

Return to:
McCall Development
1536 Muldowney Lane, Suite 100
Billings, MT 59101-6397

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this _____ day of _____, 2020, by and between MCCALL DEVELOPMENT, INC., 1536 Muldowney Lane, Suite 100, Billings, Montana, 59101-6397 hereinafter referred to as the "OWNER," 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, OWNER is the owner of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Lot 2A, Block 1, of the Amended Plat of Lot 2, Block 1, Adam & Mollie Walter Subdivision, First Filing, situated in the NW1/4 of Section 19, T 01S, R 26E, P.M.M., in the City of Billings, Yellowstone County, Montana hereinafter referred to as "Tract".

WHEREAS, OWNER has submitted to the City a Petition for Annexation to CITY for OWNER Tract; and

WHEREAS, OWNER desires to annex Tract to CITY; and

WHEREAS, CITY has approved the Petition for Annexation by Resolution No. _____ for Tract contingent that a Development Agreement be executed between CITY and OWNER to identify required off-site infrastructure improvements and guarantees of those improvements associated with said Tract.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. Sanitary Sewer. The Tract will be served by extension of existing sanitary sewer mains in Annafeld Subdivision and/or East Lane. OWNER will be responsible for connecting to the sanitary sewer system at the time of development and shall be responsible for payment of CITY wastewater system development fees at the time of connection to the sanitary sewer.

The OWNER will be required to reimburse the CITY for a portion of the construction costs relating to the trunk sanitary sewer main previously installed along the southern boundary of Lot 2A. If the City's Rules and Regulations (Dated June 2017) are modified to include a reimbursement, then the payment will be in accordance with that change.

Payment will include half of the cost of the installation of a 12-inch lateral main fronting the property. Payment may be appropriated to reflect actual frontage of individual development phases. Payment shall be made prior to issuance of building permits within each development phase.

2. Water. The Tract will be served by extension of existing water mains in Annafeld Subdivision and/or in Elysian Road. OWNER will be responsible for connecting to the water mains at the time of development and shall be responsible for payment of CITY water system development fees at the time of connection.

The OWNER will be required to reimburse the CITY for a portion of the construction costs relating to the water main previously installed in Elysian Road. If the City's Rules and Regulations (Dated June 2017) are modified to include a reimbursement, then the payment will be in accordance with that change.

Payment will include half of the cost of the installation of a 12-inch lateral main fronting the property. Payment may be appropriated to reflect actual frontage of individual development phases. Payment shall be made prior to issuance of building permits within each development phase.

3. Storm Drain. The Tract will be served by extension of existing storm drains in Annafeld Subdivision. The OWNER will manage storm drainage in accordance with the version of the City of Billings Stormwater Management Manual adopted at the time Tract development.

A Waiver of Right to Protest all future storm drain facilities shall be executed with this agreement.

4. Elysian Road. OWNER shall participate in the construction of the Elysian Road street improvements including, but not limited to asphalt pavement, curb and gutter, and sidewalk through a Special Improvement District. It is anticipated that the Special Improvement District utilized to construct the

Elysian Road improvements will be created in 2021. All Street improvements will be constructed to the City of Billings Standards.

5. 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 OWNER 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

“OWNER”

MCCALL DEVELOPMENT, INC.

By: _____

Title: _____

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 _____, known to me to be the person who signed the foregoing instrument as _____ of OWNER, and who acknowledged to me that said OWNER executed the same.

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

Notary Public in and for the State of Montana

Printed name: _____

Residing at: _____

My commission expires: _____

WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Owner of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) 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:

Lot 2A, Block 1, of the Amended Plat of Lot 2, Block 1, Adam & Mollie Walter Subdivision, First Filing, situated in the NW1/4 of Section 19, T 01N, R 26E, P.M.M., in the City of Billings, Yellowstone County, Montana

“OWNER”

MCCALL DEVELOPMENT, INC.

By: _____

Title: _____

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 _____, known to me to be the person who signed the foregoing instrument as the _____ of OWNER, and who acknowledged to me that said OWNER executed the same.

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

Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____