

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

Coal Creek Subdivision Amended Plat Lots 7-17

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City of Billings

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

Coal Creek Subdivision Amended Plat Lots 7-17

This agreement is made and entered into this _____ day of _____, 20____, by and between *ABS MT-O LLC, A DELAWARE LIMITED LIABILITY COMPANY*, whose address for the purpose of this agreement is **250 E. Parkcenter Blvd., Boise, ID 83706**, is 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 Coal Creek Subdivision Amended Plat of Lots 7-17 and;

WHEREAS, at a regular meeting conducted on _____ day of _____, 20____, the City Council conditionally approved a preliminary plat of Coal Creek Subdivision Amended Plat of lots 7-17; 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 *Coal Creek Subdivision Amended Plat Lots 7-17* 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

A. No variance request is being made as part of this development.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

A. Lot owners will be required to construct the segment of the required sidewalk that fronts their property at the time of 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 possible 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 specific site development.
- 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 (SID) for only those items specifically identified within this document 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

- All roads within the subdivision shall be privately owned and built to the City of Billings subdivision regulation standards. These roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings' site development ordinance, and City subdivision regulations.

- The north half of Rimrock Road shall be built to collector standards including asphalt, curb and gutter, and sidewalk. A right turn lane for west bound traffic off of Rimrock Road will be constructed at the intersection of first private approach and Rimrock Road. Storm collection shall be included along the north half of the road with a discharge to the Birely Drain. Water quality standards for Rimrock Road runoff shall be met in accordance with the Billings Stormwater Management Manual (BSMM).
- Cash contribution shall be made for improvements to 62nd Street West. Contributions shall be made for the widening of the west half of 62nd Street West to commercial standards including asphalt, curb and gutter, and sidewalk. Subdivider shall be given credit for materials already in place. Subdivider shall construct, or contribute to the construction, of a median to control turning movements for the $\frac{3}{4}$ shared access located between Lots 1-A and 2-A.
- The southern half, a minimum of 30 foot asphalt width, of Signal Peak Avenue will be constructed from the western boundary of the subdivision east to 62nd Street West. This will include the installation of the private storm sewer and public water and sewer.

B. Sidewalks

- The Subdivider will install, corner intersection handicap ramps and aprons and will grade all street frontages for sidewalk finished grades.
- The Subdivider shall be responsible for the installation of a 10 foot asphalt trail along the Rimrock Road frontage.
- The Subdivider shall make a cash contribution for sidewalks along 62nd Street West.
- Individual lot owners within the commercial portion of the Subdivision will be responsible for the construction of the sidewalks adjacent to their lot and Signal Peak Avenue at the time of lot construction and shall be included in each building permit. Sidewalks shall be 5-foot boulevard walk style with a boulevard width of 5 feet.

C. Street Lighting

- The Subdivider will be responsible for extending street lighting north along 62nd Street West to the first subdivision approach. Maintenance of the street lights shall be the responsibility of the HOA or through the creation of a street light district.

D. Traffic Control Devices

- Subdivider shall furnish the necessary traffic control devices within and adjacent to the subdivision as required by City Engineering. Traffic control devices shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) and City of Billings Standards.
- Subdivider shall pay intersection impact contributions totaling **\$107,600**.
 - a) Rimrock Road and 62nd St W: **\$64,375 (25.75%)**
 - b) Rimrock Road and 54th St W: **\$28,750 (11.50%)**
 - c) Grand Avenue and 62nd St W: **\$14,475 (5.79%)**

Scheduling for intersection impact contributions is provided in the Phasing section of this SIA.

- Subdivider shall furnish and install street name signs for streets within the subdivision, or located immediately adjacent thereto, in accordance with the specifications of the City of Billings Publics Works and Fire Departments.

E. Access

Rimrock Road

- Two full movement private road access points will be located along Rimrock Road:
 - a) First subdivision approach is approximately 370 feet west of 62nd Street West and Rimrock Road intersection.
 - b) Lot 3-A access is approximately 650' west of the 62nd Street West and Rimrock intersection.
- All access approaches will meet design standards outlined in the City of Billings Standard Modification Drawings.
- A 1-foot no access strip shall run along the boundary of lots fronting Rimrock Road as indicated on the Plat.
- The developer will be required to construct the necessary turn lanes as outlined in the traffic study.

