

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

Central Avenue Subdivision

Table of Contents

(City of Billings)

I.	Variances.....	2
II.	Property Conditions and Information for Lot Purchasers.....	3
III.	Transportation.....	4
IV.	Emergency Service.....	7
V.	Storm Drainage.....	8
VI.	Utilities.....	8
VII.	Parks/Open Space.....	9
VIII.	Irrigation.....	10
IX.	Soils/Geotechnical Study.....	10
X.	Phasing of Improvements.....	10
XI.	Financial Guarantees.....	10
XII.	Legal Provisions Applying to Subdivider.....	11

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

Central Avenue Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between *CK Land, LLC*, whose address for the purpose of this agreement is **2729 Aspen Way, 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 *Central Avenue 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 *Central Avenue Subdivision*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *Central Avenue 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 *Central Avenue 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. Variance from Section 23-406-A.1: Streets and Roads, A, 1. Said section requires developments to provide connections from the subdivision to undeveloped land.

This subdivision is providing a connection to four (4) of the five (5) adjacent undeveloped lots. Said undeveloped lots have been previously divided, and are of a particular parcel size that they may, or may not, be further subdivided upon development thus not necessitating or continuing a connection.

2. Variance from Section 23-405: Blocks, A. Said section requires block dimensional standard to be met, including block perimeter, section, and length. Said requirements are planned to met at final development of the created parcels, however as large lots are being proposed it causes the need for variance from said block dimensional standards.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A. Lot owners will be required to construct 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.

III. TRANSPORTATION

A. Streets

- Central Avenue currently exists in a 100-foot wide rights-of-way. As part of the development an additional 20-feet of rights-of-way will be dedicated extending north from the edge of existing Central Avenue rights-of-way. Additionally, a 70-foot wide rights-of-way for Double Haul Lane, Road A, and Road B, and a 74-foot wide rights-of-way for Road C will be dedicated for public roads and utilities within the development. Said rights-of-way widths are in conformance with the Subdivision Regulations for commercial and collector roadways, respectively. Broadwater Avenue currently exists as an 80' rights-of-way previously dedicated as part of Barber Farm Subdivision.
- A westbound right turn lane on Central Avenue at Road A will be constructed as part of Phase I of the Subdivision improvements.
- Eastbound left turn lanes on Central Avenue at Road A and Double Haul Lane will be constructed as part of Phase II of the Subdivision improvements.
- Double Haul Lane and Road B (west of Road C) will be constructed as commercial local access streets meeting City of Billings subdivision requirements, being constructed to commercial local street widths. Road B east of its intersection of Road C will be constructed as a collector roadway street meeting City of Billings subdivision requirements, being constructed to a collector road width. Improvements will be completed by private contract or SID.
- Road A will be constructed as a collector roadway street meeting City of Billings subdivision requirements, being constructed to a collector road width. At the time of development, Road A will include curb and gutter on

the west side of the street and 35 feet of asphalt paving. Curb and gutter on the east side of the street and the additional asphalt paving shall be constructed as Parcel 2A1 of COS 2007, Amended is annexed into the City of Billings and developed.

- Road C shall be constructed as a collector street meeting City of Billings subdivision requirements, being constructed to a collector road width. Improvements will be completed by private contract or SID. Road C will be constructed to the north edge of Phase 1 and incorporate a fire apparatus turnaround. Upon opening of Phase 2, the remaining length of Road C will be constructed to its intersection with Broadwater Avenue, which will also be constructed as a City of Billings collector roadway from the western edge of the development to the eastern edge of the development at that time.
- Broadwater Avenue shall be constructed as a collector street meeting City of Billings subdivision requirements. At the time of development, Broadwater Avenue will include curb and gutter on the south side of the street and 35 feet of asphalt paving. Improvements will be completed by private contract or SID. Final alignment of Broadwater Avenue to be determined by City Engineering.
- No connection to Bluegrass Drive West is proposed at this time, and the Subdivider waives the right to protest inclusion in a future SID should the connection be pursued by the City of Billings.
- A Traffic Impact Study has been completed for the *Central Avenue Subdivision*. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. Based on the additional lots created with the *Central Avenue Subdivision*, the percentage of traffic contributions and associated cost to these intersections based on a pro-rata share, as negotiated with City Engineering, are as follows:
 - Phase I -
 - Broadwater Avenue and Shiloh Road – 1.0%
 - Central Avenue and 48th Street West – 0.4%
 - Central Avenue and Shiloh Road – 3.5%
 - Central Avenue and South 44th Steet West – 5.3%
 - Phase II-
 - Broadwater Avenue and Shiloh Road – 1.5%
 - Central Avenue and 48th Street West – 1.6%
 - Central Avenue and Shiloh Road – 7.3%
 - Central Avenue and South 44th Steet West – 8.9%

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. These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage of contributions are as outlined within the Traffic Impact Study for *Central Avenue Subdivision* as submitted with the preliminary plat.

B. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks adjacent to public rights-of-way 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 aside from the areas designated for an 8' wide asphalt trail, as indicated in "Section F".
- ADA ramps shall be installed by the Subdivider at the time of construction of public improvements.

