

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

**AMENDED SUBDIVISION IMPROVEMENTS AGREEMENT  
ANNAFELD SUBDIVISION, FIRST FILING**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019~~17~~, by and between **MCCALL DEVELOPMENT, INC.**, whose address for the purpose of this agreement is 1536 Mallowney Lane, Suite 100; Billings, Montana 59101, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the plat of Annafeld Subdivision, First Filing, (formerly known as Josephine Landing Subdivision, First Filing) located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on the 4th day of May, 2016, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld Subdivision, First Filing; (formerly known as Josephine Landing Subdivision, First Filing); and

**WHEREAS**, at a regular meeting conducted on the 23rd day of May, 2016, the City Council conditionally approved a preliminary plat of Annafeld Subdivision, First Filing (formerly known as Josephine Landing Subdivision, First 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 Annafeld Subdivision, First 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**

None requested

**II. CONDITIONS THAT RUN WITH THE LAND**

- A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development.
- B. 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.
- C. Lot owners should be aware that this subdivision is built with a “traditional neighborhood” design. The single-family dwellings will have the garage set in the rear of the lots. The access will be provided to the garages by means of a paved alley.
- D. Lot owners should be aware that this subdivision is zoned “Planned Development” (PD). Special zoning regulations regarding lot development will be enforced in accordance to the Amended Planned Development Agreement recorded at the Yellowstone County Clerk and Records Office under Document No. 3826023.
- E. Lot owners should be aware that this subdivision is adjacent to wildlife habitat. Consequently, owners are advised that wildlife indigenous to the area is found on the property, and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also experience problems with damage to landscaped shrubs, flowers, and

gardens. Any impacts associated with wildlife and any damage arising there from is the responsibility of the lot owners.

- F. No water rights have been transferred to the individual lot owners, but may be held by the subdivider and/or the homeowners association. 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 without the permission of the controlling ditch company.
- G. Lot owners should be aware they may be required to participate in a park maintenance district administered by the City of Billings for Annafeld Subdivision, First Filing
- H. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Chapter 28-201, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- I. Lot owners should be aware that the Yellowstone River Channel Migration Study sponsored by the Yellowstone River Conservation District Council and the U.S. Army Corp of Engineers has identified areas which may be susceptible to erosion by the Yellowstone River. Owners are encouraged to review the extent to which bank erosion may pose a threat to structures built in this subdivision.
- J. Lot owners should be aware that Hogan's Slough adjacent to the subdivision is a major stormwater outfall for Billings west end. There is a possibility that the slough could overtop during a major storm event. Based upon the existing topography near Hogan's Slough and the Elysian Road Bridge, it is anticipated that the channel would overtop northeast of Elysian Road and flow east prior to overtopping Elysian Road. There is the possibility however that Elysian Road could be overtopped during a major storm event. If that occurs, flows not carried within the Hogan's Slough channel would be carried within the subdivision streets. The elevation of residential dwellings and commercial structures must be established in recognition of the City's policy that storm runoff flows are allowed to a depth of 18-inches in the gutter flowline of adjacent streets during the major storm. Higher house finished floor elevations may be required on a lot by lot basis.
- K. The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and

the State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the City of Billings *Stormwater Management Manual*.

### III. TRANSPORTATION

#### A. Streets

1. All internal access roads and site improvements within the subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, International Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All internal streets within the subdivision shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All public roads will be built to provide a 34-foot back-to-back curb street width. The design cross-sections of said streets shall be submitted to, and approved by, the City of Billings Public Works Department.
3. Elysian Road is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter and any necessary pavement widening will be constructed on the south side of Elysian Road frontage adjacent to the First Filing. Storm drain shall be installed as necessary, draining directly to Hogan's Slough and/or routed internally through the subdivision. A westbound left-turn bay is not required with First Filing, but may be necessary with future filings of the Annafeld Planned Development. The curb and gutter installed with first filing will be designed such that it will accommodate a future turn bay. Elysian Road improvements will be completed by private contract or SID.
4. Story Road, ~~lying east of from~~ Walter Creek Boulevard to the Hogan's Slough crossing, will be constructed at the time of Phase II construction of the Hogan's Slough Crossing. At the time of this filing, Phase IV of Harmony Meadows Subdivision, Second Filing has not been constructed. Therefore, a physical connection between Annafeld Subdivision and Harmony Meadows Subdivision cannot be made at this time. The Subdivider agrees to contribute up to 50 percent of the cost for the design, permitting, and construction of the Hogan's Slough crossing on Story Road. ~~The cash contribution for~~

~~the crossing will be made at the time of Phase II construction.~~ If the cash contribution is not sufficient to cover 50 percent of the crossing costs at the time of construction, the City retains the right to create an SID to recover additional design and construction costs.

