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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS
ANNAFELD SUBDIVISION, SEVENTH FILING
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THIS AGREEMENT is made and entered into this _____ day of _____, 20____, 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, Seventh Filing located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on the ____ day of _____ 20____, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld Subdivision, Seventh Filing; and

WHEREAS, at a regular meeting conducted on the _____ day of _____ 20____, the City Council conditionally approved a preliminary plat of Annafeld Subdivision, Seventh 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, Seventh 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. 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. If sidewalk is not constructed within five years, the City has the right to construct the sidewalk and assess the property owners.
- 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 Carriage Lane.
- 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 with 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 homeowners' association for Annafeld Subdivision, Seventh 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 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.

- J. 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, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All internal streets (excluding Annafeld Parkway East and Annafeld Parkway West) 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. The street improvements will be completed by private contract or SID.
3. Annafeld Parkway East and Annafeld Parkway West will be designed for one-way traffic with 45-degree turn-in parking on one side of the drive aisle and parallel parking on the other side. Total width of Annafeld Parkway East and West will be 45.25-feet back of curb to back of curb. Each street will consist of 8.5-foot width for parallel parking space, 20-foot-wide drive aisle and 16.75-foot width for the 45-degree turn-in parking. The street shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. The design cross-section of said street shall be submitted to, and approved by, the City of Billings

Public Works Department. The street improvements will be completed by private contract or SID.

4. 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. Furthermore, even if the Story Road connection were constructed, the traffic generated from Annafeld Subdivision, Seventh Filing would be unlikely to utilize Story Road based on proximity to East Lane and Elysian Road and the land uses that are currently in Harmony Meadows Subdivision. Therefore, a detailed traffic impact analysis of the Story Road connection to Harmony Meadows Subdivision is not required for this Filing of Annafeld Subdivision.

The Subdivider agrees to contribute up to 50 percent of the cost for design, permitting, and construction of the Hogan's Slough crossing on Story Road by a cash contribution or by SID. 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 a SID to recover additional design and construction costs.

The timing of the contribution or SID 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.
5. A traffic accessibility study update has been completed for Annafeld Subdivision, Seventh Filing. The traffic accessibility study identified required intersection improvement contributions attributable to Annafeld

Subdivision, Seventh Filing. However, Annafeld Subdivision Seventh Filing was previously included as Annafeld Subdivision, Fifth Filing, Phase 2, and intersection contributions were previously paid to the City of Billings for Fifth Filing Phase 2 by the Subdivider. Based on the analysis in the traffic accessibility study, the intersection contribution previously made for Annafeld Subdivision, Fifth Filing Phase 2 is adequate for the impacts required for Annafeld Subdivision, Seventh Filing. No additional intersection contributions are required for Annafeld Subdivision, Seventh Filing.

B. Carriage Lanes

All Carriage Lanes within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All Carriage Lane 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. Carriage Lane pavement widths shall be 12-feet. The design cross-sections of said Carriage Lanes shall be submitted to, and approved by, the City of Billings Public Works Department. No trees are allowed to be planted in the Carriage Lane. In addition, no shrubs taller than two feet are allowed to be planted in Carriage Lanes. The existing Carriage Lane constructed with Annafeld Fourth Filing to the west of existing Lots 1 through 5, Block 18 will be widened to a 33-foot drive aisle along the frontage adjacent to Lots 41 through 45, Block 18 to provide emergency vehicle access.

C. Sidewalks

Subdivider shall install handicap access ramps at the time of lot development, where necessary. 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. Developer shall construct a 5-foot-wide boulevard sidewalk adjacent to right of way for private parks on Lot

1, Block 28; Lot 1, Block (north, east, and west sides) and Lots 25 and 34, Block 18 at the time of private park development.

D. Street Lighting

Street lighting is required for this subdivision. It is anticipated that street lighting will be installed for Seventh Filing by private contract or SID. A Street Light Maintenance District will be created for operation and maintenance of the lighting at a future date and is included in the waiver of right to protest.

E. 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.

F. Access

Access to the subdivision will be provided by Farmstead Avenue, Centennial Farm Road, and Rosemary Road. Access to residential lots will be provided by public right of way (street and carriage Lane) and/or private parks within the subdivision.

G. Billings Area Bikeway and Trail Master Plan

A multi-use trail has been constructed along the south boundary of Elysian Road. Said multi-use trail extends from the east boundary of the subdivision to the easterly right-of-way line of East Lane.

