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SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS GRAND PEAKS SUBDIVISION, FIFTH FILING

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

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST
FUTURE SPECIAL IMPROVEMENT DISTRICTS
GRAND PEAKS SUBDIVISION, FIFTH FILING**

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between **J & S DEVELOPMENT CO.**, whose address for the purpose of this agreement is 1733 East Thunder Mountain Road, Billings, MT 59106, 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 the 26th day of November, 2019, the Board of Planning recommended conditional approval of a preliminary plat of Grand Peaks Subdivision, Fifth Filing; and

WHEREAS, at a regular meeting conducted on the 16th day of December, 2019, the City Council conditionally approved a preliminary plat of Grand Peaks Subdivision, Fifth 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 Grand Peaks Subdivision, Fifth 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

A. 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 23.1401, BMCC):

1. No Variances are 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.

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 of soil characteristics within the area of this subdivision, as described in the "Geotechnical Investigation Report, Approximate 25 Acre Parcel North of Existing Grand Peaks Subdivision, Billings, Montana" by Geoscience, PLLP, dated March 10, 2016. Lot owners and homebuilders shall reference the report in its entirety, but a summary is as follows:

1. Over-excavation and structural fill are options. Settlement risk is estimated at 3/4 to 1-1/2 inches. The geotechnical engineer shall observe excavation and fill work. (Sections 5.1, 5.2, 5.15).
2. Structural fill shall be placed in maximum 6-inch lifts and compacted to 98-percent of maximum dry density per ASTM D 698. (Section 5.8.4)
3. Footings, foundation walls, retaining walls, interior slabs, and exterior slabs shall be designed by a structural engineer. (Sections 5.11 and 5.12)

4. Footings shall not be below 4 to 5 feet of existing grades. (Section 5.1)
 5. Exterior backfill in non-structural and landscape areas shall be compacted to a minimum of 92 percent of maximum dry density per ASTM D 698, and exterior backfill below concrete slabs, driveways, sidewalks, and all other paving shall be compacted to a minimum of 95 percent of maximum dry density per ASTM D 698. (Section 5.8.4)
 6. Site grading and surface water control is described in Section 5.9.
- 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.** Lot owners are advised they will be subject to inclusion in a Parks Maintenance District (PMD) for the operation and maintenance of the regional Cottonwood Park.
- G.** 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.
- H.** 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 Chapter 28, BMCC and detailed in the Billings Stormwater Management Manual.

1. The lowest finish floor elevation (which includes the garage) shall be a minimum of 18-inches higher than the top of curb, measured from the highest location along the lot frontage. Home builder and lot owner may find it necessary to raise the finish floor elevation of house or garage above this minimum during on-site building design and/or during on-lot grading.
2. The stormwater runoff from individual lots shall be directed toward the public right-of-way wherever possible. However, due to the existing terrain of the subdivision this is not possible for every lot. Where runoff from lots cannot be directed to public right-of-way because existing terrain is falling away from the public right of way, the stormwater runoff shall be directed to flow to the same location as it has historically. Home builder and lot owners shall consider the effect of potential off-lot run-on waters from lots uphill of the subject lot, and grade around the home to provide positive drainage away from the home. Home builder and lot owners must take necessary measures to protect the house from surface stormwater flows. Lots shall allow, through on-site building design and on-lot grading, for stormwater to pass through each lot without negatively impacting adjacent lots. The lowest openings on each home (window wells) are to be located outside the designated drainage paths. If this is not possible, the builder and lot owners must take necessary measures to protect these openings from inundating from surface water flows. In any case, the homebuilder shall allow enough space between window wells and property lines to provide sufficient swales and proper storm water drainage away from window wells.
3. Each owner of a completed lot shall be a member of the Grand Peaks Fifth and Sixth Filing Homeowners Association (HOA). Membership shall be appurtenant to and may not be separated from ownership of a lot. The Home Owners Association will be set up to maintain the permanent stormwater detention facilities. The HOA Board of Directors shall have the power, in its discretion, to exclude costs of major repairs or approved capital improvements to the HOA Storm Water System from the regular monthly assessments and, instead, impose special assessments for these expenses, and for emergencies, as they are incurred.

