

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

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
PLAT OF AMENDED LOT 1, BLOCK 1
MIDLAND SUBDIVISION, FIRST FILING
CITY OF BILLINGS
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FUTURE SPECIAL IMPROVEMENT DISTRICTS
PLAT OF AMENDED LOT 1, BLOCK 1
MIDLAND SUBDIVISION, FIRST FILING**

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between **640 S 24th STREET W ASSOCIATES LLC**, whose address for the purpose of this agreement is 141 W Campbell Rd, Schenectady, NY 12306, hereinafter referred to as “Subdivider”, and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of Amended Lot 1, Block 1, Midland Subdivision, First Filing, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on the 10th day of August, 2020, the City Council conditionally approved a preliminary plat of Amended Lot 1, Block 1, Midland Subdivision, First Filing; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the 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 United Industry, Inc. as “Owners and Subdividers” and the City of Billings as “City,” dated the 13th day of July, 1992 and recorded the 14th day of July, 1992, under Document No. 1643293 for Midland Subdivision, First Filing, 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 Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements dated the 30th day of June, 1992, and recorded the 14th day of July, 1992, under Document No. 1643294 for Midland Subdivision, First Filing, and the modifications to those Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements recorded on the 2nd day of August, 1992, under document number 1648858, on the 27th day of October, 1992, under document number 1657678, and on the 4th day of June, 2002, under document number 3178954 , all in records of Yellowstone County; and

WHEREAS, the provisions of this agreement shall be effective and applicable to Amended Lot 1, Block 1, Midland Subdivision, First 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

A. 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. None requested.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

A. Lot owners should be aware that a geotechnical investigation will be required prior to future construction. Assessment and mitigation of any conditions shall be the responsibility of the lot owner.

B. 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.

- C. 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

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

1. Access to the lots is provided by King Avenue West and 24th Street West through Notice of Reciprocal Easement and matters incidental thereto, contained in Declaration of Covenants, Conditions and Reciprocal Easements, recorded the 14th day of July, 1992, under Document No. 1643294 for Midland Subdivision, First Filing. All future 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 most current *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. A Traffic Impact Study shall be required to be submitted to the Engineering Division for review and approval prior to final plat approval. Construction and/or financial contribution for improvements along adjacent streets, and within the subdivision, shall be in accordance with that document and as generally described herein.
3. Intersection contributions are also identified within the Traffic Impact Study and noted herein. The costs for these intersection improvements shall be paid for at time of development of Lot 1B.

Based on the Traffic Impact Study, the intersection contributions shall be paid at the time of Lot 1B development and are as follows:

| | |
|---|-----------------|
| • King Avenue West and 24th St. W. (3.36%) | \$8,400 |
| • <u>24th St. W and Rosebud Dr. (6.58%)</u> | <u>\$16,450</u> |
| Total | \$24,850 |

B. Sidewalks

Sidewalks along the King Avenue West and 24th Street West frontage currently exist, and no additional sidewalk improvements will be required as part of this subdivision.

Internal sidewalks will be required to comply with 50-60-213, MCA.

C. Street Lighting

Street lights along the King Avenue West and 24th Street West frontage currently exist and no additional street light improvements will be required as part of this subdivision. Street lighting for the internal streets and parking lots will be included as part of the site development.

D. Traffic Control Devices

Even though traffic control devices along the King Avenue West and 24th Street West frontage are currently installed, any required traffic signal, signage, and striping improvements shall be installed in accordance with the Traffic Impact Study. The timing, extent and level of participation in those improvements shall be in accordance with approval by the City of Billings.

E. Access

Access is permitted to Lot 1A and Lot 1B from King Avenue West and 24th Street West via the existing internal access roads.

The interior access roads within the Marketplace development provide the network for traffic circulation and connection with the above-described accesses to King Avenue West and 24th Street West per the Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements filed with the original subdivision plat under records of the Yellowstone County Clerk and Recorder, Document No. 1643294.