62nd Street West

- One full movement and one $\frac{3}{4}$ movement private road accesses will be located along 62nd Street West:
 - a) The Signal Peak Avenue access is approximately 1,020 ft north of the 62nd Street West and Rimrock Road intersection;
 - b) The second proposed access will be a $\frac{3}{4}$ access and is approximately 650 ft north of the 62nd Street West and Rimrock Road intersection.
- All access approaches will meet design standards outlined in the City of Billings Standard Modification Drawings.
- A 1-foot no access strip shall run along the boundary of lots fronting 62nd Street West as indicated on the Plat.

Emergency Access

- In the event that Signal Peak is not fully constructed at one time, at minimum, a temporary emergency turnaround shall be constructed for road lengths less than 1,000 feet.

IV. EMERGENCY SERVICE

The Billings Fire Department currently provides fire protection for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to meet fire suppression requirements. Prior to 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 an 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 apparatus access and water supply.

Emergency access to the subdivision will occur at the locations described in Section III. TRANSPORTATION, Subsection E, Access. Approaches and internal roads are designed to accommodate emergency vehicles described previously.

V. **STORM DRAINAGE**

- A. Storm drainage shall be provided by a combination of surface drainage, curb and gutters, and storm drain piping. 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 City Engineering Division and Montana Department of Environmental Quality (as required) for review and approval at the time of development.
- B. Amended Plat of Lots 7-17 Coal Creek Subdivision shall utilize a series of small detention areas in addition to the community stormwater detention area located on Lot 2 of the Coal Creek Subdivision for stormwater management. The community detention area will collect runoff from the Coal Creek Subdivision and the Amended Plat of Lots 7-17 Coal Creek Subdivision and convey it to the Birely Drain. The stormwater retention areas and associated improvements will be privately owned and maintained by the HOA. O&M requirements and HOA responsibilities shall be outlined within the city of Billings Stormwater Management Manual (SWMM), appendices E and F. Retention areas shall be covered with a blanket easement, allowing access by the City. If the HOA fails to maintain the stormwater retention facilities, the City reserves the right to create a maintenance district in the subdivision to maintain the stormwater retention facilities.

- a. If the City constructs a storm water management facility on the land south of RimRock Road and adjacent to the Birley Drain, the Subdivider may direct runoff from the subdivision to the City's storm water management area. If the City does not proceed with construction of a storm water management facility prior to the development of subdivision, subdivider must construct detention on site. The water quality storm must be mitigated for each parcel on site.

- i. If storm water detention is directed to City's storm water facility, parcels shall make a cash contribution for stormwater improvements at a rate of \$0.24/sf of gross area of the parcels. Contributions shall be made to the City prior to the issuances of the parcels first building permit.

- C. Storm drainage for the north half of Rimrock Road adjacent to the Coal Creek Subdivision shall be conveyed thru a series of catch basins which will route runoff through a drainage main and discharge to the Birely Drain. Runoff from the south half of Rimrock Road is currently managed by the borrow ditch which ultimately drains to the Birely Drain. Improvements to the south half of Rimrock Road shall occur upon annexation of parcels adjacent to the roadway.

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 of/connection to water mains and sanitary sewers is subject to the approval conditions of the applications. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any plans and specifications.

The Subdivider/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 or when a building permit is issued for new construction

A. Water

Lots 5-A and 6-A will be serviced by a 12-inch public water main placed within the public water and sewer utility easement. The 12-inch main will run along Signal Peak Avenue tying into the existing 20-inch water main in 62nd Street. Valve and hydrant placement shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations. Installation of main will be by private contract.

Lots 2-A will be served by the existing 20-inch water main in 62nd Street with private service connections installed at the time of site development. Valve and hydrant placement shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

Lots 1-A, 3-A, and 4-A will be served by the existing 12-inch water main in Rimrock Road with private service connections. Valve and hydrant placement shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

B. Sanitary Sewer

Lots 5-A and 6-A will be serviced by an 8-inch public sewer main placed within the public water and sewer utility easement. The 8-inch sewer main will run along Signal Peak Avenue tying into the existing 18-inch sewer main in 62nd Street. The services shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations. Installation of main will be by private contract.

