

Return to:
McCall Properties, LLC
1536 Mullooney Lane, Suite 100
Billings, MT 59101

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made this _____ day of _____, 2022, by and between McCall Properties, LLC, 1536 Mullooney Lane, Suite 100, Billings, MT 59101-6397 and Brittany’s Dream, LLC, 1536 Mullooney Lane, Suite 300, Billings, MT 59101-6397 hereinafter referred to as “DEVELOPERS,” and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, 210 North 27th Street, Billings, Montana, 59101, hereinafter referred to as the “CITY.” DEVELOPERS and CITY are sometimes referred to in this Agreement individually as “Party” and collectively as the “Parties.”

WHEREAS, DEVELOPERS are the owners of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Lot 6A of Titan Subdivision, Amended Plat of Lots 5 & 6, Block 1, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 3399260 hereinafter referred to as “Developer Tract”

WHEREAS, DEVELOPERS have submitted to the City a Petition for Annexation to the City for Developer Tract; and

WHEREAS, DEVELOPERS desire to annex Developer Tract to the City; and

WHEREAS, CITY has approved the Petition for Annexation by Resolution No. _____ for the Developer Tract contingent upon a Annexation Agreement being executed between CITY and DEVELOPERS to identify required off-site infrastructure improvements and guarantees of those improvements.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do hereby agree as follows:

1. Roads and Access. The Developer Tract currently has access from Titan Avenue.
2. Sanitary Sewer. The Developer Tract will be served by an existing sanitary sewer main located in Elysian Road. Prior to connecting to the sanitary sewer, DEVELOPERS are required to reimburse the City for their proportionate share of the sanitary sewer main and water main in Elysian Road along the Elysian Road frontage of the Developer Tract.

In the future, if a sanitary sewer main is extended in Titan Avenue, the City reserves the right to assess Developer Tract through a Special Improvement District for their frontage costs and is included in the waiver of right to protest.

DEVELOPERS shall be responsible for payment of the City wastewater system development fee prior to hooking up to the sanitary sewer.

3. Water. The Developer Tract will be served by an existing water main located in Mallowney Lane.

In the future, if a water main is extended in Titan Avenue, the City reserves the right to assess Developer Tract through a Special Improvement District for their frontage costs and is included in the waiver of right to protest.

DEVELOPERS shall be responsible for payment of the City water system development fee prior to hooking up to water.

4. Storm Drain. If the Developer Tract is re-developed or changed from the existing condition, as defined by the City of Billings Stormwater Management Manual, in the future, DEVELOPERS will manage storm drainage within the Developer Tract in accordance with the City of Billings Stormwater Management Manual (2018).

5. Right-of-Way. Public right-of-way will be dedicated at no cost to the City of Billings in accordance with the 2018 Billings Urban Area Long Range Transportation Plan, in accordance with the City of Billings Subdivision Regulations, and in accordance with the final design plans for the Mallowney Lane Widening Project.

6. Street Construction, Widening and Sidewalks. DEVELOPERS shall construct or financially participate in a City project to install curb and gutter, street widening, and boulevard sidewalk along Mallowney Lane and Elysian Road.

DEVELOPERS are responsible for the construction of curb and gutter, street widening and sidewalk along Titan Avenue in the future. DEVELOPERS shall construct these improvements or participate in a Special Improvement District when the adjacent properties or the City construct the improvements along Titan Avenue.

DEVELOPERS shall be responsible for the maintenance and replacement of the sidewalk.

7. Multi-use Trail. A multi-use trail will be constructed on the east side of Mullowney Lane with a City Project.
8. Future Intersection Contributions. A traffic impact study will be performed at the time of future subdivision and/or re-development to determine DEVELOPERS contributions to future intersection improvements if re-development exceeds 500 trips/day. The preparation of the traffic impact study and any fees to mitigate impacts to future intersection improvements will be at the expense of the DEVELOPERS.
9. Other Public Improvements. For any other improvements not specifically listed in this Agreement, the CITY shall rely on the attached Waiver filed concurrently herewith, to ensure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, multi-use trails, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, parks and park maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area, and other improvements which the City of Billings may require. The attached Waiver, waiving the right to protest the creation of one or more Special Improvement Districts, by this reference is expressly incorporated herein and part hereof. All of the Developer Tract can be included in a Special Improvements District for improvements identified in Annexation Agreement regardless of location of individual properties in relation to the improvements.
10. Compliance. Nothing herein shall be deemed to exempt the Developer Tract from compliance with any current or future City laws, rules, regulations, policies, and fees that are applicable to the development, redevelopment, or use of the subject property. Final plats or other dedications of the Developer Tract will be transmitted to the City for City Council acceptance of dedication

of right-of-way and public easements. Dedications, deeds or conveyances will be in the name of the City after the effective date of the annexation and will be forwarded to the City Council for acceptance.

11. Runs with Land. The covenants, agreements, and all statements in this Agreement and in the incorporated and attached Waiver shall run with the land and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.
12. Attorney's Fees. 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, including those fees and costs of in-house counsel.
13. Amendments and Modifications. Any amendments or modifications of this Agreement 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

“DEVELOPERS”

McCall Properties, LLC

By: _____

Title: _____

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 signed the foregoing instrument as the _____ of McCall Properties, LLC and who acknowledged to me that said DEVELOPER 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: _____

“DEVELOPERS”

Brittany’s Dream, LLC

By: _____

Title: _____

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 signed the foregoing instrument as the _____ of Brittany’s Dream, LLC and who acknowledged to me that said DEVELOPER 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: _____

This Agreement is hereby approved and accepted by City of Billings, this ____ day of _____, 20____.

“CITY”

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 :ss
County of Yellowstone)

On this _____ day of _____, 20____, before me, a Notary Public 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: _____

Approved as to Form:

City Attorney

WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, Owner of the hereinafter described real property, does hereby waive the right to protest the formation of one or more Special Improvement Districts (SID) for the construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, multi-use trails, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, parks and park maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area, and other improvements which the City of Billings may require.

The Waiver and Agreement shall run with the land and shall be binding upon the undersigned, its successors and assigns, and shall be recorded in the office of County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Lot 6A of Titan Subdivision, Amended Plat of Lots 5 & 6, Block 1, Situated in the SE ¼ of Section 18, T 01S, R 26E, P.M.M., in the City of Billings, Yellowstone County, Montana

“DEVELOPERS”

McCall Properties, LLC

By: _____
Title: _____

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 signed the foregoing instrument as the _____ of McCall Properties, LLC and who acknowledged to me that said DEVELOPER 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: _____

“DEVELOPERS”

Brittany’s Dream, LLC

By: _____

Title: _____

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 signed the foregoing instrument as the _____ of Brittany’s Dream, LLC and who acknowledged to me that said DEVELOPER 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: _____