C. Street Lighting

- Street lighting in the public rights-of-way will be installed by private contract or SID. A Street Light Maintenance District will be created in the future and is included in the waiver of right to protest.

D. Traffic Control Devices

- Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
- No traffic signals are anticipated to be warranted within this subdivision. Stop signs shall be installed on the southbound lane of Double Haul Lane and Road A at their intersections with Central Avenue, as well as the southbound lane of Road C at its intersection with Road B and northbound lane at its intersection with Broadwater Avenue.
- 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.
- As detailed in the TIS prepared for the Subdivision and within the City of Billings Subdivision Regulations, traffic calming measures will be incorporated on roadways without traffic controls for distances greater than 500'.

E. Access

- The Subdivision will be accessed by way of Central Avenue through intersections at Double Haul Lane and Central Avenue and Road A and Central Avenue during Phase 1
- The Subdivision will have a third access point at the time Phase 2 is built out which will connect to the existing eastern edge of Broadwater Avenue north of Sundance Subdivision and progress west to Broadwater Avenue's intersection with 48th Street West.
- Double Haul Lane, Road A, Road B and Road C will be public rights-of-way providing access to the lots within the development.

F. Billings Area Bikeway and Trail Master Plan

As part of this project, an 8-foot wide asphalt trail will be constructed as adjacent lots are developed. This trail will be constructed at the time of lot development in the areas as follows:

- On the west side of Road A from Central Avenue to Road B.
- On the south side of Road B from Road A to Road C.
- On the east side of Road C from Road B to Broadwater Avenue.

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. 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.

Stormwater drainage will be collected and conveyed to detention facilities located within areas that will serve as private parkland. These underground detention facilities will be sized to accept runoff generated from the public rights-of-way of Double Haul Lane, Road A, Road B, Road C and Broadwater Avenue. It is anticipated infiltration of captured stormwater will be utilized to evacuate the stored water, with connection to underlying gravels providing the capacity for this means. Stormwater treatment will comply with the City of Billings Stormwater Management Manual. The detention facilities will be within a “Stormwater Detention Easement” that will be determined by the final approved Comprehensive Drainage Report. The detention facility will be managed and maintained by the Subdivision Owner’s Association.

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 24-inch water main north through the subdivision within Double Haul Lane, Road B (west of Road C), Road C, and continuing east through Broadwater Avenue from Road C. Said 24-inch water main will connect onto the existing 16-inch water main within Central Avenue prior to being extended.
- The Subdivision will extend a 12-inch water main east of Road C within Road B to a point along Lot 3, Block 1 to provide service to said lot.
- Lot 4, Block 1 will be serviced from the existing 16-in water main located south of Central Avenue. The Developer will reimburse for the constructed water main along the Subdivision's frontage in accordance with the City's Rules and Regulations Governing Water and Wastewater Service.

B. Sanitary Sewer

- The Subdivision will be extending an 8-inch sanitary sewer main from the existing 8-inch sewer south of Central Avenue. The Developer is responsible for extending the 8-inch main through Road A, Road C, and east through Broadwater Avenue. 8-inch sewer main will be constructed within Road B east of its intersection with Road C, and far enough west within Road B to provide service to Lots 1 and 2 of Block 1.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines within the public rights-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

- Section 27-803 of the City Code of Billings, Montana covers the open space requirements for Planned Neighborhood Developments. Table 27-

800.1 calls for a minimum of 2 percent of the land proposed to be zoned for open space. The required open space for the subdivision is 1.11 acres.

- No parkland dedication is required outside that included in Section 27-803 as the subject lots are commercial or greater than 5 acres.

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 unless authorization from current and downstream users is provided.

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 will be constructed in phases as defined below. Public improvements associated with these phases shall be constructed or monetarily guaranteed prior to opening the phase.

- Phase I: Lot 1, Block 2 and Lot 1, Block 3.
 - Double Haul Lane, Road B and Road C constructed entirely from Central Avenue to the northern property line of Lot 1, Block 2 and Lot 1, Block 3.
 - West curb and gutter and 35 feet of asphalt will be constructed for Road A from Central Avenue to Road B.
 - Sanitary sewer will be constructed up to the northern property line of Lot 1, Block 2 and Lot 1, Block 3
 - Water main will be constructed up to the northern property line of Lot 1, Block 2 and Lot 1, Block 3
 - Stormwater detention facility, and associated storm drain and inlets, serving Phase 1 and incorporating management plan for Phase 2 will be constructed.
- Phase II: Lots 1-4, Block 1; Lot 2, Block 2; and Lots 2-3, Block 3.
 - Road C will be constructed from the terminus of Phase I to the intersection with Broadwater Avenue.
 - Broadwater Avenue will be constructed along the northern boundary of the 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, 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 year 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

CK Land, LLC

By: _____

Title: _____

STATE OF MONTANA)

: ss

County of)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the _____ of *CK Land, LLC*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public in and for the State of _____
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: _____

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:

Central Avenue Subdivision

Signed and dated this _____ day of _____, 20__.

