

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

***Trailhead Subdivision***

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(City of Billings)**

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

**Trailhead Subdivision**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *Tropicana Inn-Vestments 2.0, LLC*, whose address for the purpose of this agreement is **16114 E. Indiana Ave, Suite 200, Spokane Valley, WA 99216**, hereinafter referred to as “Subdivider,” and **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the plat of *Trailhead Subdivision*, 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 Board of Planning recommended conditional approval of a preliminary plat of *Trailhead Subdivision*; and

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

**A.** Subdivider has requested, and the City hereby grants, the following variances by 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 that segment of the required sidewalk 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.

### III. TRANSPORTATION

#### A. Streets

- All public right-of-way for surrounding streets has been dedicated. No additional right-of-way dedication is required.
- All public roadways adjacent to the Subdivision have been completed as part of previous projects. No additional public street improvements are required by the Subdivider.
- All private internal access roads and site improvements within the Subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, the Uniform Building Code, and the City of Billings Stormwater Management Manual.
- A traffic accessibility study has been completed for the *Trailhead Subdivision*. All required intersection improvement contributions are identified herein shall be completed by the Lot Owners at the Owner's expense at the time of lot development. The percentage of traffic contributions to the following intersections shall be in accordance with the traffic accessibility study:

| Intersection                    | Lot 1         | Lot 2        | Lot 3        | Lot 4        | Lot 5        | Lot 6        | Lot 7        | Total        |
|---------------------------------|---------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Muldowney and Midland           | 9.22%         | 1.07%        | 1.07%        | 1.07%        | 1.07%        | 1.07%        | 4.63%        | <b>19.2%</b> |
| South Billings Blvd and Midland | 1.50%         | 0.17%        | 0.17%        | 0.17%        | 0.17%        | 0.17%        | 0.75%        | <b>3.1%</b>  |
| <b>Subtotal</b>                 | <b>10.71%</b> | <b>1.24%</b> | <b>1.24%</b> | <b>1.24%</b> | <b>1.24%</b> | <b>1.24%</b> | <b>5.38%</b> | <b>22.3%</b> |

The cash contributions shall be based on the percentage of traffic contributions to the intersections based on the total cost of an intersection as determined by City Engineering for the year in which the contribution is made.

#### B. Sidewalks

- The 10-foot-wide multi-use path located within the public right-of-way adjacent to the Subdivision has been constructed as part of previous projects. No additional sidewalks are required by the Subdivider.

- Subdivision is responsible for maintaining the 10-foot multi-use path adjacent to the development.

### **C. Street Lighting**

- Streetlights exist within the public right-of-way adjacent to the Subdivision along Midland Road. The existing parcel is part of Street Light District Number 324. No additional street lighting is proposed for the development.

### **D. Traffic Control Devices**

- The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

### **E. Access**

- The Subdivision will be accessed off Midland Road. Access off Midland Road will be provided via two (2) 40-foot-wide shared accesses at the locations identified on the plat.
- A site vision analysis shall be completed for the western approach at the time of lot development.

### **F. Billings Area Bikeway and Trail Master Plan**

- The Subdivision is within the Billings Area Bikeway and Trail Master Plan. A 10-foot-wide multi-use trail was previously constructed within the public right-of-way adjacent to the Subdivision. No additional improvements are required.

### **G. Public Transit**

- MET Transit provides services along Midland Road with a stop located along the frontage 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 shall be submitted to the Engineering Division for review and approval at the time of 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.

Service connections to the existing public water and sanitary sewer mains within Midland Road shall be completed at the time of lot development for Lots 1 – 6. Water and sanitary sewer services exist for Lot 7.

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 an existing 12-inch water main located in Midland Road.

**B. Sanitary Sewer**

- The Subdivision will be serviced by existing 8-inch and 10-inch sanitary sewer mains located in Midland Road.

**C. Power, Telephone, Gas, and Cable Television**

- Private utility facilities currently exist to serve the subdivision. The private utility facilities will be installed within the right-of-way and utility easements shown on the plat.

**VII. PARKS/OPEN SPACE**

There is no parkland requirement for proposed *Trailhead Subdivision* as all parcels in the subdivision are nonresidential [MCA 76-3-621(3)(b)].

**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 soils/geotechnical study has been performed for the subdivision. A copy of this report is included as part of the infrastructure permitting documents and made public record through the Engineering Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations or complete a site-specific geotechnical investigation.

**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, or by SID. 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.** Subdivider agrees to guarantee all public improvements for a period of two (2) years from the date of final acceptance by the City of Billings.
- 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.



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 IMPROVEMENTS 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:

*Trailhead Subdivision*

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

