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Performance Engineering
3412 Colton Boulevard, Billings, MT 59102

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made this _____ day of _____, 20_____, by and between Donna Barber-Schneider, Diana Browne, and Karin Barber, PO Box 121, Hogeland, MT 59529 hereinafter referred to as "DEVELOPER," and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, 316 North 26th Street, Montana, 59101, hereinafter referred to as the "CITY." DEVELOPER and CITY are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties."

WHEREAS, DEVELOPER is the owner of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Lot 3 and Lot 4 of Barber Farm Subdivision situated in the E ½ of the SW ¼ of Section 03, Township 01 South, Range 25 East, P.M.M., Yellowstone County, Montana.

Above referenced property is hereinafter referred to as "Developer Tract"

WHEREAS, DEVELOPER has submitted to the City a Petition for Annexation to the City for Developer Tract; and

WHEREAS, DEVELOPER desires to annex Developer Tract to the City; and

WHEREAS, DEVELOPER is proposing to develop the Developer Tract in phases over time; and

WHEREAS, CITY has approved the Petition for Annexation by Resolution No. _____ for the Developer Tract contingent upon an Annexation Agreement being executed between CITY and DEVELOPER to identify required off-site infrastructure improvements and guarantees of those improvements.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do hereby agree as follows:

1. Roads and Access. The Developer Tract will be accessed by way of two public accesses from Central Avenue and one public access from Broadwater Avenue.
2. Sanitary Sewer. The Developer Tract will be served by proposed sanitary sewer improvements. Developer will be required to extend an 8-inch sanitary sewer throughout the development to be connected into the existing sanitary sewer located in Central Avenue. The 8-inch sanitary sewer main is required to be extended to the eastern boundary of the development within Broadwater Avenue right-of-way north of Lot 4 Barber Farm Subdivision.

DEVELOPER shall be responsible for payment of the City wastewater system development fee prior to the issuance of any building permits.

3. Water. The Developer Tract will be served by proposed water lines. Developer will be required to extend a 24-inch water main and appurtenances from Central Avenue to Broadwater Avenue. The water main shall be extended in Broadwater to the eastern boundary of the Developer Tracts located in the 40-foot right of way north of Lot 4 Barber Farm Subdivision. The construction of water main will done in phases. Prior to commencement of Phase II, if the City elects to construct the water main from within the Barber Farm Subdivision to Broadwater Avenue and then to Grand Avenue, the developer will be required to dedicate Lot 4 Barber Farm Subdivision to the public prior to the water main construction and also dedicate the north-south collector street right-of-way from Central Avenue to Broadwater Avenue to the public.

Developer may submit a compensation agreement to oversize the water main to a 24-inch water main in accordance with the City of Billings Rules and Regulations Governing Water and Sanitary Sewer.

DEVELOPER shall be responsible for payment of the City water system development fee prior to the issuance of any building permits.

4. Storm Drain. The DEVELOPER will manage storm drainage within the Developer Tract in accordance with the City of Billings Stormwater Management Manual (2018).
5. Right-of-Way. Public Right-of-Way will be dedicated to the City of Billings in accordance with the 2018 Billings Urban Area Long Range Transportation

Plan and in accordance with the City of Billings Subdivision Regulations. Developer is required to dedicate 20-feet of right of way along Central Avenue and a collector street right-of-way from Central Avenue to Broadwater Avenue. Developer is also required to dedicate Lot 4 Barber Farm Subdivision as public right-of-way at the time of the annexation of Lot 4 Barber Farm Subdivision or at the time of the water main construction, depending on what comes first.

6. Street Improvements. DEVELOPER will be required at the time of development to construct all interior public streets to City Standards. Developer will required to construct Broadwater Avenue with at least 30-foot asphalt width along with curb and gutter along the south side. A traffic impact study is required for the development. All improvements identified within the traffic impact study must be completed by Developer. This may include, but not limited to, turn lanes along Central Avenue and traffic calming improvements within the development. All other improvements, including widening and curb and gutter, will be included in the waiver of right to protest.

DEVELOPER shall be responsible for the maintenance of the sidewalk and/or trail after construction.

7. Sidewalk or Multi-use Trail. A sidewalk/multi-use trail will be required to be constructed at the expense of the DEVELOPER along Central Avenue.

