

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

Emma Jean Heights Subdivision, 4th Filing

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(City of Billings)

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

Emma Jean Heights Subdivision, 4th Filing

This agreement is made and entered into this ____ day of _____, 20__, by and between **Felton Associates, Inc.**, whose address for the purpose of this agreement is **PO Box 598, Frenchtown, MT 59834**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Emma Jean Heights Subdivision, 4th Filing*, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of *Emma Jean Heights 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 *Emma Jean Heights 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. 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.
- 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.
- D.** The following lot owners should be aware that the minimum main floor elevation of 3168.25 feet based on NAVD 88 differentially leveled from NGS Benchmark "B124" brass cap set in concrete on the west side of Bench Blvd. approximately 200 feet north of Logan Lane must be maintained to prevent flooding: Lots 4 of Block 11; Lots 8 and 9 of Block 10; Lots 12 and 13 of Block 9; and Lots 10 and 11 of Block 8.
- E.** No water rights have been transferred to the lot owners. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- F.** 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.
- G.** All construction traffic shall be limited to using Anchor Avenue from Bitterroot Drive and shall not use neighboring residential streets.
- H.** There exists the potential for variable soils conditions and groundwater levels within this subdivision area. Assessment and mitigation of these conditions, if necessary, shall be the responsibility of the lot owner. Additional geotechnical studies may be necessary at the time of individual lot development.
- I.** 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.

- J.** 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.

II. TRANSPORTATION

A. Streets

Subdivider will execute a private contract to construct public streets, curb and gutter, and some sidewalks within the Subdivision. The improvements will consist of 34-foot from back of curb to back of curb residential streets constructed within a 56-foot right-of-way using standard curb and gutter and full width asphalt pavement. Road Closed sign assemblies will be placed at the end of Anchor Avenue until such time this street is extended with future filings.

B. Sidewalks

Sidewalks adjacent to interior subdivision streets shall be 5-foot boulevard walk style with a boulevard width of 5-feet and shall have the walks installed at the time that housing units are constructed on the lot and shall be included in each building permit.

Subdivider will install, with the private contract, corner intersection handicap ramps and aprons, parallel handicap ramps, and will grade all street frontages for sidewalk finished grades.

The City of Billings reserves the right to construct sidewalks not completed within three (3) years of the date of the Final Plat is recorded for the development and to assess the adjacent property owner for the sidewalk work.

C. Street Lighting

Construction or installation of streetlights within the Subdivision will not be required at this time, but streetlights shall be included in the Waiver for construction of the same in the future. Said Waiver shall also include a maintenance district for streetlight energy and maintenance of streetlights. Conduits and pull boxes will be installed, if required, at intersections.

D. Traffic Control Devices

Subdivider will furnish necessary traffic control devices within or adjacent to the Subdivision in conformance with the City of Billings standards and in accordance with the plans and specifications approved by the City. The Subdivider shall include one (1) Road Closed Sign Setup assemblies at the 4th

Filing endpoints of Anchor Ave until such time this street is extended with future filing.

Street name signs for streets within the Subdivision shall be furnished and installed by the Subdivider in accordance with the specifications of the City Engineer.

E. Access

Primary subdivision access is from a single access to Bitterroot Drive via a public street (Anchor Avenue) located approximately 970 feet south of Wicks Lane. There is also access on the south from Columbine Drive, an existing County gravel road within a 60-foot right-of-way.

F. Major Offsite Intersection Contributions

Offsite intersection contributions for Emma Jean Heights Subdivision, 4th Filing have been identified in accordance with the 2007 Traffic Accessibility Study for Emma Jean Heights Subdivision Residential Development, Billings, MT prepared by HKM Engineering. The amount assessed for capacity losses to the Hawthorne Drive & Yellowstone River Road intersection and the Wicks Lane & Hawthorne Drive intersection is \$4,982.11, which shall be made as a cash contribution by the Subdivider prior to final plat approval.

G. Billings Area Bikeway & Trail Master Plan

The Emma Jean Heights Subdivision, 4th Filing is within the planning area for the Billings Area Bikeway & Trail Master Plan. The Trail Plan indicates a proposed multi-use trail along the south side of the BBWA lateral ditch. The path will be built in accordance with the “City Trails and Bikeway Design Standards” as the pathway is platted.

H. Public Transit

Met Transit provides service to the Billings Heights with a route on Bitterroot Drive. No improvements are required to ensure public transit service.