The timing of the contribution for the Hogan's Slough crossing on Story Road shall be made at the earlier of the following:

- I. At the time an Annafeld Subdivision Traffic Impact Study recommends the Story Road connection be completed.
- II. At the commencement of construction of Phase IV improvements for Harmony Meadows Subdivision. 2nd Filing.
- III. Prior to final plat approval of the final filing of Annafeld Subdivision.

~~With a future At the time of second~~ filing of Annafeld Subdivision, the Subdivider shall provide a Traffic Impacts Study update addressing the subdivision's connection to Story Road to the east and the impacts Annafeld Subdivision will have on Story Road. Any cash contributions that may be required due to those impacts will be identified in the updated Traffic Impacts Study.

- 5. A traffic accessibility study has been completed for the Annafeld Master Plan and submitted as part of the First Filing. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. Based on the additional lots created with Annafeld Subdivision, First Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

South Frontage Road/Mullowney Lane	4.58%	\$11,450.00
Mullowney Lane/Elysian Road	3.17%	\$7,925.00
Elysian Road/East Lane	3.42%	\$8,550.00
Elysian Road/South Frontage Road	1.40%	\$3,500.00

These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage contributions and dollar amounts are as outlined within the Traffic Impacts Study for Annafeld Subdivision, First Filing as submitted with the preliminary plat.

**B. Alleys**

All alleys within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All alley approaches constructed with asphalt shall be replaced with concrete by the Subdivider at the time when home construction is complete. In the event asphalt approaches within the subdivision are not replaced with concrete within three years of the date of recording of the final plat, the City may construct the concrete approaches and assess the Subdivider for the costs associated with the approach construction. Alley pavement widths shall be 12-feet. The design cross-sections of said alleys shall be submitted to, and approved by, the City of Billings Public Works Department.

**C. Sidewalks**

Subdivider shall install handicap access ramps, where necessary, during street construction. Construction of sidewalks along frontage of the lots shall be installed by the lot owner at the time of lot development. Sidewalks along the street frontage shall be minimum 5-foot-wide and separated with a boulevard width not less than five feet.

In the event that portions of the required sidewalks within the subdivision are not constructed within three years of the date of recording of the final plat, the City may construct the remaining sidewalks and assess the individual lot owners for the costs associated with the sidewalk construction.

A sidewalk shall not be required along the south side of Elysian Road, due to the proximity of the proposed multi-use path, as allowed by 23-406 (B)(13), BMCC.

**D. Street Lighting**

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for First Filing by private contract or SID. A Street Light Maintenance District will be created for operation and maintenance of the lighting installed in First Filing.

**E. Traffic Control Devices**



1. Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
2. No traffic signals are required within this subdivision.
3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

**F. Access**

Access to the subdivision will be provided by Elysian Road. A secondary emergency access will be provided to East Lane, to be utilized until such time as future filings of the Annafeld Masterplan are developed. The secondary emergency access will be along the existing City trunk sanitary sewer easement. The access road shall be designed to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of 20-foot-wide. Alley access is also provided to all residential lots within the subdivision.

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

The Billings Area Bikeway and Trail Master Plan and the Zoo Montana to Riverfront Park Trail Feasibility Study both recommend a multi-use trail along the southern boundary of the Annafeld Planned Development. A public park on the upper bench area north of the Yellowstone River interface is being dedicated as part of First Filing, providing the opportunity for a future extension of the trail to the east and west.

A multi-use trail will be constructed along the south boundary of Elysian Road. Said multi-use trail shall extend from the east boundary of the subdivision to the easterly right-of-way line of East Lane. The multi-use trail or a temporary trail shall be constructed in conjunction with Phase I. A temporary trail may be constructed in lieu of the permanent trail to be utilized until such time as full construction of Elysian Road is completed. The alignment, and composition of the temporary path shall be approved by the City of Billings.

A pedestrian bridge associated with the multi-use trail along Elysian Road for crossing of the Hogan's Slough will be constructed. The Subdivider

agrees to contribute up to 50 percent of the cost of the crossing, including design and permitting costs. The cash contribution for the crossing will be made at the time of Phase I construction. If the cash contribution is not sufficient to cover 50 percent of the crossing costs, the City retains the right to create an SID to recover additional design and construction costs.

