

Return to:
Sanderson Stewart.
1300 North Transtech Way
Billings, MT 59102

MODIFICATION OF SUBDIVISION IMPROVEMENTS AGREEMENT PEPELKA COMMERCE CENTER SUBDIVISION, SECOND FILING

This Modification of Subdivision Improvements Agreement (this "Modification") is made this _____ day of _____, 2014, by and between **PEPELKA ENTERPRISES, LLC**, whose address for the purpose of this agreement is PO Box 50126, Billings, MT 59102 hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City".

RECITALS

WHEREAS, the plat of Popelka Commerce Center Subdivision, Second Filing (the "Subdivision"), located in the City of Billings, Yellowstone County, Montana, is subject to the terms of that certain Subdivision Improvements Agreement by and between the Subdivider and City recorded August 1, 2014, under Document No. 3713010 in the office of the Yellowstone County Clerk and Recorder (the "Agreement"); and

WHEREAS, the Agreement has been previously modified and recorded July 28, 2014, under Document No. 3713011, in the office of the Yellowstone County Clerk and Recorder; and

WHEREAS, pursuant to Section X. H of the Agreement, the Agreement may be modified in writing and executed in the same manner as the Agreement.

AGREEMENT

The parties hereby agree as follows:

1. Amendment. Section II. C; Section III. E, paragraph 1; and Section III. F; of the Agreement shall be deleted and replaced with the following:

II. CONDITIONS THAT RUN WITH THE LAND

- C. A Storm Water Pollution Prevention Plan (SWPPP) will be required prior to any ground disturbing activity for each lot, if the disturbed area is to be greater than one acre. Lots ~~3A-3 and~~ 3A-4 will be required to complete a SWPPP^s regardless of area disturbed due to the proximity of the Suburban Ditch (Section 28-401(a), BMCC). The SWPPP(s) shall be submitted for review and approval by the City Environmental Affairs Division prior to submission to Montana Department of Environmental Quality.

III. TRANSPORTATION

E. Access

Four accesses will be permitted from King Avenue East. One 40-foot wide access opening (right-in/right-out) centered 200 feet east of the east line of Lot ~~3A-1~~ 3A-2, a 50-foot wide full access opening will be centered on the east line of Lot ~~3A-1~~ 3A-2, a 40-foot wide access opening (right-in/right-out) centered on the west line of Lot ~~3A-1~~ 3A-2, and a 60-foot wide full access opening centered on the west line of Lot ~~3A-2~~ 3A-3.

F. Billings Area Bikeway and Trail Master Plan

The Billings Area Bikeway and Trail Master Plan identifies a proposed bike trail connecting the existing trail along Southgate Drive through the Popelka Commerce Center to Amend Park. Bike trails will be constructed within a 15 foot wide trail easement. The trail easements are shown on the plat along the east side of ~~Lot 3A-1~~ Lots 3A-1 and 3A-2, the east side of Lot 3A-5, and the south side of Lot ~~3A-3~~ 3A-4. Trail easements can be relocated at the time of development if agreed to by the developer and the City.

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

“SUBDIVIDER”

POPELKA ENTERPRISES, LLC.

By: _____

By: _____

Its: _____

Its: _____

STATE OF MONTANA)

: ss

County of Yellowstone)

On this ____ day of _____, 2014, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the person who executed the foregoing instrument as the _____ of POPEKLA ENTERPRISES, LLC., and who acknowledged to me that said company executed the same.

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

Notary Public in and for the State of Montana

Printed Name: _____

Residing at: _____

My commission expires: _____

“CITY”

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this _____ day of _____, 2014, before me, a Notary Public 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 in 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: _____

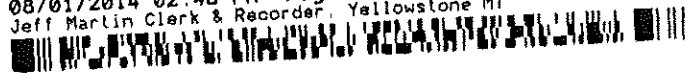
Approved as to Form:

City Attorney

SIA

3713011

08/01/2014 02:48 PM Pages: 1 of 13 Fees: 5 00
Jeff Martin Clerk & Recorder, Yellowstone MT



Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT
PLAT OF POPELKA COMMERCE CENTER SUBDIVISION,
SECOND FILING
CITY OF BILLINGS
Table of Contents**

| | | |
|--------------|--|-------|
| I. | Variances | SIA-2 |
| II. | Conditions that Run with the Land | SIA-2 |
| III. | Transportation | SIA-3 |
| | A. Streets | SIA-3 |
| | B. Sidewalks | SIA-4 |
| | C. Street Lighting | SIA-4 |
| | D. Traffic Control Devices | SIA-4 |
| | E. Access | SIA-5 |
| | F. Billings Area Bikeway and Trail Master Plan | SIA-6 |
| | G. Public Transit | SIA-6 |
| IV. | Emergency Services | SIA-6 |
| V. | Storm Drainage | SIA-6 |
| VI. | Utilities | SIA-6 |
| | A. Water | SIA-7 |
| | B. Sanitary Sewer | SIA-7 |
| | C. Power, Telephone, Gas, and Cable Television | SIA-7 |
| VII. | Parks/Open Space | SIA-8 |
| VIII. | Irrigation | SIA-8 |
| IX. | Soils/Geotechnical Study | SIA-8 |
| X. | Legal Provisions | SIA-8 |