DEVELOPER shall be responsible for the maintenance and replacement of the sidewalk and/or trail after construction.

8. Future Intersection Contributions. A traffic impact study will be required for the development. The preparation of the traffic impact study and any fees to mitigate impacts to future intersection improvements will be at the expense of the DEVELOPER.

9. Public Improvements. Should the City perform improvements listed in the Agreement or not listed in the Agreement benefitting the Developer Tract, the CITY shall rely on the attached Waiver filed concurrently herewith, to ensure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, multi-use trails, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, parks and parks maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or

relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area, and other improvements which the City of Billings may require. The attached Waiver, waiving the right to protest the creation of one or more Special Improvement Districts, by this reference is expressly incorporated herein and part hereof. All of the Developer properties can be included in a Special Improvements District for improvements identified in Annexation Agreement regardless of location of individual properties in relation to the improvements.

10. Annexation. The Developer has requested to develop and annex the property in phases. The annexation is subject to the following conditions of approval:
 - a. Phase 1 shall be considered annexed effective immediately upon approval of the mutually agreed upon Annexation Agreement.
 - b. Phase 2 annexation will require a written request from the developer to the Planning Division. The request shall refer to the document number of this filed resolution and expressly state the landowners desire to immediately include the property within city limits to be developed in accordance with the Planned Neighborhood Development. If deemed necessary, the City may bring forward a subsequent Resolution of Annexation for the City Council's review specifically related to Phase 2. Since both phases were included in the original petition, no new annexation petition fees will be collected by the Planning Division. Further, in no circumstance shall development of any kind (excepting and allowing City-installed water, sanitary sewer, or storm drain) to commence prior to the City accepting the written request and notification to the Department of Revenue (DOR), City of Billings Geographic Information Services (GIS) and the Yellowstone County Clerk and Recorder. If the Phase 2 written request has not been submitted within seven years of the date of this Resolution, the property will automatically be included in the City Limits. The City will initiate this annexation through notification to the DOR.
 - c. Upon the approval of a subdivision associated with this Annexation and Planned Neighborhood Development, the Annexation Resolution may be amended by City Council to reflect any new phasing boundaries to be consistent with the required Subdivision Improvement Agreement and plat.
 - d. If the conditions are not satisfied, or the developer requests changes inconsistent with the approval in the Resolution of Annexation, any new

requests for the property legally described within this resolution shall be processed as a new petition of annexation.

11. Compliance. Nothing herein shall be deemed to exempt the Developer Tract from compliance with any current or future City laws, rules, regulations, or policies that are applicable to the development, redevelopment, or use of the subject property.
12. Runs with Land. The covenants, agreements, and all statements in this Agreement and in the incorporated and attached Waiver shall run with the land and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.
13. Attorney's Fees. 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, including those fees and costs of in-house counsel.
14. Amendments and Modifications. Any amendments or modifications of this Agreement 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

“DEVELOPER”

Donna Barber-Schneider

By: _____

Title: _____

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 _____, known to me to be the person who signed the foregoing instrument, and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

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

Diana Browne

By: _____

Title: _____

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 _____, known to me to be the person who signed the foregoing instrument , and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

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

Karin Barber

By: _____

Title: _____

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 _____, known to me to be the person who signed the foregoing instrument , and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

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

WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, Owner of the hereinafter described real property, does hereby waive the right to protest the formation of one or more Special Improvement Districts (SID) for the construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, multi-use trails, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, parks and parks maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area, and other improvements which the City of Billings may require.

The Waiver and Agreement shall run with the land and shall be binding upon the undersigned, its successors and assigns, and shall be recorded in the office of County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Lot 3 and Lot 4 of Barber Farm Subdivision situated in the E 1/2 of the SW 1/4 of Section 03, Township 01 South, Range 25 East, P.M.M., Yellowstone County, Montana.

“DEVELOPER”

Donna Barber-Schneider

By: _____

Title: _____

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 _____, known to me to be the person who signed the foregoing instrument as the _____ of *Developer* and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of Montana

Printed name: _____

Residing at: _____

My commission expires: _____

Diana Browne

By: _____
Title: _____

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 _____, known to me to be the person who signed the foregoing instrument as the _____ of *Developer* and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

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

Karin Barber

By: _____
Title: _____

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 _____, known to me to be the person who signed the foregoing instrument as the _____ of *Developer* and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

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