

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

Les Schwab Subdivision

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(City of Billings)

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

Les Schwab Subdivision

This agreement is made and entered into this ____ day of _____, 200__, by and between Les Schwab Tire Centers (*Subdivider*), whose address for the purpose of this agreement is **1146 Shiloh Crossing Blvd, Billings, MT 59102**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of the Les Schwab Subdivision , located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

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WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of the Les Schwab Subdivision; and

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

No variance is being requested

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A.** 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. 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.
- E. 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.
- F. The lot owners acknowledge that this subdivision is within the Shiloh Crossing Property Owner's association. As such the lots created by this subdivision are subject to the existing conditions of the prior Subdivision Improvement Agreement, Declaration of Covenants and any subsequent amendments, and Reciprocal Easement Agreements and any subsequent amendments that the lot being subdivided is currently subject to.

III. TRANSPORTATION

This section should include, but not be limited to the following:

A. Streets

- No street improvements are required as part of this subdivision.

B. Sidewalks

Five foot wide concrete sidewalks exist along South Shiloh Road and Shiloh Crossing Blvd. Lot 1 is currently developed with a pedestrian accessible pathway to these sidewalks. The development of Lot 2 will require a pedestrian connection to South Shiloh Road and Shiloh Crossing Blvd.

C. Street Lighting

Street lighting existing along South Shiloh Road and Shiloh Crossing Blvd. No additional street lighting is required for this subdivision.

D. Traffic Control Devices

No additional traffic control devices are required for this subdivision.

E. Access

Lot 1 and Lot 2 of the proposed subdivision shall be accessed from Shiloh Crossing Blvd at the existing 35' access to the lot being a shared access for both lots.

F. Billings Area Bikeway and Trail Master Plan

A 10' wide asphalt bike trail exists on the west side of South Shiloh Road. No additional connection to this bike trail is required for this subdivision.

G. Public Transit

The City of Billings MET transit has a public stop north of the proposed subdivision approximately 500' north of Lot 1. A pedestrian path of travel currently exists from the subdivision to this location.

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.
- An 8' wide sewer utility easement through Lot 1 to serve Lot 2 has been provided for sewer service to Lot 2.
- As part of the development of Lot 1, a new hydrant was installed to maintain minimum distances to the fire department connection. An existing fire hydrant on the south side of Lot 2 is available to serve Lot 2.

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.

Existing stormwater service connection is provided for both lots as depicted on the Les Schwab Preliminary Plat. Stormwater management is provided by the Shiloh Crossing Subdivision. Any improvements are subject to the Shiloh Crossing Stormwater Management Reported dated January 11, 2008 (Drainage Report). The development of Lot 2 cannot exceed the allowable impervious area requirements of Lots 1 and 2 combined in accordance with the Drainage Report without providing additional stormwater detention.

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.

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

Lot 1 has already been developed and has an existing water service connection that was added during its development. A new water service sufficient to meet the demand of the proposed development will be required for Lot 2 from Shiloh Crossing Blvd.

B. Sanitary Sewer

Lot 1 has already been developed and has an existing sewer service connection. A new 6” sewer service will need to be constructed through Lot 1 for the development of Lot 2. An 8’ wide sewer easement for this service has been provided with the preliminary plat.

C. Power, Telephone, Gas, and Cable Television

Lot 1 has already been developed and has existing power, telephone, gas and cable television service. Lot 2 will be supplied with available buried power

located along Shiloh Crossing Blvd. An existing transformer exists at the NE corner of Lot 2. An existing gas service riser at the NE corner of Lot 2 will be utilized for gas service. Telephone and cable television are available in the South Shiloh Crossing right-of-way immediately adjacent to the site.

VII. PARKS/OPEN SPACE

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

VIII. IRRIGATION

No irrigation facilities are on the property proposed to be subdivided.

IX. SOILS/GEOTECHNICAL STUDY

Lot 1 is a developed property, Lot 2 will require a geotechnical study prior to development and be subject to any restrictions associated with this study.

X. PHASING OF IMPROVEMENTS

No phasing is proposed for this subdivision.

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. This subdivision does not have any public improvements to be installed.
- 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” *(Name of Subdivider)*

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 *(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 _____, 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: _____