III. 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.

IV. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Emma Jean Heights Stormwater Management Plan prepared by HKM Engineering, Inc. April 2007, and the Comprehensive Drainage Plan Report prepared by Interstate Engineering, Inc. June 2013. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

The storm drainage for public streets will include a combination of surface drainage and curb and gutter. The runoff will be conveyed to and discharged to temporary detention and retention ponds located within the Emma Jean Heights Subdivision that are sized to store stormwater from all phases of the subdivision. The temporary detention and retention ponds are located on Lots 12 and 13, Block 2 of Emma Jean Heights Subdivision, 1st Filing, and on Lots 10 and 11, Block 10 of Emma Jean Heights Subdivision, 2nd Filing. The temporary detention and retention ponds will be removed, and stormwater conveyance infrastructure will be connected to the storm sewer truck main within Bitterroot Drive when it is constructed in the future.

V. 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 Fee 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 water mains, appurtenances extensions, and connections shall be sized and installed as approved by the Manager of the Heights Water District and shall be installed in conformance with District design standards and specifications and the rules and regulations of the District and the Montana State Department of Environmental Quality.

Water mains and water service lines to the curb stop will be installed by the Subdivider under private contract.

The Subdivider acknowledges that the Subdivision shall be responsible for the payment of buy-in fees to the District prior to water being supplied to the Subdivision.

B. Sanitary Sewer

Sanitary sewer mains and lateral sanitary sewer service lines to the nearest property line will be installed by the Subdivider under private contract.

Sewer mains and appurtenances shall be sized and installed as approved by the City Public Works Department and shall be installed in conformance with City design standards and specifications and the rules and regulations of the City and the Montana State Department of Environmental Quality.

The Subdivider acknowledges that the Subdivision shall be subject to applicable sanitary sewer system development fees in affect at the time new sewer service connections are made.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines within the public right-of-way shall be installed prior to surface improvements. The location of all such facilities within the public right-of-way shall be subject to the approval of the City Engineer.

10-foot utility easements are provided along the side, rear, or front lot lines of selected lots for utility services as shown on the plat of Emma Jean Heights Subdivision, 4th Filing.

VI. PARKS/OPEN SPACE

The parkland requirements for the Emma Jean Heights Subdivision, 4th Filing is 0.88 acres (11% of the net area) or an equal cash donation. The parkland requirement for the entire planned area of Emma Jean Heights Subdivision is 4.31 acres (11% of the net area). 0.77 acres of parkland has been dedicated in Emma Jean Heights Subdivision, 1st Filing and a cash contribution equal to 0.81 acres has been made by the Subdivider for Emma Jean Heights, 2nd Filing. For the 3rd Filing, 0.75 acres has been dedicated as parkland within Lot 1 Block 19 of Emma Jean Heights Subdivision. For the 4th Filing the Developer will dedicate 1.72 acres east of the 3rd Filing Park Dedication Tract 1 and 0.25 acres parkland dedication along the multi-use path.

An SID and a PMD will be created to fund the development and maintenance of the parks in the subdivision.

VII. IRRIGATION

Billings Bench Water Association Lateral No. 1 right-of-way utility crossings at the west end of Anchor Avenue shall be constructed with Emma Jean Heights Subdivision, 4th Filing by the subdivider. The Anchor Avenue crossing over the Billings Bench Water Association Lateral No. 1 shall be constructed in subsequent filings of Emma Jean Heights Subdivision. The Emma Jean Heights Subdivision 4th Filing subdivider shall remove the existing irrigation turnout located north of the proposed future Anchor Avenue canal crossing and shall remove the irrigation ditch lateral through the Emma Jean Heights Subdivision 4th Filing; the subdivider has executed a Well Agreement with irrigation ditch easement grantee to abandon the irrigation ditch and easement.

- No water rights have been transferred to the lot owners.

VIII. SOILS/GEOTECHNICAL STUDY

A geotechnical investigation was performed for the area of Emma Jean Heights Subdivision, 4th Filing. The investigation found subsoils generally consist of sand lean clay and lean clay with sand overlying poorly graded gravels with silt and sand. Subsurface groundwater was not encountered in borings that ranged in depth from 6.5 to 12.5 feet.

The geotechnical investigation found that residential construction can be supported on spread footings placed below frost depth.

IX. 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.

X. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- 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”

Felton Associates, Inc.

By: _____

Title: _____

STATE OF MONTANA)

County of _____ : ss
)

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 _____ of (*Subdivider*), 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 _____, 20__.

“CITY”
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
County of Yellowstone : ss
)

On this ____ day of _____, 20__, 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: _____

