

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

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT
LOT 1A, BLOCK 1, LENHARDT SQUARE SUBDIVISION,
FIRST FILING AMENDED
CITY OF BILLINGS
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Return to:
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**SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT
TO PROTEST FUTURE SPECIAL IMPROVEMENTS DISTRICTS
LOT 1A, BLOCK 1, LENHARDT SQUARE SUBDIVISION,
FIRST FILING AMENDED**

THIS AGREEMENT is made and entered into this ___ day of _____, 20__, by and between **SREI-Lenhardt, LLC**, whose address for the purpose of this Agreement is 115 Shiloh Road, Suite 2, Billings, Montana 59106, hereinafter referred to as "Subdivider;" and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City."

WITNESSETH:

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

WHEREAS, at a regular meeting held on the ___ day of _____, 20__, the City Council approved, subject to certain conditions, a preliminary plat of Lenhardt Square Subdivision, First Filing, and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to the plat of Lot 1A, Block 1, Lenhardt Square Subdivision, First Filing, Amended, upon 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

Subdivider has requested, and the City grants, the following variances by the City Council from the strict interpretation of the City Subdivision Regulations as listed in Billings, Montana, City Code, BMCC.

Subdivider requests no variances.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A. Lot owners will be required to construct that segment of the required five-foot-wide boulevard-style sidewalk that fronts their property at the time of lot development. If the sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.
- B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department do not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the Geotechnical Assessment performed for Lenhardt Square Subdivision, First Filing, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical investigation prior to construction. Assessment and mitigation, if any, of these conditions shall be the responsibility of the lot owner.
- D. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- E. 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.

The City of Billings is currently considering intersection improvements at the intersection of King Avenue West and South 44th Street West that would be done in accordance with this waiver and through an SID.

- F. The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- G. 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.
- H. Lot owners should be aware that agricultural activities could be present on surrounding properties. Any impacts associated with agricultural activities and any issue arising therefrom is the responsibility of the lot owners.
- I. Lot owners should be aware that there is a planned development zoning agreement, a master plan agreement, covenants, and design guidelines that govern the development and use of the property, and that their lots will be subject to requirements as set forth in said documents. The Lenhardt Square Conceptual Master Plan is attached with this subdivision improvements agreement for reference.

III. TRANSPORTATION

A. Streets

1. Improvements to South 44th Street West and Monad Road to complete a vehicular route to the intersection of Monad Road and Shiloh Road are currently being constructed under Private Contract No. 766.
2. The City of Billings is currently considering intersection improvements at the intersection of King Avenue West and South 44th Street West that would be done in accordance with this waiver and through an SID.

In accordance with the Lenhardt Square Master Plan, a bike trail shall be constructed on the west and north side of Monad Road beginning where it intersects with 44th Street West. Appropriate signage and street markings shall be installed to designate the place where the trail crosses from the east side of 44th Street West to the west side of Monad

Road when both trails have been constructed. A boulevard sidewalk shall continue along the east and south side of Monad Road from the point where 44th Street West intersects with Monad Road.

B. Sidewalks

City and the Subdivider agree that the developer will install accessibility ramps at time of private contract construction. Individual lot owners will be responsible for the construction of the five-foot wide boulevard sidewalks adjacent to their lot at the time of lot construction.

C. Street Lighting

Construction or installation of streetlights shall not be required at this time; however, in accordance with the contract for the street improvements, the Subdivider shall include conduits across 44th Street West and at all of their street crossings on the east side of 44th Street West at the time of street and sidewalk construction to accommodate the future wiring of street lights for each development. The parties agree that one or more streetlights, as approved by the City, will be installed near the median curb at the King Avenue/44th Street West intersection when the median is installed as part of construction improvements. City and Founders agree that streetlights near the median will be installed by the developer of Tract 4A-1 when that tract is developed. The streetlights will be installed by the property owners association and when street lights are installed, a street light maintenance district must be set up and approved by the City prior to installation of said streetlights.

D. Traffic Control Devices

1. The Subdivider shall furnish and install all necessary traffic control devices adjacent to the subdivision. Traffic control devices shall include all necessary signing, striping, and channelization device to properly complete the implementation of the proposed street construction.
2. All traffic control and street improvements will be as outlined in the previously approved traffic accessibility study provided to the City by the Subdivider with Lenhardt Subdivision, First Filing. Any significant change of anticipated use of any lot from that estimated in the original traffic accessibility study would require an update of the traffic analysis and recommendations.

E. Access

One full access to the subdivision will be provided on 44th Street West. In addition, one access shall be allowed to Monad Road for Lot 1A, Block 1, internal connectivity shall be provided between lots at the time of site development. Design of all accesses shall be reviewed and approved by the City Engineering Department.

