

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

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

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between **HOGAN PROPERTIES, LLC**, whose address for the purpose of this agreement is 520 Business Hub Drive, Belgrade, MT, 59714, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of Big Iron Subdivision, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on the 23rd day of November 2020, the City Council conditionally approved a preliminary plat of Big Iron Subdivision; 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 Big Iron Subdivision 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. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A.** 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.
- 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.** 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.
- D.** 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.
- E.** 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.

- F. Lot owners should be aware that portion(s) of this property lie within the 100-year floodplain, as depicted on Panel 30111C1460E of the FEMA map for this area. Please be advised that special development restrictions may apply within these specified areas.

III. TRANSPORTATION

A. Streets

This subdivision is adjacent to South Frontage Road and Interstate I-90, both of which are under the jurisdiction of the Montana Department of Transportation (MDOT). Adjacent to the subdivision, there a total of 270 feet of right of way for these two roadways. No street improvements are anticipated at this time for the subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

B. Sidewalks

No sidewalk improvements are anticipated at this time for the subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

C. Street Lighting

No street lighting exists along South Frontage Road in the vicinity of this subdivision. No new street lighting will be required as a result of this subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

D. Traffic Control Devices

No street traffic control devices are anticipated at this time for the subdivision but is included in the Waiver of Right to Protest Future Special Improvement Districts.

E. Access

Subdivider wishes to use the two existing accesses from South Frontage Road. If modification to either access is needed, Subdivider shall obtain appropriate permit approval from MDOT. A Declaration of Reciprocal Easement between the two proposed lots will be recorded at the time of

final plat approval. This easement will allow both lots within the subdivision to use both accesses onto South Frontage Road. No other accesses are proposed for this subdivision.

F. Billings Area Bikeway and Trail Master Plan

The subdivision is included in the Billings Area Bikeway and Trail Master Plan. Improvements identified in that plan shall be made at time of development of Lot 1. The Subdivider shall construct a ten-foot-wide multi-use asphalt trail along the subdivision's frontage of South Frontage Road at the time of Lot 1 development. Construction shall be either within the public right of way of South Frontage Road or within an easement on private property. Maintenance of the ten-foot-wide multi-use path shall be the responsibility of the City.

G. Public Transit

There are no existing MET Transit routes in the vicinity of this Subdivision. No additional improvements are required for the subdivision relating to public transit.

IV. EMERGENCY SERVICES

Emergency services will be provided by the City of Billings. Access will be provided by the adjacent roadway of South Frontage Road.

No new construction shall take place on either lot or to the existing building until fire hydrants are installed per City of Billings Fire Department and Public Works.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, and a stormwater management plan shall be submitted to and approved by the Engineering Division at the time of development of Lot 1 or redevelopment of Lot 2.

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 2 currently has water service from an existing water well. A 12-inch water main exists adjacent to the Subdivision in South Frontage Road. At the time of lot development, Lot 1 shall install an individual water service for domestic water supply at the time of lot development. Lot 2 shall install an individual water service for domestic water supply upon redevelopment, or at the time the existing water supply is in a state of disrepair.

B. Sanitary Sewer

Lot 2 currently has sanitary sewer service from an existing subsurface sewage treatment system permitted by Yellowstone County under Permit No. 7861. An existing 48-inch sanitary sewer main exists adjacent to the Subdivision in South Frontage Road. Lot 1 shall install an individual sanitary sewer service by connecting to the existing main in South Frontage Road at the time of lot development. Lot 2 shall install an individual sanitary sewer service upon redevelopment, or at the time the existing subsurface sewage treatment system is in a state of disrepair. All new sanitary service connections to the public main in South Frontage Road shall be constructed with a back-flow preventor within a manhole constructed within private property.

C. Power, Telephone, Gas, and Cable Television

Service to Lot 2 is already provided. Service to Lot 1 will be provided from existing facilities located within South Frontage Road.

No additional new easements are required for the private utilities.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Big Iron Subdivision, as this is a minor subdivision [MCA 76-3-617(3)(a)].

VIII. IRRIGATION

There are no active agricultural facilities within the subdivision.

IX. SOILS/GEOTECHNICAL STUDY

Lot 2 is already developed at this time. A project/building specific Geotechnical report may be required at the time of development of Lot 1.

X. PHASING OF IMPROVEMENTS

No public improvements are required at this time by the Subdivider.

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.

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:

Big Iron Subdivision

SUBDIVIDER

HOGAN PROPERTIES, LLC

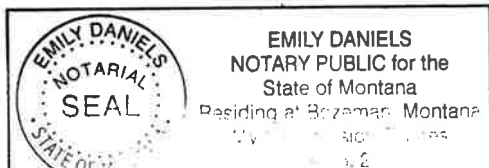
By: [Signature]

Its: President

STATE OF MONTANA)
 : SS
County of Yellowstone)

On this 15th day of October, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Chuck Hogan, known to me to be the person who executed the foregoing instrument as the President of **HOGAN PROPERTIES, LLC**, 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.



[Signature]
Notary Public in and for the State of Montana
Printed Name: Emily Daniels
Residing at: Bozeman, MT
My commission expires: 06/23/25

OWNERS

EVOLUTION HC, LLC

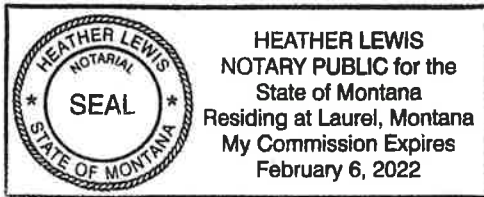
By: Richard A. Dorn By: Channah Louise

Its: MEMBER Its: Member

STATE OF MONTANA)
 : SS
County of Yellowstone)

On this 29 day of October, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Richard A. Dorn, known to me to be the person who executed the foregoing instrument as the Member of **EVOLUTION HC, LLC**, 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.

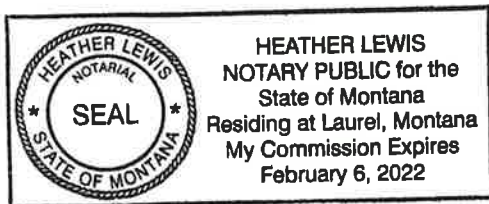


Heather Lewis
Notary Public in and for the State of Montana
Printed Name: Heather Lewis
Residing at: Laurel, MT
My commission expires: Feb. 6, 2022

STATE OF MONTANA)
 : SS
County of Yellowstone)

On this 29 day of October, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Johannah Louise, known to me to be the person who executed the foregoing instrument as the Member of **EVOLUTION HC, LLC**, 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.



Heather Lewis
Notary Public in and for the State of Montana
Printed Name: Heather Lewis
Residing at: Laurel, MT
My commission expires: Feb. 6, 2022