In addition, a 10-foot-wide multi-use path will be provided on the north side of Rosemary Road (adjacent to Lots 17-20, Block 18; Lot 1, Block 28; and Lot 17 Block 31). Construction of this 10-foot-wide multi-use path will occur with adjacent lot and private park development. No additional trail improvements will be required as part of this subdivision.

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 Mallowney 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.

V. STORM DRAINAGE

- A.** A stormwater management plan shall be submitted to the Engineering Division prior to final plat approval. The storm drainage system for Annafeld Subdivision, Seventh Filing will consist of a curb and gutter surface collection and curb inlets that drain into storm drainage piping, as well as surface conveyance. The storm drain piping will discharge into existing storm drain piping and to an existing mechanical stormwater filtration manhole, then 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 are existing, and associated improvements are privately owned and maintained by the HOA. Annafeld Subdivision, Seventh Filing will be included in the HOA that is responsible to maintain these facilities. O&M requirements and HOA maintenance and fiscal responsibilities have been outlined within the Annafeld Subdivision, First Filing 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 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 8-inch water main all

streets within Annafeld Subdivision, Seventh 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.

B. Sanitary Sewer

Sanitary sewer service to Annafeld Sub., Seventh Filing will be provided by connecting to the existing 8-inch gravity sewer main located in Rosemary Road at Annafeld Parkway East and Annafeld Parkway West. There is an existing 10-inch sewer main located in Centennial Farm Road, from St. George Boulevard to Annafeld Parkway E., and extends north in Annafeld Parkway E. to Farmstead Avenue. 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.

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 Carriage Lane right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the Carriage Lanes.

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 0.456 acres (11% of net lot area, Seventh Filing) of dedication required under section 76-3-621(1), MCA. The private park dedication within Seventh Filing is 2.088 acres. The Subdivider and City agree that the parkland dedication has been met through the dedication of private park area within Annafeld Subdivision, Seventh Filing. In addition, with previous filings of Annafeld Subdivision more public and private parkland dedication has been provided than has been required.

In addition, the lots within Annafeld Subdivision, Seventh Filing may provide additional funding to complete the park improvements for the previously created public parkland SID. The park improvements shall be in accordance with the City Council approved Annafeld Parks Master Plan. The Subdivider shall prepare all SID documents necessary for creation, and coordinate with the City of Billings Parks and Recreation Department for review and approval. If all park improvements as defined in the Annafeld Parks Master Plan have been completed prior to the creation of this park SID, then this park SID will no longer be required.

The current park maintenance district (PMD 4041) for Annafeld Subdivision, First Filing shall be expanded to include lots with Annafeld Subdivision, Seventh Filing for the perpetual maintenance of the public parkland. The Subdivider shall prepare all park maintenance district documents necessary for its expansion and coordinate with the City of Billings Parks and Recreation Department for review and approval.

VIII. HOMEOWNER'S ASSOCIATIONS

A homeowner's association (HOA) will be established for this subdivision. The HOA will have the following responsibilities:

A. Contact Information

HOA shall provide contact information of the senior board official to the City Engineering Department upon the establishment of the HOA and/or changing of board members.

B. Stormwater Drainage Facilities

The HOA shall be responsible for the maintenance of the mechanical filtration stormwater manholes. The HOA shall share the cost of maintenance of the community stormwater facilities.

IX. POSTAL DELIVERY

The Subdivider has provided permanent mail delivery with centralized delivery boxes within the subdivision, currently located at 1625 Annafeld Parkway East, Suite 101. The Subdivider previously coordinated the permanent mail delivery location with the United States Post Office for the entire Annafeld Subdivision. It is anticipated that mail delivery for Seventh Filing will also occur at this location.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study has been performed for Annafeld Subdivision, Seventh Filing (originally being Annafeld Subdivision, Fifth Filing Phase 2) by Rimrock Engineering Inc. dated February 22, 2023, and is available for review at the City of Billings Planning Department. Annafeld Subdivision, Seventh Filing consists of Lot owners and contractors/builders are encouraged to review the report and its recommendations.

XI. PHASING OF IMPROVEMENTS

Phasing is not being proposed with this subdivision.

XII. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install, and construct said required improvements by SID or by private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender or by SID. 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.

XIII. 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.

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: _____

**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.

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

The real property hereinabove mentioned that is the subject of this waiver is more particularly described as follows:

ANNAFELD SUBDIVISION, SEVENTH FILING

SUBDIVIDER/OWNER

MCCALL DEVELOPMENT, INC.

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 _____, 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.

Montana

Notary Public in and for the State of

Printed Name:_____

Residing at:_____

My commission expires:_____