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Performance Engineering  
3412 Colton Boulevard, Suite 202  
Billings, MT 59102

## ANNEXATION AGREEMENT

**THIS ANNEXATION AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between LMO Investment, LLC, 590 Garden Avenue, Billings, MT 59101 hereinafter referred to as "DEVELOPER," and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, 210 North 27th Street, Billings, 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 7 of Sunny Cove Fruit Farms situated in the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 31, Township 01 North, 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 25-11307 for the Developer Tract contingent upon a 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 one access from Rimrock Road and one access from 60<sup>th</sup> Street West.
2. Sanitary Sewer. The Developer Tract will be served by the existing 24-inch sanitary sewer in Rimrock Road. Developer will be required to extend sanitary sewer in 60<sup>th</sup> Street West along the frontage of the Developer Tract.

DEVELOPER shall reimburse City for one-half of the cost of the sanitary sewer main in Rimrock Road in accordance with the City of Billings Rules and Regulations Governing Water and Wastewater Service.

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 the existing 20-inch +water main in Rimrock Road. Developer will be required to extend water main in 60<sup>th</sup> Street West along the frontage of the Developer Tract.

DEVELOPER shall reimburse City for one half of the cost of the water main in Rimrock Road in accordance with the City of Billings Rules and Regulations Governing Water and Wastewater Service.

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. Existing right-of-way is between 50-feet and 60-feet along the Developer Tract. DEVELOPER shall dedicate right-of-way to establish a full 60-foot half right-of-way adjacent to Developer Tract along Rimrock Road.
6. Street Improvements. DEVELOPER will be required at the time of development to construct curb and gutter, sidewalk, and at least 30-foot wide asphalt along 60<sup>th</sup> Street West. DEVELOPER is required to participate in the construction of Rimrock Road either through a Special Improvement District or a Work Order. This includes curb and gutter, sidewalk, streetlights, storm drain improvements, and street widening. A traffic study has been submitted to the City for review.

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. This improvement can be included by the City in the construction of Rimrock Road with the DEVELOPER being assessed for the cost of construction.

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 has been submitted to the CITY for review. 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. 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.
11. 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.

12. 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.
13. 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”

LMO Investment, LLC

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 LMO Investment, LLC, 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 7 of Sunny Cove Fruit Farms situated in the NW ¼ of the NW ¼ of Section 31, Township 01 North, Range 25 East, P.M.M., Yellowstone County, Montana.

“DEVELOPER”

LMO Investment, LLC

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 LMO Investment, LLC 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: \_\_\_\_\_