

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

**Clearwater Estates Subdivision**

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(City of Billings)

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

**Clearwater Estates Subdivision**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *Brown Development, LLC*, whose address for the purpose of this agreement is **745 South 56<sup>th</sup> Street West, Billings, MT 59106**, hereinafter referred to collectively as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

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

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of *Clearwater Estates 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 *Clearwater Estates 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.

**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) is not required at this time. Prior to lot development, or as part of a subsequent subdivision(s), Subdivider or Developer shall coordinate with the City Engineer's office on the necessity and scope of a TIS.

### **III. TRANSPORTATION**

#### **A. Streets**

- Central Avenue currently exists in a 30-foot wide county road easement. As part of the development a 60-foot wide right-of-way dedication will occur from the centerline of the existing Central Avenue easement. Additionally, a 70-foot wide right-of-way for Double Haul Lane, Tippet Trail and 44<sup>th</sup> Street West will be dedicated for public access and utilities within the development.
- A TIS will be completed at the time of development for review and approval by City Engineering. The TIS will determine improvements to Central Avenue that will be required at the time of development. The TIS may identify future improvements to Central Avenue in which the City will assess property owners within the development for their proportional share of the cost of the improvements.
- Double Haul Lane, Tippet Trail, and 44<sup>th</sup> Street West will be constructed as commercial local access streets meeting City of Billings subdivision requirements. Improvements will be completed or bonded by the time of final plat approval.
- Double Haul Lane south of the intersection with Tippet Trail shall be constructed as a residential street meeting City of Billings subdivision requirements. Improvements will be completed or bonded by the time of final plat approval.
- Private streets within the development shall allow public access through a right-of-way easement that is no wider than the private street.
- Lot owners will be required to construct any private access roads that front or are located within 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.

- Sidewalks shall be 5-foot-wide boulevard style walks.
- ADA ramps shall be installed by the Subdivider at the time of construction of public improvements.

**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) is not required at this time. Subdivider has coordinated access location along Central Avenue with City Engineering. Prior to lot development, or as part of a subsequent subdivision(s), Subdivider or Developer shall coordinate with the City Engineer's office on the necessity and scope of a TIS.
- Intersection impact fees associated with the findings of the TIS will be collected by the City at the time of development of the lots.

**E. Access**

- The Subdivision will be accessed by way of Central Avenue through intersections at Double Haul Lane and Central Avenue and 44<sup>th</sup> Street West and Central Avenue.
- Double Haul Lane, Tippet Trail, and 44<sup>th</sup> Street West will be public right-of-way providing access to the lots within the development.
- Private streets within the Subdivision shall allow public access through a right-of-way easement that is no wider than the road width.

**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 will be constructed along Central Avenue. Improvements will be completed or bonded by the time of final plat approval.

**G. Public Transit**

- MET Transit provides service along Central Avenue with the closest stop at the intersection of Central Avenue and Shiloh Road, approximately 0.5 miles east 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. The Subdivision will be allowed to discharge stormwater into the Monad Drain as part of its stormwater management strategy.

A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of private contract permitting for public facilities and as part 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 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 Subdivision will be extending a 16-inch water main in Central Avenue. The City will reimburse the Developer for the cost of upsizing the water main from an 12-inch line to a 16-inch line. If requested by Developer, City staff will forward a Compensation Agreement to City Council for approval of oversizing of the water main in accordance with the City's Rules and Regulations Governing Water and Wastewater Service.

**B. Sanitary Sewer**

The Subdivision will be extending a 10-inch sanitary sewer main from the existing 10-inch sewer at the south end of the Subdivision. The Developer is responsible for extending the 10-inch main to Central Avenue.

**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. Private utility easements are provided along the front lot lines of lots as shown on the plat.

**VII. PARKS/OPEN SPACE**

There is no parkland requirement for proposed *Clearwater Estates Subdivision* as this is a minor subdivision [MCA 76-3-621(3)(a)].

**VIII. IRRIGATION**

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.

**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.





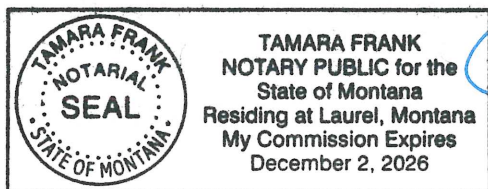
Brown Development, LLC

By: Tobin

Title: MANAGER

STATE OF )  
 : ss  
County of )

On this 11th day of November, 2024, before me, a Notary Public in and for the State of Montana, personally appeared Todd Bawa, known to me to be the MANAGER of Brown Development, LLC, who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Tamara Frank  
Notary Public in and for the State of MT  
Printed Name: TAMARA FRANK  
Residing at: Laurel MT  
My commission expires: 12-02-2026

# 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:

*Clearwater Estates Subdivision*

Signed and dated this 11th day of November, 2024.