SIA

3713011

08/01/2014 02:48 PM Pages: 2 of 13 Fees: 5.00
Jeff Martin Clerk & Recorder, Yellowstone MT



Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT
PLAT OF POPELKA COMMERCE CENTER SUBDIVISION,
SECOND FILING**

THIS AGREEMENT is made and entered into this 28th day of July, 2014, by and between **POPELKA ENTERPRISES, LLC**, whose address for the purpose of this Agreement is P.O. Box 50126 Billings, Montana 59102, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the plat of Popelka Commerce Center Subdivision, Second Filing, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on the 14 day of APRIL, 2014, the City Council conditionally approved a preliminary plat of Popelka Commerce Center Subdivision, Second Filing; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to approval of the final plat; and

WHEREAS, the real property affected by the proposed amended plat is covered by and subject to the terms and conditions of that certain Subdivision Improvements Agreement and Waiver between Popelka Enterprises, LLC as "Owners and Subdividers" and the City of Billings as "City," dated the 27th day of January, 2003, and recorded the 3rd day of September, 2003, under Document No. 3250441 for Popelka Commerce Center Subdivision, all in records of Yellowstone County; and

WHEREAS, the real property affected by the proposed amended plat is covered by and subject to the terms and conditions of that certain Perpetual Right-of-Way



Easement dated the 12th day of September, 2005, and recorded the 6th day of November, 2005, under Document No. 3356092 for Popelka Commerce Center Subdivision, all in records of Yellowstone County; and

WHEREAS, the real property affected by the proposed amended plat is covered by and subject to the terms and conditions of that certain Perpetual Right-of-Way Easement dated the 12th day of November, 2013, and recorded the 3rd day of March, 2014, under Document No. 3700606 for Popelka Commerce Center Subdivision, all in records of Yellowstone County; and

WHEREAS, the provisions of this agreement shall be effective and applicable to the Popelka Commerce Center Subdivision, Second Filing 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:

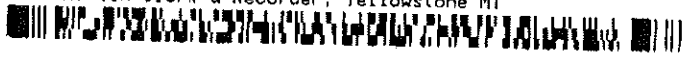
I. VARIANCES

Subdivider has requested, and the City hereby grants, the following variance by the City Council from the strict interpretation of the City's Subdivision Regulations (Section 23.1101, BMCC):

None requested.

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners should be aware that a letter updating the Traffic Impact Study dated April 2001 will be required to identify traffic impacts created by the development of each lot.
- B. Lot owners should be aware that a preliminary geotechnical investigation has not been performed. A geotechnical analysis will be required on a lot by lot basis at the time of development.
- C. A Storm Water Pollution Prevention Plan (SWPPP) will be required prior to any ground disturbing activity for each lot, if the disturbed area is to be greater than one acre. Lots 3A-3 and 3A-4 will be required to complete SWPPP's regardless of area disturbed due to the proximity of the Suburban Ditch (Section 28-401(a), BMCC). The SWPPP(s) shall be



submitted for review and approval by the City Environmental Affairs Division prior to submission to Montana Department of Environmental Quality.

- D. Permission from the Suburban Ditch Company and any other permits deemed necessary by the DNRC, Army Corps of Engineers, and/or Montana DEQ such as the joint application, shall be submitted to the Environmental Affairs Division.
- E. 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 City of Billings *Stormwater Management Manual*.
- F. In the event that a particular developer chooses to build more than one building on each lot, that developer will be required to go through the master site plan review process for the lot in question.
- G. The Suburban Ditch passes through the northwest corner of Lot 3A-4. At the time of development of Lot 3A-4 the developer of said lot shall obtain approval from the Suburban Ditch Company for any plan that would alter the ditch in any way from its current location and condition. In the event the ditch were to be relocated, the developer shall coordinate with the ditch company to relocate the ditch and create an easement for the ditch if required.
- H. Permission from the Suburban Ditch Company and any other permits deemed necessary by the DNRC, Army Corps of Engineers, and/or Montana DEQ such as the joint application shall be submitted to the Environmental Affairs Division.

