

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

Zimmerman Home Place Subdivision, 4th Filing

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(City of Billings)

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

Zimmerman Home Place Subdivision, 4th Filing

This agreement is made and entered into this ____ day of _____, 20__, by and between *Highlands ZHP Subdivision, LLC, a Montana Limited Liability Company, L & L ZHP Subdivision, LLC, a Montana Limited Liability Company, and Ludwig Consulting, LLC, a Montana Limited Liability Company*, whose address for the purpose of this agreement is **PO Box 333, Reed Point, MT 59069**, and *WL Zimmerman, LLC*, whose address for the purpose of this agreement is **595 S. Riverwoods Parkway, Suite 400, Logan, UT 84321**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Zimmerman Home Place Subdivision, 4th Filing*, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *Zimmerman Home Place Subdivision, 4th 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 *Zimmerman Home Place Subdivision, 4th 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):

1. No variances are requested.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A.** Lot owners will be required to construct the curb and gutter and sidewalk along the segment of the existing access road(s) 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.

H. A Traffic Impact Study (TIS) was completed as part of the Zimmerman Home Place Subdivision, 3rd Filing. Lot developers may be required to provide an update to the TIS to evaluate the proposed trip generation versus the original reports for traffic impacts. Lot owners can contact the City Engineering office for additional information regarding the original TIS and requirements for potential TIS updates.

III. TRANSPORTATION

A. Streets

- All public roadways adjacent to Lot 2, Block 1 and Lots 1 and 2, Block 2 have been completed as part of previous projects. No additional public street improvements are required by the Subdivider.
- Portions of Avenue D remain unconstructed as right-of-way dedication is required from Tract 2B of COS 2974 prior to completing the road. At the time when Avenue D is constructed, Lot 1 of Block 1 shall be responsible for constructing the curb and gutter along its frontage. The City reserves the right to create an SID to construct the improvements if not made at the time of initial construction of Avenue D.
- All public right-of-way for surrounding streets has been dedicated. No additional right-of-way dedication is required.
- Lot owners will be required to construct the private access roads that front their property at the time of lot development.

B. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks adjacent to the existing access roads fronting their lot at the time of lot construction and shall be included in each building permit.
- Portions of Avenue D remain unconstructed as right-of-way dedication is required from Tract 2B of COS 2974 prior to completing the road. At the time when Avenue D is constructed, Lot 1 of Block 1 shall be responsible for constructing sidewalk along its frontage. The City reserves the right to create an SID to construct the improvements if not made at the time of initial construction of Avenue D.

- Sidewalks shall be 5-foot wide boulevard style walks. Handicap ramps and aprons have been constructed as part of previous projects.

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

- A Traffic Impact Study (TIS) evaluating the impacts of the entire Zimmerman Home Place project area has previously been completed and submitted to City Engineering. Intersection impact fees associated with the findings of the TIS have been collected by the city and additional contributions are not required at this time.
- Lot developers may be required to provide an updated to the TIS to evaluate the proposed trip generation versus the original reports for traffic impacts. Lot owners can contact the City Engineering office for additional information regarding the original TIS and requirements for potential TIS updates.

E. Access

- The Subdivision will be accessed by way of driveway approaches off Green Valley Drive, Avenue D and Avenue E.
- Access to Block 2 from Zimmerman Trail is provided via an existing 40' shared access. This access shall be restricted to right-in/right-out and located at the location identified on the plat.

F. Billings Area Bikeway and Trail Master Plan

- The subdivision is located within the Bikeway and Trail Master Plan. A 10-foot multi-use trail has been constructed as part of a previous project.

G. Public Transit

- MET Transit provides service along Grand Avenue with the closest stop at the intersection of Grand Avenue and Zimmerman Trail, approximately 0.25 miles south of the Subdivision. 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.

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 for adjacent private infrastructure located within the shared private access roads has been submitted to the Engineering Division for review and approval. Storm facilities for adjacent private streets have been installed as part of a previous project.

A complete stormwater management Master Plan for the Zimmerman Home Place area has been developed and is on-file at the City Engineering office. Individual Lots will be required to manage their own stormwater in accordance with the above referenced Master Plan and the City of Billings' 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 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 new water and/or sanitary sewer service connections are made.

Lots 2, Block 2 does not have water, sewer, or storm service connections stubbed to it. Service connections to existing public mains within Avenue E shall be completed at the time of Lot development.

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 subdivision will be serviced by existing water mains located in Green Valley Drive and Avenue E.

B. Sanitary Sewer

The subdivision will be serviced by existing sanitary sewer mains located in Green Valley Drive and Avenue E.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines within the public right-of-way shall be installed prior to surface improvements. Existing 8-foot utility easements are provided along the front lot lines of selected lots for utility services as shown on the plat.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed *Zimmerman Home Place Subdivision, 4th Filing* as this is a minor subdivision [MCA 76-3-621(3)(a)].

VIII. IRRIGATION

No water rights have been transferred to the lot owners. There are no irrigation ditches within or adjacent to the Subdivision.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical investigation was performed for the area and can be obtained from the City Engineering Department office.

X. PHASING OF IMPROVEMENTS

The Subdivision is not proposed to be constructed in phases.

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. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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”

*Highlands ZHP Subdivision, LLC
a Montana Limited Liability Company*

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of)

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 *Highlands ZHP Subdivision, LLC, a Montana Limited Liability Company*, 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: _____

“SUBDIVIDER”

L & L ZHP Subdivision, LLC
a Montana Limited Liability Company

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of)

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 *L & L ZHP Subdivision, LLC, a Montana Limited Liability Company*, 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: _____

“SUBDIVIDER”

Ludwig Consulting, LLC
a Montana Limited Liability Company

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of)

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 *Ludwig Consulting, LLC, a Montana Limited Liability Company*, 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: _____

“SUBDIVIDER”

WL Zimmerman, LLC

By: _____

Title: _____

STATE OF MONTANA)

: ss

County of)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the _____ of *WL Zimmerman, LLC*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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

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: _____

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:

Zimmerman Home Place Subdivision, 4th Filing

Signed and dated this ____ day of _____, 20__.

*Highlands ZHP Subdivision, LLC
a Montana Limited Liability Company*

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of)

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 *Highlands ZHP Subdivision, LLC, a Montana Limited Liability Company*, 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: _____

L & L ZHP Subdivision, LLC
a Montana Limited Liability Company

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of)

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 *L & L ZHP Subdivision, LLC, a Montana Limited Liability Company*, 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: _____

Ludwig Consulting, LLC
a Montana Limited Liability Company

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of)

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 *Ludwig Consulting, LLC, a Montana Limited Liability Company*, 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: _____

WL Zimmerman, LLC

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the _____ of *WL Zimmerman LLC*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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