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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT
HOMESTEAD ACRES SUBDIVISION
CITY OF BILLINGS
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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
HOMESTEAD ACRES SUBDIVISION**

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between **GRAND AVENUE LLC**, whose address for the purpose of this agreement is 3110 Cel Avenue, Billings, Montana 59102, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of Homestead Acres Subdivision, located in the City of Billings, Yellowstone County, Montana, was submitted to the Planning and Community Services Department; and

WHEREAS, at a regular meeting held on the ___ day of _____, 20___, the City Council approved, subject to certain conditions, a preliminary plat of Homestead Acres Subdivision, and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to approval of the final plat; and

WHEREAS, the provisions of this agreement shall be effective and applicable to the plat of Homestead Acres Subdivision, upon 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

Subdivider requests no variances.

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 5 years, the City has the right to construct the sidewalk and assess the property owners.
- 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.** 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 should be aware that a site-specific geotechnical investigation and report was completed on for the property. A copy of the entire geotechnical report is available for review at the City Building and/or Planning Division offices.

- G. Lot owners should be aware that the United States Postal Service mail delivery will be made only to centralized delivery locations. Subdivider shall install the mailboxes within the private contract.
- H. Lot owners should be aware that agricultural activities could be present on surrounding properties. Any impacts associated with agricultural activities and any issue arising therefrom is the responsibility of the lot owners.
- I. The developer and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and 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 Billings Stormwater Management Manual.
- J. 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 Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

III. TRANSPORTATION

A. Streets

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 Uniform Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.

1. Subdivider will enter into a private contract for the construction of all required improvements for those streets within the subdivision, as follows:

Harvey Park Drive shall be a minimum of 39 feet wide from back of curb to back of curb within a 70-foot right-of-way with a center median extending north from its intersection with Grand Avenue approximately 250 feet. This internal access road shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. The center median in Harvey Park Drive shall be maintained by the HOA.

If NOT CONSTRUCTED BY THE OWNER(S) OF LOT 3, BLOCK 1 OF MK SUBDIVISION AND/OR LOT 1, BLOCK 1 OF MK SUBDIVISION, 2ND FILING prior to entering into a private contract for any improvements contemplated under this agreement for Homestead Acres Subdivision, the Subdivider shall construct Hawk Creek Avenue from Chy Way to Harvey Park Drive. Hawk Creek Avenue shall be a minimum 34 feet wide from back of curb to back of curb within an existing 40-foot-wide perpetual right-of-way and utility easement. This internal access road shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface.

2. Financial contribution shall be made for Grand Avenue by the subdivider. That portion of Grand Avenue adjacent to the subdivision has been partially constructed. The existing street includes approximately 46 feet of asphalt width. The Subdivider will provide a cash-in-lieu contribution for the construction of standard curb and gutter and 10-foot-wide multi-use path, including ramps, on Grand Avenue along the frontage of the subdivision, due prior to final plat. The cash-in-lieu contribution will also include engineering design and construction administration.
3. "Street A" shall be a minimum of 34 feet wide from back of curb to back of curb within a 56-foot-wide perpetual right-of-way and utility easement. Upon construction of 56th Street West, north of Grand Avenue, the subdivider shall construct the south half of "Street A" from Harvey Park Drive to the west property line of Lot 67A1A of Sunny Cove Fruit Farms unless "Street A" is required to be constructed as part of development of Lot 67A1A. The street construction shall consist of 30 feet of asphalt surface with a satisfactory sub-base, base course, and the south standard curb and gutter and any drainage improvement necessary to meet the overall subdivision drainage criteria.

B. Sidewalks

Sidewalk will be constructed on the east side of Harvey Park Drive and any accessibility ramps required that are not at the intersection with Grand Avenue shall be installed by private contract. Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction. Sidewalks shall be 5-foot-wide boulevard sidewalks along "Street A" and Harvey Park Drive north of Hawk Creek Avenue and 7-foot-wide curb walk on the east side of Harvey Park Drive

south of Hawk Creek Avenue. The sidewalk constructed on the east side of Harvey Park Drive shall be maintained by the HOA.

C. Street Lighting

Street lighting is required for this subdivision. It is anticipated that street lighting will be installed by private contract. 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.

D. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices within and adjacent to the subdivision. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction. All traffic control devices shall be subject to review and approval by the City Engineering office.

All off-site contributions and improvements shall be paid as required by the Traffic Impact Study (TIS) before Homestead Acres Subdivision final plat approval.

A traffic impact study has been completed for Homestead Acres Subdivision. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdividers expense. The percentage of traffic contributions to the following shall be in accordance with the traffic accessibility study.

54th Street West and Rimrock Road	2.67%
54th Street West and Colton Boulevard	2.81%
56th Street West and Grand Avenue	1.67%
Harvey Park Drive and Grand Avenue	1.67%
54th Street West and Grand Avenue	14.91%
48th Street West and Grand Avenue	4.08%
54th Street West and Hawk Creek Avenue	3.25%

The cash contributions shall be based on the percentage of traffic contributions to the intersections on the total cost of an intersection as determined by Engineering for the year in which the contribution is made. The cash contribution shall be made prior to final plat approval.

E. Access

Access will be provided for the subdivision by constructing Harvey Park Drive north of Grand Avenue. This street connection will access Grand Avenue via a three-quarter turn approach that prohibits southbound left-turn movements onto Grand Avenue. A center median shall be installed on Harvey Park Drive that extends north of the intersection with Grand Avenue approximately 250 feet. The median and three-quarter turn approach designs shall be approved by the City Engineering office. Additional access restriction improvements for Harvey Park Drive within Grand Avenue, if deemed necessary, may be constructed as part of an SID requiring subdivider participation.

