

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

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between MARSICH INVESTMENTS, LLC., 5213 Onyx Boulevard, Billings, Montana 59106 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."

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

Tract 3 of Amendment of Tracts 1, 2 and 3, Certificate of Survey No. 1648, Situated in the NE1/4 of Section 10, T 01S, R 25E, P.M.M., in the City of Billings, Yellowstone County, Montana hereinafter referred to as "Tract".

**WHEREAS**, DEVELOPER has submitted to the CITY a Petition for Annexation to the CITY for the Tract; and

**WHEREAS**, DEVELOPER desires to annex the Tract to the CITY; and

**WHEREAS**, CITY has approved the Petition for Annexation by Resolution No. 16-\_\_\_\_\_ for the Tract contingent that a Development Agreement be 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. *Phasing of Improvements.* The DEVELOPER intends to construct a unit ownership development consisting of duplex and single-family dwelling units and submit a Master Site Plan for the entire development of the Tract for review and approval by the CITY. Individual building permits shall be obtained for each building within the approved Master Site Plan.

The DEVELOPER intends to develop the Tract in multiple phases as defined on Exhibit A: "Development Phasing" attached to this agreement. Required public improvements, as described herein, shall be phased to coincide with Exhibit A.

2. Sanitary Sewer. The Tract will be served by a service connection from an extension of an existing 24-inch diameter sanitary sewer main in Central Avenue. DEVELOPER will be responsible for extending the sanitary sewer main along the Tract frontage of Central Avenue to the same size and grade as the existing main at the time of development of Phase 1. The CITY shall pay the material cost difference from a 12-inch diameter to a 24-inch diameter sanitary sewer main in Central Avenue. A compensation agreement shall be entered into between the DEVELOPER and the CITY as a mechanism for administering the reimbursement for the oversizing of the sewer main.

The DEVELOPER shall be responsible for payment of the CITY wastewater system development fee at the time of building permit. A common water meter is to be utilized for multiple residential dwelling units; the system development fee shall be paid as a percentage of the dwelling unit(s) applying for building permit over the total number of planned dwelling units, as approved under the Master Site Plan.

DEVELOPER may rely on future reimbursement of a portion of utility extension costs through a Reimbursement Agreement with CITY pursuant to Article 26-500 Billings, Montana City Code, which will be entered into at the time of final approval of the Private Contract by CITY.

No other off-site utility extensions will be required by DEVELOPER.

3. Water. The Tract will be served by a service connection from an extension of an existing 16-inch diameter water main in Central Avenue. DEVELOPER will be responsible for extending the water main along the Tract frontage of Central Avenue at the time of development of Phase 1. The CITY shall pay the material cost difference from a 12-inch diameter to a 16-inch diameter water main in Central Avenue. A compensation agreement shall be entered into between the DEVELOPER and the CITY as a mechanism for administering the reimbursement for the oversizing of the water main.

DEVELOPER will be responsible for extending the 12-inch diameter water main along the Tract frontage of Bell Avenue at the time of development of Phases 2 and 3.

The DEVELOPER shall be responsible for payment of the CITY water system development fee at the time of building permit. A common water meter is to be utilized for multiple residential dwelling units; the system development fee shall be paid as a percentage of the dwelling unit(s) applying for building permit over the total number of planned dwelling units, as approved under the Master Site Plan.

DEVELOPER may rely on future reimbursement of a portion of utility extension costs through a Reimbursement Agreement with CITY pursuant to Article 26-500 Billings, Montana City Code, which will be entered into at the time of final approval of the Private Contract by CITY.

No other off-site utility extensions will be required by DEVELOPER.

4. Storm Drain. The nearest CITY storm drain available in the area is a 24-inch diameter main located at the intersection of Bell Avenue and Legends Way. The DEVELOPER shall extend the storm drain main as necessary to manage storm drainage within the Bell Avenue right-of-way and to provide a storm drain service connection to the Tract.

The DEVELOPER will manage storm drainage on the site and in the Bell Avenue right-of-way in accordance with the City of Billings Stormwater Management Manual (2015) and the General Permit for Storm Water Discharges Associated with Small Municipal Separate Storm Sewer Systems (MS4s), Permit Number MTR040000.

No other off-site utility extensions will be required by DEVELOPER.

