

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS
*Amended Lot 1-K, Block 2, of the Amended Lots 1E & 1D-1,
Block 2 of
Midland Subdivision, Fourth Filing*
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(City of Billings)**

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

***Amended Lot 1-K, Block 2, of the Amended Lots 1E & 1D-1,
Block 2 of
Midland Subdivision, Fourth Filing***

This agreement is made and entered into this ____ day of _____, 20__, by and between *Capital Holdings, LLC*, whose address for the purpose of this agreement is **PO Box 80465, Billings, MT 59108**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Amended Lot 1-K, Block 2, of the Amended Lots 1E and 1D-1, Block 2, of Midland Subdivision, 4th Filing*, located in the City of Billings, Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning as an expedited plat which was deemed to not require preliminary review; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 2022, the City Council conditionally approved a preliminary plat of *Amended Lot 1-K, Block 2, of the Amended Lots 1E and 1D-1, Block 2, of Midland Subdivision, 4th 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 *Amended Lot 1-K, Block 2, of the Amended Lots 1E and 1D-1, Block 2, of Midland Subdivision, 4th 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

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. No variances are requested as part of this Subdivision.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A. 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.
- 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.
- 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.

III. TRANSPORTATION

A. Streets

- No public street improvements are necessitated for the Subdivision. Private drive aisles with reciprocal access and use between Lots 1-F, 1-G, 1-H, 1-J, and 1-K of Block 2 of the Amended Plat of Lot 1E and 1D-1, Block 2, of Midland Subdivision 4th Filing are existing. Additional internal private access aisles shall be constructed as reviewed and approved by the City of Billings at time of development of Lot 1-K-1.

B. Sidewalks

- Public sidewalks have previously been constructed along 29th Street West.

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

- It is not anticipated traffic control devices will be necessary as part of the constructing improvements related to the Subdivision. At time of development of subject lots, a traffic study shall be conducted by the Developer as required by the City of Billings Engineering Department.

E. Access

- The Subdivision will be accessed via the existing accesses off South 29th Street W and Millennium Court. In addition, an existing access aisle is present on the northeast portion of Lot 1-K-1 in the southeast corner of Lot 1A-1, Block 2 of the Amended Plat of Lot 1A, Block 2, of Midland Subdivision 4th Filing.

F. Billings Area Bikeway and Trail Master Plan

- No segment of the Bikeway and Trail Master Plan is located in the Subdivision. An existing trail is adjacent to the subdivision along its western boundary.

G. Public Transit

- Met Transit provides service to the City of Billings. No improvements are required to ensure public transit service.

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.
- All internal roads and hydrants shall be maintained in accordance to the currently adopted fire code requirements of the City of Billings.

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.
- A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.
- Stormwater from subject properties may discharge stormwater into the adjacent Bannister Drain provided approval from the drain district and/or City of Billings.

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

Lot 1-K-2 is currently provided water service by the City of Billings. Lot 1-K-1 will be required to connect to existing service stub-outs to the property or connect to the existing 16” water main in South 29th Street West. Private fire hydrants will be necessitated to be installed according to the City of Billings Public Works Department and Fire Department based on final development plan.

B. Sanitary Sewer

Lot 1-K-2 is currently provided sewer service by the City of Billings. Lot 1-K-1 will be required to connect to existing service stub-outs to the property or connect to the existing 8” sewer main in South 29th Street West.

C. Power, Telephone, Gas, and Cable Television

- Power, telephone, gas, and cable television lines already existing within the public right-of-way. Appropriate utility lines will be provided across the Subdivision lots for service to the proposed development.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Subdivision, as this is a minor subdivision [MCA 76-3-621(3)(a)].

VIII. IRRIGATION

No irrigation rights, infrastructure, or amenities are affected by the Subdivision.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical investigation shall be provided as part of a building permit application for any new structure/s within the Subdivision.

X. PHASING OF IMPROVEMENTS

Phasing of the Subdivision is not proposed.

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 Utility Department Manager.