III. TRANSPORTATION

A. Streets

1. **54th Street West:** 54th Street West is designated as a Minor Arterial and is located within a 100-foot right-of-way, which conforms to right-of-way widths in adjacent subdivisions for 54th Street West. It is required that 54th Street West be constructed with a minimum standard width of 42-feet, back of curb to back of curb. That portion of 54th Street West adjacent to the subdivision has been partially constructed. The existing street includes approximately 26-feet of asphalt. The Subdivider will provide a cash-in-lieu contribution for the construction of approximately an additional 6-feet of asphalt surface with a satisfactory sub-base, base course, standard curb and gutter, and any necessary tapers on 54th Street West along the frontage of the subdivision due at the time of construction fronting 54th Street West (at the time of final plat approval of the anticipated Grand Peaks Sixth Filing). The cash-in-lieu contribution will also include engineering design and construction administration.
2. Subdivider will enter into a private contract for the construction of all required improvements for those streets within the subdivision, as follows:

North Iron Mountain Road, South Iron Mountain Road, Grass Mountain Road, Chrome Mountain Road, West Thunder Mountain Road, and East Thunder Mountain Road will be constructed within a 56-foot right-of-way using curb and gutter and full-width pavement (34-feet back of curb to back of curb). Curb and Gutter will be installed per the City of Billings Standards in place at time of construction.

Per the Traffic Impact Study (TIS), the warrant criteria for a westbound right-turn lane at the intersection of Grand Avenue and Grand Peaks Drive was found to be satisfied at the time of Fifth Filing build-out. The Subdivider agrees to install a west bound right-turn lane on Grand Avenue at the Grand Peaks Drive intersection. The turn lane shall be subject to review and approval by the City Engineering office.

B. Sidewalks

1. Sidewalk on the internal streets shall be installed at the time of individual lot development. The sidewalk shall consist of a 5-foot-wide boulevard type sidewalk with a minimum 5-foot-wide boulevard.
2. Subdivider will install accessible ramps at the intersections, which shall be completed with the subdivision improvements.

C. Street Lighting

Construction or installation of street lights within the public rights-of-way shall not be required at this time, but street lights are included in the Waiver referenced herein for construction of the same in the future. A maintenance district for street lights may be formed for future maintenance of any street lights installed in the future.

D. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices within and adjacent to the Subdivision in accordance with the plans and specification submitted to and approved by the City Engineer. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction.

Based on the Traffic Impact Study (TIS), the Fifth Filing development's portion of critical volumes for impacted intersections are as follows:

	54th St. W./ Grand Ave.	54th St. W./ Rimrock Road
Fifth Filing	0.53% (\$1,325.00)	0.25% (\$625.00)

City and Subdivider agree that the Subdivider will be required to make cash contributions to these intersections prior to final plat approval.

E. Access

West Thunder Mountain Road and East Thunder Mountain Road will provide access to the subdivision through Grand Peaks Subdivision, Third Filing. The interior streets will be located within a 56-foot right-of-way and will have a width of 34-feet back of curb to back of curb.

F. Billings Area Bikeway and Trail Master Plan

54th Street West is a proposed short-term bike lane route. A 10-foot trail was recently constructed on the west side of 54th Street West along the Subdivision frontage, and as such, no other trail improvements are required as part of this subdivision.

G. Public Transit

The subdivision does not require improvements to ensure public transit service.

IV. EMERGENCY SERVICE

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 dead-end street in excess of 150-feet.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) 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 an 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-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

Storm drainage for the public streets shall be provided by a combination of surface drainage and curbs and gutters, drained to underground storm drains, and with discharge to a new detention facility that is located within the subdivision. This detention facility has been sized to accept additional runoff generated from the future Grand Peaks Subdivision, Sixth Filing. The detention facility on site will be sized to store the stormwater generated by Grand Peaks Subdivision, Fifth and Sixth Filing. Storm water will be pumped out of the detention facility and directed to the existing storm water detention facility in Grand Peaks Subdivision, Third Filing, located on Lot 1, Block 6. Stormwater management facilities for the subdivision must be able to pass flows generated outside the subdivision area without inundating existing and proposed home sites. 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 prior to filing of the final plat.

