

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT  
DISTRICTS**

**Parkland West Subdivision, 7<sup>th</sup> Filing**

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City of Billings**

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**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS**

**Parkland West Subdivision, 7<sup>th</sup> Filing**

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Lorenz Construction, LLC, a Montana limited liability company, whose address for the purpose of this agreement is **2050 Broadwater Ave, Suite D, Billings, MT 59102**, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

**WITNESSETH:**

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the Board of Planning recommended conditional approval of a preliminary plat of Parkland West Subdivision, 7<sup>th</sup> Filing; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of Parkland West Subdivision, 7<sup>th</sup> Filing; and

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

**WHEREAS**, the provisions of this agreement shall be effective and applicable to Parkland West Subdivision, 7<sup>th</sup> 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**

There are no variances being requested.

**II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS**

A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. If 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 does 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 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction. Refer to Section IX for additional information regarding soil characteristics of the site.
- D. 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.
- E. The Subdivider and subsequent contractors/builders acknowledge that a Stormwater Pollution and Prevention Plan (SWPPP) may be required to be 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.
- F. 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**

- Rights-of-way widths of 60 feet for Rachele Circle and Crater Lake Avenue were dedicated in previous filings.
- Private Contract P – 762 shall construct public streets and curb & gutter within the Subdivision. All roads shall be 34 feet back-of-curb to back-of-

curb. These access roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings' site development ordinance and shall be reviewed and approved by City Engineering prior to construction.

**B. Sidewalks**

- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction and shall be included in each building permit. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.
- 5-foot boulevard walk shall be constructed on the north frontage of Lot 1C of Parkland West Subdivision 1<sup>st</sup> Filing Private Contract P-762.
- An 8-foot sidewalk shall be constructed within the 20-foot Storm Drain Right-of-Way.
- Sidewalk shall be 5-foot wide with 5-foot boulevard planting strip between the sidewalk and the curb.

**C. Street Lighting**

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

**D. Traffic Control Devices**

- Traffic control is not required for this subdivision but are included in the waiver of right to protest

**E. Access**

- Location to the lots will be from drive approaches installed at the time of lot development.
- There are existing 1-foot no access strips adjacent to the subdivision.
  - The north property line of Lot 1 of Block 1 has a 40 foot no access strip from the radius point on Crater Lake Avenue adjacent to South 36<sup>th</sup> Street West extending east. This easement length shall be reduced to 15 feet on the filing of Parkland West Subdivision, 7<sup>th</sup> Filing.
  - The south property line of Lot 16 of Block 1 has a 50 foot no access strip on Rachelle Circle extending from the property line adjacent to South 36<sup>th</sup> Street West to the east. This easement shall be reduced to 20 feet on the filing of Parkland West Subdivision, 7<sup>th</sup> Filing.

**F. Billings Area Bikeway and Trail Master Plan (BABTMP)**

- This subdivision is located within the jurisdiction of the BABTMP, but no future trail corridors are identified within this subdivision area. There is an existing bike lane on Monad Road and a future bike lane on 36<sup>th</sup> Street West.

**G. Public Transit**

- This subdivision does not require improvements to ensure public transit service. The nearest public transit stop is at the intersection of Monad Road and South 36<sup>th</sup> Street West.

#### **IV. EMERGENCY SERVICE**

Emergency service to the Subdivision will be provided via Rachele Circle and Crater Lake Avenue.

At the time of future lot development 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. A gravel turnaround will be constructed east of Lot 8 on Crater Lake Avenue. Drawings shall be submitted and approved by City Engineering and Fire Department prior to construction.

#### **V. STORM DRAINAGE**

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. All Future stormwater improvements will be reviewed and approved by the Engineering Division to comply with said plan. The new storm drainage improvements shall be constructed as part of Private Contract P – 762.