One (1) right-in/right-out approach (each), to Harvey Park Drive, is allowed from Lot 1 of Block 1 and Lot 1 of Block 2. Those approaches must be a minimum of 150 feet north of the Grand Avenue right-of-way boundary (as measured along the center line of Harvey Park Drive).

A second subdivision access will be an unrestricted access at the intersection of Harvey Park Drive and Hawk Creek Avenue. The streets within the subdivision shall be subject to review and approval by the City Engineering office.

Access to Lot 4, Block 1 shall be from the extension of Hawk Creek Avenue or "Street A". No access shall be granted from Grand Avenue.

It is anticipated that 56th Street West may be constructed in the future north of Grand Avenue and west of the subdivision. A future unrestricted access from Harvey Park to 56th Street West is proposed with "Street A".

City and Subdivider agree that at a future date, City may require the Hawk Creek Avenue access to 54th Street West be restricted to right-in, right-out access.

F. Billings Area Bikeway and Trail Master Plan

The Billings Area Bikeway and Trail Master Plan identifies Grand Avenue, adjacent to the site, as an arterial bikeway. A 10-foot-wide multi-use path is required on the north side of Grand Avenue along the

subdivision frontage. A financial contribution will be made for the multi-use path by the subdivider.

G. Public Transit

There are no MET Transit routes that service this subdivision at this time. No improvements with regard to MET Transit vehicles are anticipated at this time.

IV. EMERGENCY SERVICES

Access is provided to this subdivision from Harvey Park Drive. Fire hydrants shall be provided at each street intersection, and at intermediate locations as required by the City of Billings Fire Department. Appropriate turnarounds will be located on any 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 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 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 affect the current minimum subdivision requirements for fire apparatus access and water supply.

V. STORM DRAINAGE

- A.** The storm drainage system for Homestead Acres Subdivision 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 a new pond located on Lot 1, Block 2 in the southeast

corner of the subdivision. All drainage improvements shall comply with the provisions of the City of Billings *Stormwater Management Manual* and Chapter 28, BMCC.

- B.** The stormwater detention area is located on Lot 1, Block 2, east of Harvey Park Drive, which will be owned and maintained by the homeowners' association (HOA) established for this subdivision. The proposed mechanical stormwater quality treatment device and associated improvements are to be privately owned and maintained by the HOA.
- C.** The elevation of buildings 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 include stormwater onsite retention/detention and discharge to the storm drain in Harvey Park Drive at a rate not to exceed the rate of 1 cubic foot per second (cfs) per 10 acres, unless such standards are modified by the City. Best Management Practices are defined within Chapter 28, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- E.** Upstream lot owners and/or developer should be aware that Best Management Practices for stormwater control shall be required for any construction and development of Tract 67A1A of Sunny Cove Fruit Farms connecting to the storm drain in Harvey Park Drive. Best Management Practices include stormwater onsite detention and discharge to the storm drain in Harvey Park Drive at a rate not to exceed the rate of 1 cubic foot per second (cfs) per 10 acres, unless such standards are modified by the City. Best Management Practices are defined within Chapter 28, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- F.** Individual lot owners and developer of Tract 67A1A of Sunny Cove Fruit Farms should be aware that a Perpetual Stormwater Discharge Easement exists of record in the office of the Clerk and Recorder of Yellowstone County, under Document No. _____, for stormwater discharge from the subdivision and Tract 67A1A until which time a municipal storm system is constructed in Grand Avenue.
- G.** 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 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

Service to the subdivision will be provided from the existing water main in Grand Avenue and extended within Harvey Park Drive. Appropriately sized main and services in the internal street will provide service to the individual lots within the subdivision. It is anticipated that each lot shall be provided with its own separate water service. All water 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.

B. Sanitary Sewer

Service to the subdivision will be provided from an existing sanitary sewer main in Grand Avenue. City and Subdivider agree that sanitary sewer service to the subdivision will be provided a gravity sanitary sewer main in Harvey Park Drive. Appropriately sized main and services in the internal street will provide service to the individual lots within the

subdivision. It is anticipated that each lot shall be provided with its own separate gravity sewer service. 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

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

VII. PARKS/OPEN SPACE

There is no parkland requirement for the proposed Homestead Acres Subdivision, as this is a minor subdivision [MCA 76-3-621(3)(a)].

VIII. IRRIGATION

An existing irrigation lateral, running from north to south, approximately three-hundred thirty (330) feet east of the west subdivision boundary, is present through the subdivision from an existing headgate on the High Ditch. The irrigation lateral serves no downstream properties. The irrigation lateral and headgate are to be abandoned by the Subdivider in a manner approved by the High Ditch Company.

An existing irrigation wastewater ditch is present along the north side of Grand Avenue. The irrigation wastewater ditch is to remain for irrigation waste from upstream irrigated land.

IX. SOILS/GEOTECHNICAL STUDY

K. A geotechnical report was performed for the subdivision and submitted with the preliminary plat. The Geotechnical Investigation Report for Homestead Acres Subdivision in Billings, Montana was completed by Rimrock Engineering.

It is recommended that owners, purchasers, realtors, builders, and developers fully familiarize themselves with the information contained in this report prior to design or construction.

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 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 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