**H. Public Transit**

There are no MET Transit routes that service this subdivision at this time. The nearest established route is at the intersection of Midland Road and Muldowney Lane. No improvements with regard to MET Transit vehicles are anticipated at this time.

**IV. EMERGENCY SERVICE**

**A. Fire Hydrants**

Emergency service will be provided by the City. Placement of fire hydrants will be as required by the City of Billings Fire Department.

**B. Construction of Buildings**

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 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 20-foot-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.

**C. Building Location**

All buildings shall be located on each lot so that the furthest portion of each building is within 150-feet from an approved fire department access road over an approved route excluding all carriage lanes and alleyways.

**V. STORM DRAINAGE**

- A.** A stormwater management plan shall be submitted to the Engineering Division prior to final plat approval. The storm drainage system consists of a curb and gutter surface collection and curb inlets that drain into storm drainage piping, as well as surface conveyance in some areas. The storm drain piping will discharge into mechanical stormwater filtration manholes, then into Hogan's Slough, or shall be routed through the water quality treatment pond located within the public park area on the southerly end of the subdivision, which will then also discharge into Hogan's Slough. All drainage improvements shall comply with the provisions of the City of Billings *Stormwater Management Manual* and Chapter 28, BMCC.
- B.** The mechanical stormwater filtration manholes, and associated improvements will be privately owned and maintained by the HOA. O&M requirements and HOA maintenance and fiscal responsibilities shall be as outlined within the Annafeld Subdivision, First Filing, Phase I O&M Manual.
- C.** Hogan's Slough adjacent to the subdivision is a major stormwater outfall for Billings west end. There is a possibility that the slough could overtop during a major storm event. Based upon the existing topography near Hogan's Slough and the Elysian Road Bridge, it is anticipated that the channel would overtop northeast of Elysian Road and flow east prior to overtopping Elysian Road. There is the possibility however that Elysian Road could be overtopped during a major storm event. If that occurs, flows not carried within the Hogan's Slough channel would be carried within the subdivision streets. The elevation of residential dwellings and commercial structures must be established in recognition of the City's policy that storm runoff flows are allowed to a depth of 18-inches in the gutter flowline of adjacent streets during the major storm.

- D. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Chapter 28, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- E. The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and the State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater discharges Associated with Construction Activity, Chapter 28, BMCC and the City of Billings *Stormwater Management Manual*.

## 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 of/connection 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/owner acknowledges that the subdivision shall be subject to the applicable system development and franchise 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**

The Annafeld Subdivision water system consists of a series of looped water mains located in each of the local streets. The subdivision water system will consist of new 12-inch water mains in Walter Creek Boulevard and Mollie Rose Lane, and 8-inch water mains in Anna's Garden Lane, and Norma Jean

Lane. The 12-inch water main in Walter Creek Boulevard will connect to the 16-inch water main trunk in Elysian Road, providing the feed for First Filing. Future filings of the Annafeld Planned Development will provide the opportunity to make additional connections to the trunk main in Elysian Road providing water main looping.

Installation of the 8-inch water main in Story Road, to the easterly boundary of the subdivision shall be constructed at the time of construction of the Story Road crossing of Hogan's Slough.

**B. Sanitary Sewer**

Sanitary sewer service to the subdivision will be provided by connecting to the existing 24-inch gravity sewer trunk main along the easterly edge of the subdivision and continuing west through the subdivision. A lateral sanitary sewer will be extended from the trunk within Walter Creek Boulevard, Anna's Garden Lane, Mollie Rose Lane and Norma Jean Lane. 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.

Paved access to the existing trunk sanitary sewer manhole located on Lot 4, Block 1 will be provided at the time of lot development.

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

Private utility facilities currently exist to serve the subdivision. The private utility facilities will be installed within the alley right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the alleys.

**VII. PARKS/OPEN SPACE**

The subdivision lies within a planned unit development that provides for land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development, per 76-3-621(6)(a) of the Montana Code Annotated. The park and open space within the Annafeld Planned Unit Development Master Plan meets or exceeds the area of dedication required under section 76-3-621(1),MCA. The Subdivider and City agree that the parkland dedication has been met through the dedication of public parks within the

Annafeld Planned Unit Development. The public parks will be developed by private contract or S.I.D.

