

AMENDED SUBDIVISION IMPROVEMENTS AGREEMENT

AMENDED LOT 1, BLOCK 6 OF PARKLAND WEST SUBDIVISION, FIRST FILING

This AGREEMENT made and entered into this ____ day of _____, ~~2000~~ 2018, by and between CORPORATION OF THE PRESIDNG BISHOP OF THE CHURCH OF JESUS OF LATTER-DAY SAINTS, a Utah corporation sole, whose address for the purpose of this agreement is Meetinghouse Facilities Department, 50 East North Temple Street, 4th Floor West Wing, Salt Lake City, Utah 84150, hereinafter referred to as "Subdivider", and the CITY OF BILLINGS, Billings, Montana, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, the Plat of Amended Lot I, Block 6 of Parkland West Subdivision, First Filing, located in the City of Billings, Yellowstone County, Montana, was submitted to the Planning Department, which recommended its approval to the City Council of the City of Billings; and

WHEREAS, at a regular meeting held on the 11th day of January, 1999, the City Council approved a Preliminary Plat of Amended Lot 1, Block 6 of Parkland West Subdivision, First Filing, and

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

WHEREAS, the Subdivision is subject to the terms and conditions of ~~that~~ certain Subdivision Improvements Agreements filed October 21, 1982 under Document No. 1243759, and filed January 17, 2001 under Document No. 3115233, records of Yellowstone County, Montana.

WHEREAS, the Subdivider owns all of Amended Lot 1, Block 6 of Parkland West Subdivision, First Filing, and wishes to file an Amended Subdivision Improvement Agreement, which will supersede the Subdivision Improvement Agreement, filed on January 17, 2001 under Document No. 3115233.

NOW, 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:

1. Subdividers agree to construct the following improvements as required and in conformance With the Billings Subdivision Regulations:

A. STREETS

(1) Street Construction.

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 Storm Water Management Manual, and other applicable City Codes, Rules, and Regulations.

Subdividers will enter into a private contract for the construction of . all required improvements for those portions of South 36th Street . West, Crater Lake Avenue, and Rachelle Circle adjacent to or within the Subdivision, as follows:

- (a) South 36th Street West: Portions of South 36th Street West have been previously constructed, including the westerly sidewalk, westerly curb and gutter and westerly 30 feet of gravel and asphalt section. The developer shall install curb . and gutter, 5-foot boulevard sidewalk and asphalt and gravel street section to complete the 49-foot wide (back of curb to back of curb) street section along the frontage of the Subdivision. Said street improvements shall be constructed in conjunction with Phase I development as defined herein.
- (b) Rachelle Circle: Rachelle Circle will be a standard 37-foot wide (back of curb to back of curb) street. Phase I development, as defined herein, shall include installation of curb and gutter, 5-foot curbside and 30-foot of asphalt and gravel street section from the lip of curb along the south side of the street, adjacent to Lot 1B.

Phase II development as defined herein shall include installation of curb and gutter, 5-foot curbside and 30 foot of asphalt and gravel street section from the lip of curb along the south side of the street along the frontage of Lot 1C, as well as construction of the entire cul-de-sac . turnaround including asphalt and gravel street section and curb and gutter over the entire perimeter of the cul-de-sac, Sidewalk will only be required on the Lot 1C frontage as part of Phase II development.

Phase ~~III~~ II development ~~as defined herein~~ shall also include curb and gutter, 5-foot curbwalk, and completion of the street section along Lot IA frontage to provide for a completed 37-foot wide street (back of curb to back of curb).

- (c) Crater Lake Avenue: A portion of Crater Lake avenue adjacent to the Subdivision has been previously constructed (South 36th Street West to Wind Cave Circle).

Phase ~~III~~ II development as defined herein shall include installation of curb and gutter, 5-foot curbwalk and 30 foot of asphalt and gravel street section from the lip of the curb, along the south side of the street, for those portions not previously constructed. Phase ~~III~~ II development shall also include a temporary emergency turnaround at the easterly end of the Subdivision. Said turnaround shall be located on Lot IA, and an easement shall be provided by the developer at the time of construction. Turnaround shall meet City standards.

- (d) Monad Road: Monad Road has been previously constructed. No improvements are required by the Subdivision.

