

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

## **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between KSKC Properties, LLC., P.O. Box 80601, Billings, Montana 59108 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." DEVELOPER and CITY are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties."

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

Tract 1 of Certificate of Survey No. 1591 and Tract 1 of Certificate of Survey No. 1596, Situated in the N 1/2 of Section 15, T 01S, R 26E, P.M.M., in the City of Billings, Yellowstone County, Montana

Above referenced property is hereinafter referred to as "Developer Tracts"

**WHEREAS**, CITY has approved the Petition for Annexation by Resolution No. 11-19100 for the Developer Tracts contingent upon a Development Agreement being executed between CITY and DEVELOPER to identify required off-site infrastructure improvements and guarantees of those improvements.

**WHEREAS**, DEVELOPER is proposing to develop the Developer Tracts in phases over time.

The DEVELOPER intends to construct a development on Tract 1 of Certificate of Survey No. 1591 and Tract 1 of Certificate of Survey No. 1596 and submit a site plan review for each development on the Tracts for review and approval by the CITY. Individual building permits shall be obtained for each building within the Developer Tracts.

The DEVELOPER intends to develop the Developer Tracts in multiple phases; and

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

1. Roads and Access. The Developer Tracts will be accessed by way of the South Frontage Road. The approach locations and geometry shall be approved by the Montana Department of Transportation and the CITY.
2. Sanitary Sewer. The Developer Tracts will be served by new sanitary service lines from the existing sanitary sewer main in South Frontage Road.

DEVELOPER shall be responsible for payment of the City wastewater system development fee prior to the issuance of any building permits.

3. Water. The Developer Tracts will be served by a proposed water line in South Frontage Road.

DEVELOPER is responsible to construct a 12-inch water main along the Developer Tracts frontage and along the frontage of Riverside Acreage Tracts Subdivision Tracts 3 through 7, inclusive. City staff will forward a Compensation Agreement to City Council for one-half of the cost of the water main construction and South Tax Increment Finance District Funds for one-half of the cost of the water main construction for Council approval. Alternatively, City staff may forward to City Council a budget approval request for the entire water line funded by City water funds and South Tax Increment Finance District funds. There are no guarantees that these funding requests will be approved by City Council.

DEVELOPER shall be responsible for payment of the City water system development fee prior to the issuance of any building permits.

4. Storm Drain. The DEVELOPER will manage storm drainage within the Developer Tracts in accordance with the City of Billings Stormwater Management Manual (2018). Storm drainage from the Developer Tracts will outfall to the 48-inch RCP storm drain, located adjacent to the South Frontage Road.
5. Right-of-Way. Public right-of-way will be dedicated to the City of Billings in accordance with the 2018 Billings Urban Area Long Range Transportation Plan and in accordance with the City of Billings Subdivision Regulations.
6. Street Construction, Widening and Sidewalks. The South Frontage Road right-of-way is MDT controlled. Any improvements to the South Frontage

Road will be at the discretion of MDT. Sidewalk will not required to be constructed as DEVELOPER will be required to construct a 10-foot-wide asphalt multi-use trail along the South Frontage Road.

7. Multi-use Trail. A 10-foot-wide asphalt multi-use trail along the South Frontage Road on the north side of the Developer Tracts will be required to be constructed at the expense of the DEVELOPER. The trail can be located within or outside of the South Frontage Road right-of-way on private property within a public easement. A second multi-use trail located along the south side of the Development Tracts will not be required to be constructed at the expense of the DEVELOPER.

The development shall be responsible for the maintenance of the sidewalk and/or trail along the South Frontage Road on the north side of the Developer Tracts after construction. The development shall not be responsible for the maintenance of the sidewalk and/or trail located along the south side of the development after it is constructed.

8. Future Intersection Contributions. A traffic impact study will be performed at the time of future subdivision and/or development to determine DEVELOPER contributions to future intersection improvements if development exceeds 500 trips/day. The preparation of the traffic impact study and any fees to mitigate impacts to future intersection improvements will be at the expense of the DEVELOPER.
9. 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 ensure 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. All of the Developer properties can be included in a Special Improvements District for improvements identified in Development Agreement regardless of location of individual properties in relation to the improvements.
9. Compliance. Nothing herein shall be deemed to exempt the Developer Tracts 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.

10. 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.
11. 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.
12. 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.

“DEVELOPER”

KSKC Properties, LLC.

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 KSKC Properties, LLC., and who acknowledged to me that said DEVELOPER 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, 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, parks and park 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 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 1 of Certificate of Survey No. 1591 (Document No. 1026729) and Tract 1 of Certificate of Survey No. 1596 (Document No. 1029099), Situated in the N 1/2 of Section 15, T 01S, R 26E, P.M.M., in the City of Billings, Yellowstone County, Montana, of which plat is on file and recorded at the Yellowstone County Clerk and Recorder's Office.

“DEVELOPER”

KSKC Properties, LLC.

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 KSKC Properties, LLC. and who acknowledged to me that said DEVELOPER 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: \_\_\_\_\_