whose address for the purpose of this agreement is **1001 Alderson Avenue, Billings, Montana, 59102**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the plat of *Michelotti Subdivision*, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Planning Board; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council conditionally approved a preliminary plat of *Michelotti 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 *Michelotti 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. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent 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.

### **III. Transportation**

#### **A. Streets**

- Subdivider will execute a private contract to construct public streets and curb and gutter within the public Right-of-Way (ROW) dedicated in conjunction with the Subdivision (56' along Avenue D). The improvements will consist of constructing a local roadway (34' TBC-TBC) from its connections with the existing paved portions of Avenue D on both sides 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.
- 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.

#### **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**

- It is not anticipated traffic control devices will be necessary as part of constructing improvements related to the Subdivision.

#### **E. Access**

- The Subdivision will be accessed via Avenue D.

#### **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. 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.

#### **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 the Avenue D right-of-way is proposed to be partially collected by curb inlets and conveyed to the existing storm drain collection system east of the Subdivision existing in Avenue D. This storm drain eventually drains to the existing stormwater detention pond located at the southwest corner of Zimmerman Homeplace Subdivision, just north of Grand Avenue and west of Green Valley Drive. Based on preliminary analysis, the existing 12" storm drain and said pond has the capacity to convey the additional stormwater from the Subdivision's Avenue D extension while meeting the Stormwater Management Manual.
- Grade constraints for the proposed Avenue D extension and the existing 12" storm drain in Avenue D will force a portion of the stormwater in the Subdivision's right-of-way to flow to the west, into the Village West Subdivision's existing conveyance system.

- Lots within the subdivision 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.

## **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**

- 8-inch water main to serve the Subdivision shall be installed by the Subdivider along Avenue D from existing stub-outs on both the east and west sides of the Subdivision.

### **B. Sanitary Sewer**

- The sanitary sewer system for the Subdivision will be installed by the Subdivider and will consist of an 8-inch gravity sewer main extending from Avenue D on the west side of the Subdivision east through the point that will service Lot 1 of the Subdivision.

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

- Mainlines for each utility will be installed by the private utility companies within the dedicated 8' utility easements on the front of each lot.

## **VII. Parks/Open Space**

There is no parkland requirement for the proposed Michelotti Subdivision, as this is a first minor subdivision [MCA 76-3-621(3)(c)].

## **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 not proposed.

**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.

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:

*Michelotti Subdivision*

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

*Michelotti Sawyers & Nordquist Mortuary Incorporated*

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 \_\_\_\_\_ of *Michelotti Sawyers & Nordquist Mortuary Incorporated*, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_