The design thickness of the street improvements shall be determined from actual field tests conducted by a responsible testing laboratory. The design section shall be submitted to, reviewed by, and approved by the City Engineer.

- (2) Street Signs.

Street name signs shall be furnished and installed as required by the City Engineer.

- (3) Traffic Control Devices. The Subdivider shall furnish and install all necessary traffic control devices in accordance with plans and specifications submitted to and approved by the City Engineer. Said devices may include, but shall not be limited to, Type III . Barricades, traffic control signs, and pavement striping.

- (4) Storm Drainage.

Storm drainage shall be provided by a combination of surface drainage and curbs and gutters, drained to underground storm drains. All drainage

improvements shall comply with the provisions of the Stormwater Management Manual..

(04-12-00)

- (a) **Phase I Development.** Phase I development as defined herein, shall include construction of a temporary stormwater retention pond located on Lot IA and drainage swales to direct the street runoff from Rachelle Circle to the retention pond.

The temporary stormwater retention pond shall lie within an easement area as depicted on the plat. Said easement shall be granted by separate temporary easement document recorded concurrently with the plat,

- (b) **Phase II Development.** Phase II development as defined herein, shall include construction of street inlets and storm drain piping in Rachelle Circle, said piping extending east of Rachelle Circle, then north along the easterly subdivision boundary to a discharge into the temporary retention pond, constructed under Phase I development.

- (c) ~~**Phase III Development**~~ **Phase II Development** as defined herein shall also include extending the storm drain piping installed under Phase II development north to Crater Lake Avenue, installation of the 21-inch storm drain piping, manholes and inlets in Crater Lake Avenue, including connecting to the existing storm drain at the intersection of Crater Lake Avenue and Wind Cave Circle. The storm drain shall be extended north of Crater Lake Avenue into the park area. A stormwater retention pond will be constructed within the park area.

At the time of Phase ~~III~~ II development, the temporary stormwater retention pond previously constructed on Lot IA will be abandoned.

- (c) **Lots 1B and 1C:** The proposed development of Lots 1B and 1C (Church meeting house/~~softball field~~/parking lot/landscaping) will require construction of on-site stormwater retention, meeting the requirements of the Stormwater Management Manual. A stormwater outfall will be constructed to the existing storm drain in Monad Road for Lots 1B and 1C.

20-Foot Wide Storm Drain Right-of-Way. A 20-foot wide Storm Drain Right-of-Way is shown on the plat at the easterly terminus of Rachelle Circle. This right-of-way traverses easterly to the east line of the subdivision and then north to Crater Lake Avenue along said east line. The primary purpose of this storm drain right-of-way is to contain the 21-inch storm drain line discussed in Paragraph (e) (b) above: This right-of-way may ultimately have a pedestrian or bike path constructed upon it, with appropriate landscaping, as approved by the City Engineer's Office. For the entire area of the storm drain right-of-way, as depicted on the face of the plat, the Subdivider and their successors agree as follows:

- 1) Not to construct, nor cause to be constructed, within the right-of-way any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, walls, nor any other fixed objects of any kind, shape or form, except as may be licensed by the City. .
- 2) Not to plant, or cause to be planted, within the right-of-way any trees, bushes, shrubs, hedges, or any other plantings of a similar nature, except as may be licensed by the City.
- 3) The City or its agents can freely travel within the right-of-way for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, and replacing improvements over, across, and through the right-of-way, together with the free right of ingress and egress at all times of the day or night
- 4) If this right-of-way is ultimately improved with sidewalks, bikeways, or formal landscaping as approved by the City, then its long-term maintenance should be guaranteed through its inclusion within the extended Park Maintenance District included in the Waiver contained herein. Prior to inclusion of this right-of-way in a Park Maintenance District, the abutting property owner(s) shall agree to maintain said area at a minimum by mowing, cleaning, keeping free of noxious weeds, and performing other general maintenance to the satisfaction of City Code.

(5) Street Lighting.

Construction or installation of street lights shall not be required at this time, but street lights shall be included in the waiver for construction of the same in the future. Said waiver shall also include a maintenance district for street light energy and the maintenance of street lights.

