

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 LOTS 1-B-1 AND 1-C, BLOCK 29  
DESCRO SUBDIVISION, SEVENTH FILING  
CITY OF BILLINGS  
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*[Signature]* **THIS AGREEMENT** (“Agreement”) is made and entered into this 17th day of January, 2021, by and between **CENTRAL AVENUE MALL, LLP**, whose address is P.O. Box 20654, Billings, MT 59104, hereinafter referred to as “Subdivider”, and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the preliminary plat of Amended Lots 1-B-1 and 1-C, Block 29, Descro Subdivision, Seventh 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 14th day of September 2020, the Billings City Council conditionally approved the preliminary plat of Amended Lots 1-B-1 and 1-C, Block 29, Descro Subdivision, Seventh Filing; and

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

**WHEREAS**, the provisions of this Agreement shall be effective and applicable to Lots 1-B-2, 1-C-1, and 1-C-2 (collectively, the “Lots”, and individually a “Lot”) as described on the plat of Amended Lots 1-B-1 and 1-C, Block 29, Descro Subdivision, Seventh Filing (the “Subdivision”) upon the filing of the final plat thereof (the “Plat”) 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. The respective owners of Lot 1-C-1 and Lot 1-C-2 will be required to construct that segment of the required sidewalk that fronts their property at the time of development of their respective lot.
- B. Owners of the Lots 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.
- C. 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 Lots, and shall constitute the guarantee by the Subdivider, and Subdivider's successors and assigns to ownership of the Lots. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider specifically agrees that it is waiving valuable rights and does so voluntarily.
- D. Individual owners of the Lots should be aware that Best Management Practices for stormwater control shall be required for new construction on the 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 24th Street West and 25th Street West and pursuant to the Declaration of Reciprocal Access and Drainage Easements to be imposed upon the Lots by Subdivider. 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. An approved Traffic Impact Study has been submitted to the Engineering Division. 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. The intersection contribution for the intersection of 24th Street West and St. John's Avenue was calculated at 5.33% as identified in the approved Traffic Impact Study. All other impacted intersections contributed less than 2% to the critical volumes. The costs for future intersection improvements shall be paid for at time of development of Lots 1-C-1 and 1-C-2 based on contributions to critical volumes at the impacted intersections.
  - Lot 1-C-1 shall contribute \$6,662.50 for intersection impacts at the time of lot development.
  - Lot 1-C-2 shall contribute \$6,662.50 for intersection impacts at the time of lot development.

#### B. Sidewalks

Curbwalk sidewalks along the 24th Street West and 25th Street West frontages currently exist, and no additional sidewalk improvements will be required for 25th Street West as part of this Subdivision. The existing curbwalk along 24th Street West must be removed and replaced with 5-foot wide boulevard sidewalk on Lots 1-C-1 and 1-C-2. The boulevard sidewalk for Lot 1-C-1 shall be installed within the new 20' wide public sidewalk easement to preserve the existing boulevard trees. New boulevard sidewalk

shall be constructed at the time of development of each of Lots 1-C-1 and 1-C-2 for the area of each respective lot fronting on 24th Street West.

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

**C. Street Lighting**

Streetlights along 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 parking lots will be included as part of site development.

**D. Traffic Control Devices**

Even though traffic control devices along the 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 the Subdivision from 24th Street West and 25th Street West via the four existing commercial drive approaches. Lot 1-B-2 has two existing 30-foot wide commercial drive approaches on 25th Street West. Lots 1-C-1 and 1-C-2 share an existing 40-foot wide commercial drive approach along their common lot line from 24th Street West, and a 35-foot wide commercial drive approach exists from 24th Street West near the north property line of Lot 1-C-1.

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 Declaration of Reciprocal Access and Drainage Easements.

**F. Billings Area Bikeway and Trail Master Plan**

No segment of the Bikeway and Trail Master Plan is located in any of the Lots.

**G. Public Transit**

No 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 Descro Subdivision, Seventh Filing. Lot owners shall preserve the storm drain piping through the Subdivision that connects to an outfall to the public storm main in 25th Street West such that each Lot has a piped storm drain outfall. Upon development of Lot 1-C-1 and Lot 1-C-2, the storm drain piping and structures may be altered to suit the development as long as the storm drain connection is preserved as described in the Declaration of Reciprocal Access and Drainage Easements.

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**

This 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 Subdivider 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 1-B-2 is provided with an existing 4-inch City water service that is manifold at the property line to provide 4-inch fire water service and two 2-inch water services for the existing shopping center. Lot 1-C-2 is provided with an existing 6-inch water service that is manifold at the property line for a 6-inch fire water service and 2-inch domestic water service.

At the time of development, Lot 1-C-1 will be required to provide an additional water service from the existing water main in 24th Street West. The size and material of the water service line will be determined at the time of lot development and shall meet the material and installations standards of the City of Billings at the time of installation.

### **B. Sanitary Sewer**

Currently, Lot 1-B-2 is provided with an existing 6-inch City sanitary sewer service from 25th Street West for the existing shopping center. Lot 1-C-1 is

provided with an existing 6-inch sanitary sewer service from 25th Street West located within an existing 10-foot wide utility easement through Lot 1-B-2.

At the time of development, Lot 1-C-2 will be required to provide an additional sewer service from the existing sewer main in 24th Street West. The size and material of the sewer service line will be determined at the time of lot development and shall meet the material and installations standards of the City of Billings at the time of installation.

**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 to utility companies, upon request by such companies, across the Subdivision Lots for service to the proposed development.

**VII. PARKS/OPEN SPACE**

There is no parkland requirement for the proposed Plat of Amended Lots 1-B-1 and 1-C, Block 29, Descro Subdivision, Seventh 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**

A geotechnical investigation shall be provided as part of a building permit application for any new structures on Lots 1-C-1 or 1-C-2.

**X. LEGAL PROVISIONS APPLYING TO SUBDIVIDER**

**A.** Subdivider and its successors and assigns to ownership of the Lots agree to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings. Upon Subdivider's conveyance or transfer of title to any of the Lots, Subdivider shall be released from this guarantee, and the grantee or assignee of such Lot shall assume such guaranty.

**B.** The owner of the properties involved in this proposed Subdivision by signature subscribed herein below agrees, consents, 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.





**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, does 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 described below 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 Lots 1-B-1 and 1-C, Block 29, Descro Subdivision, Seventh Filing*

Signed and dated this 17<sup>th</sup> day of January, 2021.

“SUBDIVIDER”

**CENTRAL AVENUE MALL LLP**

By:   
Title: 

STATE OF MONTANA        )  
  : ss  
County of Yellowstone    )

This record was acknowledged before me on \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of Central Avenue Mall, LLP.

\_\_\_\_\_  
Notary Public in and for the State of Montana