III. TRANSPORTATION

A. Streets

Subdivider and City agree that the required street improvements are as follows:

1. According to the *Billings Urban Area 2009 Transportation Plan*, King Avenue East is classified as a minor arterial and South Billings Boulevard is classified as a principal arterial. King Avenue East and South Billings Boulevard are currently fully improved and no additional improvements will be required as part of this subdivision.

2. Access to the lots is provided by King Avenue East, South Billings Boulevard, and Commerce Way (private drive). All 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, the *Stormwater Management Manual dated February 2011*, and other applicable City codes, rules, and regulations.
3. Survey monuments shall be installed as required by City ordinance and the rules and regulations of the State of Montana.

B. Sidewalks

Sidewalks along the King Avenue East and South Billings Boulevard frontages currently exist and no additional sidewalk improvements will be required along the King Avenue East and South Billings Boulevard frontages as part of this subdivision.

Within the subdivision, sidewalks will be required along the internal streets providing access from the adjacent public rights-of-way to the business sites, as is required by State Statute, to comply with the Americans with Disabilities Act.

Sidewalks within the subdivision will not be installed until building construction occurs on the lots, and the said responsibility for said installation will be with the owners of the lots at time of development. Sidewalks shall be a minimum of five-feet wide with five-foot boulevard between curb and sidewalk. Handicap ramps shall be installed at the time of street and parking lot construction for all appropriate locations within the subdivision.

C. Street Lighting

Street lights along the King Avenue East and South Billings Boulevard frontages currently exist and no additional street light improvements will be required along the King Avenue East and South Billings Boulevard frontages as part of this subdivision. No additional street lighting is required as part of this subdivision.

D. Traffic Control Devices

It is anticipated that a future traffic signal and southbound auxiliary left-turn lane would be the recommended improvements for full-buildout of



the Popelka Commerce Center Subdivision. A contribution of \$13,800 was provided to the City at the time of the original subdivision of the Popelka Commerce center. This contribution was received by the City as the total contribution for all future lots developed within the Popelka Commerce Center towards a future traffic signal. Based on this understanding, Lot 5 did not provide a contribution towards future traffic signal improvements when it was developed.

It is anticipated that as Lots 3A-1 through 3A-5 are developed they will be covered by the initial contribution of \$13,800.00 by the Popelka Commerce Center and will not be required to provide additional contributions towards the future traffic signal.

Per Section II, A Conditions that Run with the Land, a letter updating the April, 2001 Traffic Impact Study will be required for the development of each lot in the Popelka Commerce Center. If traffic studies indicate that traffic generated by the proposed development of a lot will exceed the originally projected traffic estimates by more than ten percent additional development fees may be required towards the future signal.

Traffic control devices for the private internal streets and parking lots will be included as part of the site development.

E. Access

Four accesses will be permitted from King Avenue East. One 40-foot wide access opening (right-in/right-out) centered 200 feet east of the east line of Lot 3A-1, a 50-foot wide full access opening will be centered on the east line of Lot 3A-1, a 40-foot wide access opening (right-in/right-out) centered on the west line of Lot 3A-1, and a 60-foot wide full access opening centered on the west line of Lot 3A-2.

On South Billings Boulevard, two access openings will be allowed. One access opening will be 150 feet north of King Avenue East (right-in/right-out) and the other (full access) will be centered 500 feet north of King Avenue East.

The interior access roads within the Popelka Commerce Center development will provide the network for traffic circulation and connection with the above-described accesses to King Avenue East and South Billings Boulevard per the Conditions and Reciprocal Easements filed with the original subdivision plat under records of the Yellowstone County Clerk and Recorder, Document Nos. 3328536, 3356092, and 3700606.



F. Billings Area Bikeway and Trail Master Plan

The Billings Area Bikeway and Trail Master Plan identifies a proposed bike trail connecting the existing trail along Southgate Drive through the Popelka Commerce Center to Amend Park. Bike trails will be constructed within a 15 foot wide trail easement. The trail easements are shown on the plat along the east side of Lot 3A-1, the east side of Lot 3A-5, and the south side of Lot 3A-3. Trail easements can be relocated at the time of development if agreed to by the developer and the City.

G. Public Transit

Internal street circulation and interconnectivity will be provided for the Popelka Commerce Center. This will, in turn, provide sidewalks for pedestrians to access public transit routes. No other specific public transit provisions are proposed at this time.