Lots 2-A and 4-A will be served by the existing 18-inch sewer main in 62nd Street with private service connections installed at the time of site development. The services shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

Lots 1-A and 3-A will be served by the existing 18-inch sewer main in Rimrock Road with private service connections. The services shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will all be located within the right-of-way and utility easements shown on the plat.

VII. IRRIGATION

There are no irrigation rights for this property.

VIII. SOILS/GEOTECHNICAL STUDY

- A. A geotechnical analysis was performed for this property on August 12, 2016 by Rimrock Engineering, Inc. Sub-surface conditions vary across the site. Since specific structure types and locations have not been identified, performing site specific geotechnical investigations should be considered and is recommended.
- B. Construction restrictions due to the results of the study may include over excavation and controlled re-compaction, placement of granular backfill, or specific structural considerations, depending upon the actual structural loads to be built in a particular location.
- C. Assessment of a specific lot and mitigation efforts, if any, of these conditions shall be the responsibility of the lot owner. The City may require the owner of a lot to include a lot specific geotechnical investigation report with the building permit submittal.

IX. INFRASTRUCTURE IMPROVEMENTS

Subdivider is responsible for the construction of the north half of Rimrock Road along the frontage of the subdivision. Road improvements shall include widening of the asphalt to a collector road width as well as installation of curb and gutter, storm drain, and completion of the trail and/or sidewalk from Phase 1 of the Coal Creek subdivision. A right turn lane will be installed for west bound traffic at the intersection of the first approach into Phase 2 and Rimrock Road. Stormwater collected in RimRock Road storm drain will be discharged to the Birely Drain.

Contributions for intersection impacts shall be for the Lots being developed in Amended Plat of Lots 7-17 Coal Creek Subdivision. Intersection impact contributions are as follows:

- Rimrock Road and 62nd St W: **\$64,375 (25.75%)**
- Rimrock Road and 54th St W: **\$28,750 (11.50%)**
- Grand Avenue and 62nd St W: **\$14,475 (5.79%)**

The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the Amended Plat of Lots 7-17 Coal Creek Subdivision improvements, and the Subdivider further acknowledges that no building permits for lots within the subdivision shall be issued until a private contract has been executed for the construction and installation of the public improvements to serve said lots, and to provide necessary access and traffic circulation for the traffic generated by those lots. As used herein, the lots to be served by the said subdivision are particularly described as follows:

Lots 1-A through 6-A, inclusive, located in Amended Plat Lots 7-17 Coal Creek Subdivision, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (6 lots total).

X. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts 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 special improvement district or private contract, and the improvements shall be installed as approved by the city engineers and the City of Billings Public Works.

XI. 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.

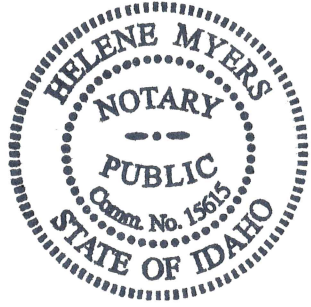
IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

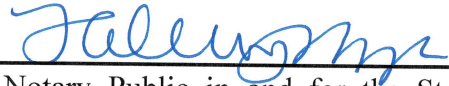
“SUBDIVIDER” *ABS MT-O LLC, A DELAWARE LIMITED LIABILITY COMPANY*

By: 
Title: **Bradley Beckstrom** JPL
Authorized Signatory

STATE OF IDAHO)
 : ss
County of Ada)

On this 13th day of June, 2023, before me, a Notary Public in and for the State of Idaho, personally appeared Bradley Beckstrom, known to me to be the Authorized Signatory of *ABS MT-O LLC, A DELAWARE LIMITED LIABILITY COMPANY*, who executed the foregoing instrument and acknowledged to me that he executed the same.




Notary Public in and for the State of Idaho
Printed Name: Helene Myers
Residing at: Boise ID
My commission expires: 12-21-2025

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.

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

Helene Myers

Notary Public in and for the State of Idaho

Printed Name: Helene Myers

Residing at: Boise ID

My commission expires: 12.21.2025