5. Right of Way. Central Avenue is designated as a Principal Arterial and is located within a 70-foot right-of-way adjacent to the Tract. Adjacent to Tract, there is a 30-foot half right-of-way for Central Avenue. DEVELOPER shall dedicate an additional 30 feet of right of way along Central Avenue fronting the Tract. DEVELOPER will not be compensated for the right of way dedication.

Bell Avenue is designated as a Residential Local Access and is located within a 60-foot right-of-way/public access easement adjacent to Tract. Adjacent to Tract, there is a 30-foot half right-of-way for Bell Avenue. No additional right of way shall be necessary for Bell Avenue.

6. Street Widening. Central Avenue is designated as a Principal Arterial and is located within a 70-foot right-of-way adjacent to Tract. That portion of Central Avenue adjacent to the Tract has been partially constructed. The existing street includes approximately 24 feet of asphalt. DEVELOPER will provide a cash-in-lieu contribution cost to design and construct

approximately an additional 3 feet of asphalt surface with a satisfactory sub-base, base course, standard curb and gutter, and construction administration, due at the time of building permit.

Bell Avenue is designated as a Residential Local Access and is located within a 60-foot right-of-way/public access easement adjacent to Tract. It is required that Bell Avenue be constructed with a minimum future standard width of 34 feet, back of curb to back of curb, and that water and storm sewer mains are constructed within the street. DEVELOPER will enter into a private contract or private contracts for the construction of Bell Avenue adjacent to the Tract, which will generally consist of 30 feet of asphalt, roadside ditch on the south side of the road, and curb, gutter, and 5-foot boulevard sidewalk on the north side of Bell Avenue. Exhibit A: "Development Phasing" has been attached to this agreement to describe phasing of the Bell Avenue construction.

No other off-site street widening will be required by DEVELOPER.

7. Sidewalk. DEVELOPER will be required to construct a 5-foot wide boulevard sidewalk along the Central Avenue frontage of the Tract located 1 foot off of the property line (after right-of-way dedication). Sidewalk construction shall be occur at the time of development of Phase 1.

DEVELOPER will be required to construct a 5-foot wide boulevard sidewalk on the north side of Bell Avenue fronting the Tract located 1 foot off of the property line. Sidewalk construction on Bell Avenue within Phase 2 shall occur at the time of the associated private contract. Sidewalk construction on Bell Avenue associated with Phase 3 shall occur at the time of construction for each building prior to occupancy.

8. Emergency Service. Access is provided to this Tract from Central Avenue, Bell Avenue, and the internal private roads. In addition, fire hydrants will be installed at the required locations as reviewed and approved by the City of Billings, Fire Department in the Master Site Plan.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrants in place to allow for fire suppression requirements. Prior to 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 obstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along an 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 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.
9. Future Intersection Contributions. DEVELOPER shall submit a Traffic Impact Study (TIS) to Engineering for review and approval prior to the development approval. Intersection contributions shall be identified within the TIS and must be made prior to the development approval.
10. Other Public Improvements. For any other improvements not specifically listed in this Agreement, the CITY shall rely on the attached Waiver filed concurrently herewith, to insure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, street construction and paving, curb, gutter, sidewalks, driveways, storm drainage, and street lighting. 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.
8. Compliance. Nothing herein shall be deemed to exempt the 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.
9. 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.
10. 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.

11. 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.



This Agreement is hereby approved and accepted by 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 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: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

# 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, driveways, survey monuments, street name signs, street lights, street light energy and 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 incidental 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:

Tract 3 of Amendment of Tracts 1, 2 and 3, Certificate of Survey No. 1648, Situated in the NE1/4 of Section 10, T 01S, R 25E, P.M.M., Yellowstone County, Montana

“DEVELOPER”

MARSICH INVESTMENTS, LLC.

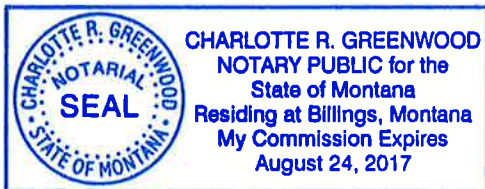
By: *Daniel A. Marsich Jr.*

Title: *owner.*

STATE OF MONTANA        )  
  ):ss.  
County of Yellowstone    )

On this 22<sup>nd</sup> day of February, 2017, before me, a Notary Public in and for the State of Montana, personally appeared *Daniel A. Marsich Jr.* known to me to be the person who signed the foregoing instrument as the *owner* of DEVELOPER, and who acknowledged to me that said DEVELOPER executed the same.

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



*Charlotte R. Greenwood*  
Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_