IV. EMERGENCY SERVICE

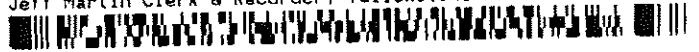
Emergency services will be provided by the City of Billings. Internal streets will be designed to allow access to all proposed building pads. Also, a looped public water main system with hydrants will be constructed within the development. The hydrants shall be maintained in accordance to the most current adopted fire code requirements by the Subdivider.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual (February 2011)* and Section 23-706, BMCC, and shall be in accordance with the recommendations of the approved storm drain study to be submitted to the Engineering Division at the time of site development. Stormwater will be handled on site through surface flow on the streets and parking lots; collection through a network of catch basins, inlets, and piping; stormwater detention/retention and discharge to the City's storm drain at the discharge rates allowed by the *Stormwater Management Manual (February 2011)*.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains or sanitary sewers. The property owner



shall make application for extension/connection of water mains and sanitary sewer 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 and franchise 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

Currently, a 12-inch water main originating in South Billings Boulevard and extending to the west to the west property line of Lot 5 exists in Commerce Way. Also, an 8-inch water main exists in Commerce Way from King Avenue East to the north boundary of the perpetual right-of-way easement filed under Yellowstone County Clerk and Recorder, Document #: 3356092. The 8-inch and 12-inch water lines will be looped at the time that Commerce Way is completed. Also at that time, separate domestic water services will be provided for each building from the water main in Commerce Way.

B. Sanitary Sewer

Currently, an 8-inch sanitary sewer main exists in Commerce Way from King Avenue East to the north boundary of the perpetual right-of-way easement filed under Yellowstone County Clerk and Recorder, Document No. 3356092.

The existing 8-inch sewer main will be extended to the lots within the subdivision with separate sewer services provided to each individual building site within the development.

C. Power, Telephone, Gas, and Cable Television

All power, telephone, gas, and cable television lines within the public right-of-way shall be installed underground prior to street paving.

Appropriate utility easements will be provided across the subdivision lots for service to the proposed development.

VII. PARKS/OPEN SPACE

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Paragraph (3)(c) states that a minor plat with all nonresidential parcels may not require parkland dedication. No on-site parkland will be dedicated as part of this minor plat.

VIII. IRRIGATION

The Suburban Ditch crosses the northwest corner of the property. When the property crossed by the ditch is developed, the developer shall coordinate with the ditch company to relocate the ditch or put it underground if necessary.

IX. SOILS/GEOTECHNICAL STUDY

A preliminary geotechnical investigation has not been performed. A geotechnical analysis will be required on a lot by lot basis at the time of development.

X. LEGAL PROVISIONS

- A. Subdivider agrees to provide for any necessary adjustments or alterations to existing improvements which are necessary and limited to those improvements required to make the improvements contemplated by this agreement without cost to the City of Billings. The water and sewer mains, storm drains, and streets shall be sized, designed, and installed in conformance with City of Billings design standards and with the provisions of the Montana Public Works Standard Specifications.
- B. Subdivider agrees to notify the City engineer of the date and hour construction is anticipated to begin on the required improvements and to keep the City engineer informed of the progress of construction. If the construction is stopped for any other reason than overnight, holidays, and weekends, the Subdivider agrees to notify the City engineer of stoppage. Further, Subdivider agrees to notify the City engineer not less than four hours before construction is scheduled to resume.
- C. Except as otherwise provided, Subdivider shall install and construct said required improvements utilizing the mechanics of a special improvement district or private contracts 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 special improvement district or private contract, and the improvements shall be installed as approved by the City engineer and Utility Department Manager.

- D. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings by a requirement that the contractor must guarantee improvements for a period of one year after final acceptance by the City of Billings.
- E. 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.
- F. The covenants, agreements, and all statements in this agreement apply to and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.
- G. 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 the 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.
- H. Any amendments or modifications of this agreement, or any provisions herein, shall be made in writing and executed in the same manner at this original document and shall, after execution, become part of this agreement.
- I. Subdivider shall comply with all 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”

PEPELKA ENTERPRISES, LLC

By: Robert A. Popelka

By: Patricia D. Sanford

Its: Managing Member

Its: Managing Member

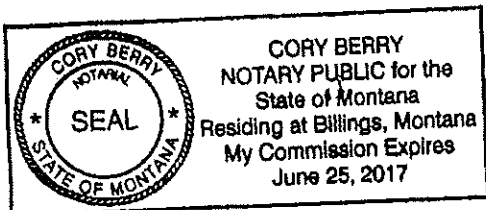
STATE OF MONTANA)

: ss

County of Yellowstone)

On this 10 day of July, 2014, before me, a Notary Public for the State of Montana, personally appeared Robert A. Popelka, known to me to be the person who executed the foregoing instrument as the Patricia D Sanford / managing member of **PEPELKA ENTERPRISES, LLC**, and who acknowledged to me that said company executed the same.

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



Cory Berry
Notary Public for the State of Montana
Printed name: Cory Berry
Residing in Billings, Montana
My commission expires: 6/25/17

