

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

**Howard Billings Industrial Subdivision
City of Billings, Montana**

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SUBDIVISION IMPROVEMENTS AGREEMENT

Howard Billings Industrial Subdivision

This agreement is made and entered into this _____ day of _____, 2023, by and between **SLH Industrial, LLC**, whose address for the purpose of this agreement is 1819 W. Olive Ave. Burbank, CA 91506-2435, 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 _____, 2003, the Board of Planning recommended conditional approval of a preliminary plat of Howard Billings Industrial Subdivision; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 2023, the City Council conditionally approved a preliminary plat of Howard Billings Industrial 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 Howard Billings Industrial 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

A. Subdivider is requesting a variance from City of Billings Subdivision Regulations Section 23-406 Streets and Roads - Section A. 1 Relation to Undeveloped Areas.

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.

- 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

The streets within the subdivision will be installed within a 70-foot right-of way dedicated to the public.

The internal subdivision streets will be completed as Commercial Local Access as defined in Table 23.406.B.1 of the City of Billings Subdivision Regulations. Each street will have 40-foot-wide asphalt which consists of 2-13.5-foot travel lanes and 8' wide parking. Curb and gutter, 5-foot-wide boulevards and 5-foot-wide sidewalk will be installed on both sides of the streets.

Curb and gutter will meet the minimum requirements of the City of Billings standard drawing Sm_M025828-1.

B. Sidewalks

5' wide boulevard sidewalks will be installed along interior streets by the lot owners at the time the individual lots are developed.

Sidewalks will be 4' thick concrete.

At intersections, ADA compliant curb ramps will be installed with truncated domes and 5' landings at either end of the ramps. These will be installed by the developer at the time of street construction.

C. Street Lighting

There is no street lighting required or proposed for the subdivision.

D. Traffic Control Devices

Stop signs/street sign will be installed the intersections of Holiday Ave and Mallowney Lane; South Frontage Road and Leith Trail. Yellow curb paint will also be installed at these intersections to ensure adequate site distances are maintained.

At interior street intersections, street signs will be installed as appropriate.

E. Access

Legal access to the subdivision is provided via City of Billings public right-of-way off of Mallowney Lane and Montana Department of Transportation right-of-way off of South Frontage Road. The streets within the subdivision are 70-foot right of ways dedicated to the City of Billings.

F. Billings Area Bikeway and Trail Master Plan

This subdivision is within the Billings Area Bikeway and Trail Master Plan study area.

The plan shows a multi-use trail along the South Frontage Road, a shared use path along Mallowney Lane, the east boundary of the subdivision and a conceptual multi-use path along the west boundary across the Hogan Slough from this development.

The 10-foot-wide asphalt multi-use trail along the South Frontage will be installed within the MDT right-of-way at Developer's expense. The multi-use trail along Mallowney Lane has been included in the City of Billing Project "W.O. 22-07 Mallowney Lane Improvements". A 15-foot-wide easement along the west boundary of the subdivision has been provided to allow the installation of a future multi-use trail.

G. Public Transit

No public transit improvements are required or proposed for this subdivision.

IV. EMERGENCY SERVICE

Fire protection shall be provided by fire hydrants located along the streets within the subdivision. Fire hydrant spacing will be 300 feet apart, per commercial development requirements, and locations shall be approved by the Billings Fire Department.

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.

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.

- There will be two stormwater retention/detention basin in the subdivision that will manage storm drainage from the public streets. The basin will be located on the east side and discharge water into the storm drain pipe alongside Mallowney Lane. This storm basin will have approximately 65,000 cubic feet of storage.

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 City of Billings Public Works. 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 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

The water system will consist of 12" diameter mains connected to the City of Billings water distribution system at the intersection of Mallowney Lane and Holiday Avenue. A second connection will be at the intersection of Leith Trail and the South Frontage Road. The existing water main in the South Frontage Road will be extended approximately 800 lineal feet, across the subdivision's frontage with the road.

Fire hydrants will be installed throughout the subdivision at spacing of approximately 300 lineal feet. The system will be looped.

B. Sanitary Sewer

The sewer system has been designed to drain two different directions. The east side of the subdivision will connect to an 4-inch low-pressure sewer main due to existing sewer main depths and topographical constraints. This low-pressure sewer main will discharge into a manhole to be installed in Holiday Ave, approximately 800 feet east of Mallowney Lane.

The remainder of the subdivision will drain wastewater to the west via 8- and 12-inch gravity sewer mains. The sanitary sewer will connect to existing City of Billings sewer collection system by tying into an existing manhole in the adjacent QFC Subdivision.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines (where said utilities are actually available and existing to subdivision) shall be installed prior to street paving.

The Subdivider shall install private utilities within private utility easements where possible. Extension of private utilities into each lot shall be the responsibility of the individual lot owners. The location of all such off-site facilities within the existing public rights-of-way shall be subject to approval of the City Public Works Department and shall be installed underground. The Subdivider shall coordinate installation with the various utility companies.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Howard Billings Industrial Subdivision, as this is a non-residential subdivision [MCA 76-3-621(3)(b)].

VIII. IRRIGATION

The property has an existing water right off of Hogans Slough. Irrigation laterals on the subdivision previously used on the site will be removed. No water shares have been transferred to the individual lot owners.

Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners unless otherwise noted herein. 35-foot-wide irrigation easements have been dedicated on the plat to ensure continued irrigation water and maintenance along perimeter ditches with downstream users.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical investigation was conducted in October 2022 by Rahwide Engineering, Inc. for use in pavement and stormwater design. The investigation consisted of drilling five borings to depths varying between 5 to 25 feet. In general, the site has one foot of topsoil and vegetation that is underlain by sandy lean clays and lean clay to a depth of approximately 18.5 feet. Below that was a two and a half foot sand layer which was underlain by gravel with sand to the explored depth of 25 feet. Groundwater was encountered at a depth of 19.4 feet below existing grade elevations.

No specific construction restrictions or required mitigation efforts are needed for the utility and surface improvements.

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 Engineer and Utility Department Manager.

XI. LEGAL PROVISIONS APPLYING TO THE 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 and assigns of transferee's 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” SLC

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of (Subdivider), who executed the foregoing 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: _____

This agreement is hereby approved and accepted by the City of Billings, this _____ day of _____, 202__.

“CITY”
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)

: ss

County of Yellowstone)

On this _____ day of _____, 200_, before me, a Notary Public in and for the State of Montana, personally appeared _____, 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 he/she 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: _____