As part of the Parkland West Subdivision, 7th Filing, the developer shall install stormwater improvements as included herein. Developer shall extend the 21" Storm Drain on Crater Lake Avenue beyond the eastern property line as required for construction of a temporary turnaround at the end of Crater Lake Avenue. The

Crater Lake Avenue storm main shall discharge to a temporary storm pond constructed within the public right of way. The temporary storm pond shall be sized as required by the Stormwater Management Manual. Storm infiltration basins or storm gardens shall be installed on Rachelle Circle to meet the requirements of the Storm Water Manual. The storm gardens will be front yard depressions with yard inlets to a below grade boulder pit and shall have curb cuts to allow flows into the property. Sidewalks shall pass flows beneath in a manner approved by the City Engineer. An 8' sidewalk shall be constructed to bypass flows from the end of Rachelle Circle to Crater Lake Avenue within the 20' Storm Drain Right-of-Way on the east side of the property.

Such stormwater facilities including piping, inlets, structures, vegetation shall be maintained through the Parkland West Subdivision, 7<sup>th</sup> Filing HOA as outlined in the HOA Stormwater Maintenance Agreement.

## **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 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**

There are existing 8-inch water mains located in Rachelle Circle and Crater Lake Avenue that currently terminate on the east side of the existing pavement. Private Contract P – 762 will extend the 8-inch water mains along the length of Rachell Circle and Crater Lake Avenue beyond the proposed paving surface of the Subdivision. Water services will be installed for all lots within the subdivision.

### **B. Sanitary Sewer**

There are existing 8-inch sanitary mains located in Rachelle Circle that currently terminates approximately 10 feet beyond the existing pavement and Crater Lake Avenue that currently terminates at a manhole in the intersection of Crater Lave Avenue and Wind Cave Circle. Private Contract P – 762 will extend the 8-inch sanitary main along the length of Rachell Circle and sufficient to provide service to all proposed lots on Rachelle Circle. The 8-inch sanitary main on Crater Lake Avenue will be extended to a manhole constructed beyond the proposed paving surface of the Subdivision. Sewer services will be installed for all lots within the subdivision.

**C. Power, Telephone, Gas, and Cable Television**

Private utility facilities (power, natural gas, telephone, and cable) will be installed during construction and located within the right-of-way and utility easements shown on the plat.

**VII. PARKS/OPEN SPACE**

The parkland requirements were previously met by Parkland West Subdivision, 1<sup>st</sup> Filing.

**VIII. IRRIGATION**

No irrigation ditch, field laterals, or irrigation easement exist in this subdivision.

**IX. SOILS/GEOTECHNICAL STUDY**

According to the Geotechnical Engineering Report for Parkland West Subdivision, prepared by Rimrock Engineering, Inc. (March 12, 2021), sand and gravel soils were encountered at or near foundation and floor slab depths with areas of clayey overburden. The overburden clayey soils are expected to be weak and highly compressible.

The report recommends the use of spread footings and/or structural/engineered fill supporting the spread footings. Construction of basements may not be feasible without additional groundwater monitoring.

Subsurface conditions may vary from one location to another, and the structural characteristics may vary from on structure to another. Currently all permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

**X. PHASING OF IMPROVEMENTS**

There are no intended phasing improvements.

**XI. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and City of Billings Public Works.

## **XII. 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 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, 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 which the City of Billings may require.

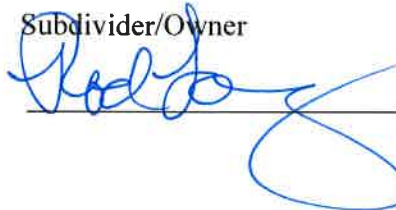
This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

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

Parkland West Subdivision, 7<sup>th</sup> Filing

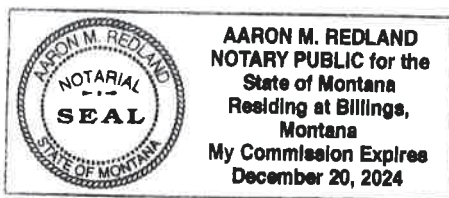
Signed and dated this 29 day of Dec, 2021.


Subdivider/Owner



STATE OF MONTANA    )  
  : ss  
County of Yellowstone    )

On this 29th day of DECEMBER, 2021, before me, a Notary Public in and for the State of Montana, personally appeared ROD LORENZ, known to me to be the PRESIDENT, of Lorenz Construction, LLC, a Montana limited liability company, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.



  
Notary Public in and for the State of Montana  
Printed Name: AARON M REDLAND  
Residing at: BILLINGS MT  
My commission expires: DEC. 20, 2024