The stormwater detention area is to be located within a private park lot deeded to the Grand Peaks Subdivision, Fifth and Sixth Filing HOA and will be an integral part of the public street drainage system. The pumped discharge line from the HOA detention facility shall be located within the public right of way. The drainage system improvements will be in accordance with the recommendations of the stormwater analysis and report prepared and submitted with the improvement plans and specifications. Maintenance of the stormwater retention area and associated drainage facilities shall be by the Grand Peaks Subdivision, Fifth and Sixth Filing HOA. The developer shall submit a landscape plan to the City of Billings for review and provide approved landscape improvements for the lot. The landscape improvements shall be completed with the subdivision improvements.

Furthermore, as part of the storm water system improvements, Subdivider shall pay a cash contribution for twenty five percent (25%) of the cost of a City project (including construction cost, design, construction observation, and staking cost) to convey storm water from the storm water detention facility located on Lot 1, Block 6, Grand Peaks Third Filing to a City conveyance system located in Grand Avenue. The Subdivider is required to provide a monetary security in the amount of \$18,804.50 prior to final plat approval, and the cash contribution (based on actual project cost) is required once the City project has been bid and awarded. Once the cash contribution is made by the Subdivider, the letter of credit will no longer be required and will be released by the 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 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 subdivision will be served by making two connections to public water mains, one at West Thunder Mountain Road and one on East Thunder Mountain Road. A new 8-inch water main will be installed in the local interior streets of the subdivision which is subject to approval from the City of Billings. The water main within the subdivision will make looped connections whenever possible. Fire hydrants will be provided at all appropriate locations and are also subject to approval by the City of Billings.

B. Sanitary Sewer

The subdivision will be served by making a connection to existing sewer mains located in East and West Thunder Mountain Roads. The sanitary sewer located within Grand Peaks Subdivision, Fifth Filing will consist of 8-inch sanitary sewer main which is subject to approval from the City of Billings.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines shall be the responsibility of the Subdivider. Any line located within public right-of-way shall be subject to approval of the City Engineer.

VII. PARKS/OPEN SPACE

The park land for this subdivision (additionally including the proposed Grand Peaks Subdivision, Sixth Filing) is 2.02 acres. The Subdivider proposes to dedicate land for a private park. The Subdivider will install turf and irrigation in the private park. The private park will be maintained by the Grand Peaks Subdivision, Fifth Filing and Sixth Filing Homeowners Association (HOA).

Lot owners are advised they will be subject to inclusion in a Parks Maintenance District (PMD) for the operation and maintenance of the regional Cottonwood Park that is also covered in the Waiver.

VIII. IRRIGATION

No permanent irrigation ditches, field laterals, or irrigation easements exist on the subdivision.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical report was performed within the area of this subdivision and submitted with the preliminary plat. The recommendations are found in the “Geotechnical Investigation Report, Approximate 25 Acre Parcel North of Existing Grand Peaks Subdivision, Billings, Montana” by Geoscience, PLLP dated March 10, 2016. Lot owners and homebuilders shall reference the report in its entirety, but a summary is as follows:

1. Over-excavation and structural fill are an option. Settlement risk is estimated at 3/4 to 1 1/2 inches. The geotechnical engineer shall observe excavation and fill work. (Sections 5.1, 5.2, 5.15).
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3. Footings, foundation walls, retaining walls, interior slabs, and exterior slabs shall be designed by a structural engineer. (Sections 5.11 and 5.12)
4. Footings shall not be below 4 to 5 feet of existing grades. (Section 5.1)

5. Exterior backfill in non-structural and landscape areas shall be compacted to a minimum of 92 percent of maximum dry density per ASTM D 698, and exterior backfill below concrete slabs, driveways, sidewalks, and all other paving shall be compacted to a minimum of 95 percent of maximum dry density per ASTM D 698. (Section 5.8.4)
6. Site grading and surface water control is described in Section 5.9.
7. The assessment and mitigation of these soil conditions shall be the responsibility of the lot owner. The City may require the owner of each lot to include a geotechnical investigation with the building permit submittal.

X. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or 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 special improvement district or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XI. 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”

J & S DEVELOPMENT CO.

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

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 person who executed the foregoing instrument as the _____ of **J & S DEVELOPMENT CO.**, 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: _____