Operation and maintenance of the public park areas will be by a park maintenance district created for the subdivision and administered by the City of Billings.

A park masterplan for the public park areas within Annafeld Subdivision, First Filing will be prepared by the Subdivider for review and approval by the City of Billings Parks and Recreation Department. The park masterplan shall be submitted within 120 days of filing of the final plat. The park masterplan will define the improvements and timing of construction of the park improvements.

**VIII. POSTAL DELIVERY**

The Subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.

**IX. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study has been performed for the subdivision. The report dated January 19, 2016, is available for review at the City of Billings Planning Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

**X. PHASING OF IMPROVEMENTS**

The Subdivider does not desire to commence development of all the lots within the subdivision, but does desire to file the approved final plat of Annafeld Subdivision, First Filing and to sell and convey lots in said subdivision in phases. In accordance with the foregoing, the Subdivider and the City agree as follows:

- A. Prior to filing of the final plat, the Subdivider will enter into a private contract for the Phase I infrastructure improvements or shall monetarily secure said improvements.

As used herein, the Phase I lots to be served by the initial private contract are more particularly described as follows:

**Phase 1:** Lots 1-22 and Lot 24, Block 1, Lots 2-5, Block 2, Lots 2-4 and Lots 11-25, Block 3, Lots 1-3, Block 4, all in Annafeld Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone

County, Montana. (48 Lots)

- B. The remaining improvements will be installed by the Subdivider at a future date. The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the future phase improvements, and the Subdivider further acknowledges that no building permits for lots within the future phases shall be issued until a private contract has been executed and necessary funding guarantees have been provided for the construction and installation of the public improvements to serve said lots. As used herein, the lots to be served by the said future phase improvements are more particularly described as follows:

**Phase 2:** Lot 23, Block 1, Lots 1 and Lots 6-8, Block 2, Lots 5-10 and Lots 26-34, Block 3, Lot 4, Block 4, all in Annafeld Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana. (25 Lots)

Pursuant to the foregoing agreement, the Subdivider shall execute and record a Declaration of Restriction on Transfers and Conveyances for said future phase lots, to be recorded concurrently with the recording of this agreement. Said Declaration notifies all third parties that said lots may not be legally sold, conveyed, or transferred until a Release executed by the City of Billings, and substantially in the form of Exhibit A attached hereto, has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No lots shall be released until a Certificate substantially in the form of Exhibit B attached hereto has been executed by the Department of Public Works stating that the above conditions have been met, which Certificate must accompany any request for a release. By the acceptance and recording of the agreement, the City does hereby authorize the Department of Public Works, and the Mayor and City Clerk of the City, to review any request for release and to execute such certificates and releases as may be necessary to evidence a release from the restriction against sale, conveyance, and transfer of lots in the subdivision.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, as one unit, all lots in the subdivision, nor shall the requirements for installation of improvements become effective as a result thereof; provided, however, that such sale shall be subject to the restrictions herein provided against the transfer of individual lots until the conditions set forth above have been met.

## **XI. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts 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.

## **XII. LEGAL PROVISIONS**

- A.** Subdivider agrees to guarantee all public improvements for a period of one year 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 apply to and shall be binding on the heirs, personal representatives, successors, and assigns 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.



**IN WITNESS WHEREOF**, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

**MCCALL DEVELOPMENT, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA     )  
  : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 2019~~17~~, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of **MCCALL DEVELOPMENT, INC.** who executed the foregoing instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

This agreement is hereby approved and accepted by the City of Billings, this \_\_\_\_ day of \_\_\_\_\_, 201917.

“CITY”

CITY OF BILLINGS, MONTANA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA      )  
  : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 201917, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

\_\_\_\_\_  
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, being the Subdivider and Founders of the hereinafter described real property, do hereby waive for a period of 20 years after the date that the final subdivision plat is filed, the right to protest the formation of one or more special improvement district(s) 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 are supported by sufficient independent consideration to which the undersigned is a party, and shall run with the land and shall be binding upon the undersigned, its 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 that is the subject of this waiver is more particularly described as follows:

ANNAFELD SUBDIVISION, FIRST FILING

SUBDIVIDER/OWNER

**MCCALL DEVELOPMENT, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA        )  
                                      : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 201917, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of **MCCALL DEVELOPMENT, INC.** and acknowledged to me that he/she 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: \_\_\_\_\_