City and Subdivider agree that access shall be provided between lots to provide interconnectivity. Access shall be provided from each lot for future connections in accordance with the Reciprocal Easement Agreement previously recorded.

No new or additional accesses to King Avenue West or 24th Street West will be allowed.

The access along the south property boundary of Lot 1B to "Marketplace Street", a private street within the subdivision, will be allowed to be relocated at the time of development of Lot 1B. Said location of relocated access will be determined at the time of site development and supported by a Traffic Impact Study performed by Subdivider.

F. Billings Area Bikeway and Trail Master Plan

No segment of the Bikeway and Trail Master Plan is located in Amended Lot 1.

G. Public Transit

Internal street circulation and interconnectivity is provided within the Marketplace retail and commercial center. No other specific public transit provisions are proposed at this time.

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.
- Paved emergency access roads and a looped private fire line system with hydrants exists within the development.

The roads and hydrants shall be maintained in accordance to the currently adopted fire code requirements by the Subdivider.

V. STORM DRAINAGE

Stormwater will be handled through surface flow and piping within the existing Midland Subdivision, First Filing. 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.

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, Lot 1A is provided with an existing City water service. At the time of development, Lot1B will be required to provide an additional water service from the existing water main in 24th Street West. Private fire lines exist within the Marketplace development for fire protection.

B. Sanitary Sewer

Currently, Lot 1A is provided with an existing City sanitary sewer service from King Avenue West. In lieu of having to construct a separate sanitary sewer service into King Avenue West, Lot1B will be allowed to share the existing service of Lot 1A through a Multiple Service Agreement. This agreement shall be signed, notarized and recorded at the time of final plat approval.

C. Power, Telephone, Gas, and Cable Television

Power, telephone, gas, and cable television lines already exist within the public right of-way. Appropriate utility easements will be provided across the subdivision lots for service to the proposed development.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Amended Lot 1, Block 1, Midland Subdivision, First Filing, as this is a minor subdivision [MCA 76-3-621(3)(a)].

VIII. IRRIGATION

No irrigation ditches are located on this property.

IX. SOILS/GEOTECHNICAL STUDY

This subdivision has an existing geotechnical investigation at the time of initial development. A geotechnical investigation shall be provided as part of a building permit application for any new structure on Lot 1B.

X. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

A. Subdivider agrees to guarantee all public improvements for a period of one 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”

640 S 24th STREET W ASSOCIATES LLC

By: Jamin Lu

Title: president

STATE OF New York)

County of Schenectady) : ss

On this 4th day of November, 2020, before me, a Notary Public in and for the State of NY, personally appeared DAVID LEON, known to me to be the President of 640 S 24th STREET W ASSOCIATES LLC, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

VICTORIA RAGUCCI
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01RA6084199
Qualified in Schenectady County
Commission Expires December 2, 2022

Notary Public in and for the State of NY
Printed Name: VICTORIA RAGUCCI
Residing at: 1509 UNION ST NISKAYUNA NY 12309
My commission expires: DECEMBER 2 2022

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 incident to the above 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.

The real property hereinabove mentioned is more particularly described as follows:

Plat of Amended Lot 1, Block 1, Midland Subdivision, First Filing

Signed and dated this 4th day of November, 2020.

“SUBDIVIDER”

640 S 24TH STREET W ASSOCIATES LLC

By: *[Signature]*

Title: *President*

STATE OF *New York*)
County of *Schenectady*) : ss

On this *4th* day of *November*, 20*20*, before me, a Notary Public in and for the State of *New York*, personally appeared *David Leon*, known to me to be the person who executed the forgoing instrument as the *President* of **640 S 24th STREET W ASSOCIATES LLC** and acknowledged to me that he/she executed the same.

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

VICTORIA RAGUCCI
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01RA6084199
Qualified in Schenectady County
Commission Expires December 2, 2022

Notary Public in and for the State of ~~Montana~~ *New York*
Printed Name: *Victoria Ragucci*
Residing at: *1509 Union St New York NY 12309*
My commission expires: *December 2 2022*