(6) Landscaping.

Landscaping shall be provided in conformance with the requirements as outlined the Unifield Zoning Regulations for the City of Billings and Yellowstone County. Landscaping within public right-of-way does not satisfy the requirements for landscaping on private property.

B. UTILITIES

(1) Water.

Phase I development, as defined herein, shall include installation of 8-inch water main in Rachelle Circle along the frontage of Lot 1B. A temporary fire hydrant shall be installed on the east end of said water main.

Phase II development, as defined herein, shall include installation of 8-inch water main from the easterly end of the Phase I water main to the cul-de-sac. A fire hydrant shall be installed at the cul-de-sac.

~~Phase III development, as defined herein,~~ Phase II development shall also include installation of 8-inch water main in Crater Lake Avenue from the existing stub at Wind Cave Circle to the easterly property line of Lot 1 C. A fire hydrant shall be installed on the east end of said water main.

(2) Sanitary Sewer.

Phase I development, as defined herein, shall include construction of 8-inch sanitary sewer in Rachelle Circle from the existing sanitary sewer main in South 36th Street West to the east property line of Lot 1B. A temporary manhole shall be installed on the east end of said sanitary sewer.

Phase II development, as defined herein, shall include construction of 8-inch sanitary sewer in Rachelle Circle from the easterly end of the Phase I sanitary sewer main to the cul-de-sac. ~~Phase III development, as defined herein,~~ and shall also include construction of 8-inch sanitary sewer main in Crater Lake Avenue from the existing manhole at Wind Cave Circle to the east property line of Lot IA.

(3) Services.

It is anticipated that Lot IA will be subdivided into residential lots at some time in the future. As such, sewer and water services will be constructed at the time of street construction. Service locations are to be based upon a concept layout of future subdivision lotting of Lot IA.

(4) Standards.

The water and sewer mains and storm drains shall be sized and installed in conformance with the City of Billings design standards and specifications and the rules and regulations of the State of Montana Department of Environmental Quality.

(5) Power, Telephone, Gas, and Cable Television.

All power, telephone, gas and cable television lines within the public right-of-way shall be installed prior to street paving. Appropriate utility easements be provided across the Subdivision lots for service to the proposed development.

(6) Fees and Charges.

Unless specifically mentioned or excluded herein, the property is subject to any and all applicable water and wastewater fees and charges.

C. SURVEY MONUMENTS

Survey monuments shall be installed as required by City Ordinance and the Rules and Regulations of the State of Montana.

2. Park Dedication. Park dedication has been previously met, as part of Parkland West Subdivision, First Filing

3. For the purposes of this agreement, development phasing is defined as follows:

- Phase I - Development of Lot 1B and Lot 1C
- Phase II - Development of Lot ~~1C~~ 1A
- ~~Phase III - Development of Lot 1A~~

4. Subdividers agree 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. The water and sewer mains, storm drains, and streets shall be sized, designed, and installed in conformance with City design standards and with the provisions of the Montana Public Works Standard Specifications.

5. Subdividers agree 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 Subdividers agree to notify the City Engineer of stoppage. Further, Subdividers agree to notify the City Engineer not less than four (4) hours before construction is scheduled to resume.
6. A Private Contract will be executed by the Subdividers for installation and construction of the required Phase I improvements. The private contract will be secured by a letter 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 private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Engineer. Building permits may not be issued for the Subdivision, prior to securing the public improvements.
7. Subdividers desire to file the Subdivision plat following the execution and financial guarantee of said Phase I Private Contract for installation of the required improvements described herein. The Subdividers and the City agree that the final plat may be filed, but that Subdividers install or construct the improvements required hereunder before an occupancy permit will be issued for Lot 1B.
8. The Subdivider agrees that a private contract will be executed by the Subdivider for the installation and construction of the required Phase II ~~and/or Phase III~~ improvements prior to development of ~~Lot 1C and/or~~ Lot IA.
9. There is attached hereto a Waiver waiving the right to protest the creation of a 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 owners specifically agree that they are waiving valuable rights and do so voluntarily. In the event the Subdivider fails or refuses to create a special improvement district as required by this Agreement or to commence construction under a private contract, the City shall be entitled to rely on the Waiver and create the or districts necessary to install said improvements.
10. In the event the improvements are constructed through a private contract, then the Subdivider will be held responsible for the care and maintenance

of all improvements until completion and final acceptance by the City. If the improvements are constructed utilizing a Special Improvement District, then the Special Improvement District shall be responsible for the care and maintenance of all improvements until completion and final acceptance by the City.