F. Billings Area Bikeway and Trail Master Plan

A 10-foot-wide bikeway shall be extended on the east side of 44th Street West and Monad Road at the time of lot developments. These bikeway improvements shall be approved by the City of Billings.

G. Public Transit

Currently, MET Transit does not service this area. No improvements with regards to MET Transit vehicles are anticipated at this time.

IV. EMERGENCY SERVICES

Primary access to this subdivision will be provided from one location on King Avenue (44th Street West), and along Monad Road to the intersection of Monad Road and Shiloh Drive.

The City will provide emergency service. Fire hydrants shall be provided at each street intersection, and at intermediate locations where distances exceed 500 feet. Appropriate turn arounds will be located on any street in excess of 150 feet.

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.

V. **STORM DRAINAGE**

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division.

A storm drain system, including curb and gutter, inlets, and storm drain piping, will be provided for all public streets within the subdivision. Storm drain services will be provided to each separate lot. All lots will be required to store storm drainage on their specific lot as set forth in the City of Billings *Stormwater Management Manual*.

VI. **UTILITIES**

All new development shall be served by public sewer facilities and public water service. Water and sanitary sewer lines shall be sized and installed in conformance with the City design standards and specifications, and the rules and regulations of the City of Billings.

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The Subdivider shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department, Distribution and Collection Division. The extension/connection of/to water mains and sanitary sewers are 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 appropriate application fees in effect at the time shall be submitted with the applications.

It is acknowledged that the properties subject to the Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the preceding paragraph above.

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. Subdivider shall be solely responsible for payment of system development, or other fees associated with development of the subdivision.

The developer/owner acknowledges that the subdivision shall be subject to the applicable system development fees in effect at the time new 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 and regulations of, and as approved by the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

A. Water

The subdivision is served by a tie-in to the 24-inch main in King Avenue. Appropriately sized mains and services have been or are being installed in the internal streets and will provide service to the individual lots within the subdivision. It is anticipated that each lot shall be provided with its own separate water service. All water construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department, Distribution and Collection Division.

Improvements noted herein shall include, but not be limited to, any and all interim improvements that may be deemed necessary due to phased or partial construction.

B. Sanitary Sewer

It is anticipated that the subdivision would be served by a tie-in to the 18- inch sanitary sewer main installed in 44th Street West. Appropriately sized mains and services have been or are being installed and will provide service to the individual lots within the subdivision. All sanitary sewer construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department, Distribution and Collection Division.

Improvements noted herein shall include, but not be limited to, any and all interim improvements that may be deemed necessary due to phased or partial construction.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines shall be placed in designated easements outside of the right-of-way and shall be installed underground prior to surface improvements. The location of all such facilities shall be subject to approval of the city engineer.

VII. PARKS/OPEN SPACE

The Montana Subdivision and Platting Act covers park dedication requirements and waiver of such requirements for planned unit developments. Additionally, the City of Billings municipal code covers parkland dedication of minor subdivisions. The permanent allocation of land for park and recreational uses in this subdivision and other parts of the Lenhardt Square planned unit development will be in accordance with the planned development and master plan agreements for Lenhardt Square.

City and Subdivider agree the homeowner's association established for the property will be responsible for the maintenance of the linear park easements throughout the subdivision. Development of the linear parks shall be the responsibility of individual lot owners and the time of lot development but shall be in accordance with the planned development agreement and master plan agreement for Lenhardt Square.

VIII. SOILS/GEOTECHNICAL STUDY

The Subdivider has performed a preliminary geotechnical analysis for this property with the original Lenhardt Square Subdivision, First Filing.

It is recommended that owners, purchasers, realtors, builders or developers fully familiarize themselves with the information contained in this report prior to any design or construction

IX. IRRIGATION

The owner of any shares in the irrigation district serving the subdivision or its transferee may elect to retain the shares, transfer such shares to a property owners association, or transfer such shares back to the irrigation district. Founders specifically reserve in favor of themselves or their transferees, and do not waive or abandon irrigation and drainage easements for the conveyance of water and collection of wastewater wherever irrigation or drainage ditches are currently located or historically have been located in the subdivision. All easements shall continue as long as irrigation is conducted on the property and as long as any such easement may reasonably be necessary to convey or drain water in the future for the benefit of the property or any nearby property.

X. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider or its transferee shall install and construct the improvements required under this Agreement by private contracts secured by one or more letters of credit or letters of commitment to lend funds from a commercial lender or other means permitted under City regulations. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contracts, and the improvements shall be installed as approved by the City Engineering Department and Public Works Department, Collection and Distribution Division.

XI. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- A. Subdivider agrees to guarantee all public improvements for a period of two years 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 any 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 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.