11. While the improvements are being constructed hereunder, the construction site shall be kept free and clear of all unsightly accumulation of rubbish and debris, and the public shall be protected by the use and maintenance of sufficient and proper barricades, lights and related construction items as specified in the manual of uniform traffic control devices during the course of construction.
12. Subdivider agrees to guarantee all improvements for a period of one year from the date of final acceptance by the City of Billings by a requirement in the special improvement district or private contract that the contractor must guarantee improvements for a period of one year after final acceptance by the City.
13. The owners of the properties involved in this proposed Subdivision by signature subscribed hereinbelow, agree, consent and shall be bound by the provisions of this Agreement.
14. The covenants, agreements and all statements in this Agreement shall run with the land and shall be binding on the heirs, personal representatives, successor and assigns of the respective parties.
15. 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.
16. Any amendments or modifications of this Agreement or any provisions herein shall be made in and executed in the same manner as this original document and shall after execution become a part of this Agreement.
17. The Subdivider agrees to comply with all requirements of the Billings, Montana City Code and all laws and administrative rules of the State of Montana.

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

"SUBDIVIDER"

CORPORATION OF THE PRESIDING BISHOP
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation sole

By _____
Authorized Agent

STATE OF UTAH

: SS

COUNTY OF Salt Lake)

On this _____ day of _____, ~~2000~~ 2018, personally appeared before me _____, personally known to me to be the Authorized Agent of the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, who. acknowledged before me that he signed the foregoing instrument as Authorized Agent for the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS OF LATTER-DAY SAINTS, a Utah corporation sole, and that the seal impressed on the within instrument is the seal of said Corporation; and that said instrument is the free and voluntary act of said Corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said Corporation and that said Corporation executed the same.

Notary Public in and for the State of Utah
Residing at _____
My commission expires _____

This Agreement is hereby approved and accepted by the City of Billings, this

_____ day of _____, ~~2000~~ 2018.

"CITY"
THE CITY OF BILLINGS
MONTANA

By _____
Mayor

Attest _____
City Clerk

Approved as to Form _____
City Attorney

STATE OF MONTANA)
 :ss
County of Yellowstone)

On this _____ day of _____, ~~2000~~ 2018, 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 Utah
Residing at _____
My commission expires _____

WAIVER OF RIGHTS TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdividers and sole owners of the hereinafter described property does hereby waive its right to protest the creation of one or more concurrent or sequential Special Improvement Districts for the following purpose or purposes:

Construction of streets, curbs, gutter, survey monuments, street name signs, traffic control devices, sanitary sewer lines, water lines, street lights, street light energy, street light maintenance, sidewalks, driveways, parks and park maintenance, storm drain system, either within or without the area, to provide drainage for runoff water and other improvements incident to the above which the City of Billings may require.

The waiver and agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned is a party and shall run with the land and shall be binding upon the undersigned, its successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows, to-wit:

All of Amended Lot 1, Block 6, Parkland West Subdivision, First Filing, according to the plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana.

WAIVER signed and dated this _____ day of _____, ~~2000~~ 2018.

"SUBDIVIDER"

CORPORATION OF PRESIDNG BISHOP
OF CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, Utah corporation sole

STATE OF UTAH

COUNTY OF Salt Lake)

On this _____ day of _____ ~~2000~~ 2018, personally appeared before me _____, personally known to me to be the Authorized Agent of the CORPORATION OF PRESIDING BISHOP OF CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, who acknowledged before me that he signed the foregoing instrument as Authorized Agent for the CORPORATION OF THE PRESIDNG BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, *and that the seal impressed on the within instrument is the seal of said Corporation*; and that said instrument is the free and voluntary act of said Corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said Corporation and that said Corporation executed the same.th Corporation executed the same.

Notary Public in and for the State of Utah

Residing at _____

My commission expires _____