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**SUBDIVISION IMPROVEMENTS AGREEMENT**  
**ANNAFELD SUBDIVISION, FIRST FILING**  
**CITY OF BILLINGS**  
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**SIA**

**3831830**

10/27/2017 03:37 PM Pages: 2 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



## **SUBDIVISION IMPROVEMENTS AGREEMENT ANNAFELD SUBDIVISION, FIRST FILING**

**THIS AGREEMENT** is made and entered into this 10<sup>th</sup> day of October, 2017, 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, First Filing, (formerly known as Josephine Landing Subdivision, First Filing) located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on the 4th day of May, 2016, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld Subdivision, First Filing; (formerly known as Josephine Landing Subdivision, First Filing); and

**WHEREAS**, at a regular meeting conducted on the 23rd day of May, 2016, the City Council conditionally approved a preliminary plat of Annafeld Subdivision, First Filing (formerly known as Josephine Landing Subdivision, First 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, First 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

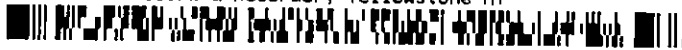
**II. CONDITIONS THAT RUN WITH THE LAND**

- 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. 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 alley.
- 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 to 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 City of Billings for Annafeld Subdivision, First 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 the Yellowstone River Channel Migration Study sponsored by the Yellowstone River Conservation District Council and the U.S. Army Corp of Engineers has identified areas which may be susceptible to erosion by the Yellowstone River. Owners are encouraged to review the extent to which bank erosion may pose a threat to structures built in this subdivision.
- J. 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.
- K. The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and

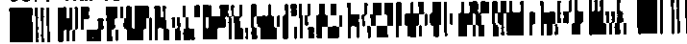


the State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the City of Billings *Stormwater 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, International Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All internal streets 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.
3. Elysian Road is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter and any necessary pavement widening will be constructed on the south side of Elysian Road frontage adjacent to the First Filing. Storm drain shall be installed as necessary, draining directly to Hogan's Slough and/or routed internally through the subdivision. A westbound left-turn bay is not required with First Filing, but may be necessary with future filings of the Annafeld Planned Development. The curb and gutter installed with first filing will be designed such that it will accommodate a future turn bay. Elysian Road improvements will be completed by private contract or SID.
4. Story Road, lying east of Walter Creek Boulevard will be constructed at the time of construction of the Hogan's Slough Crossing. The Subdivider agrees to contribute up to 50 percent of the cost for the design, permitting, and construction of the Hogan's Slough crossing on Story Road. The cash contribution for the crossing will be made at the time of Phase II construction. 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 an SID to recover additional design and construction costs.



At the time of second filing of Annafeld Subdivision, the Subdivider shall provide a Traffic Impacts Study update addressing the subdivision's connection to Story Road to the east and the impacts Annafeld Subdivision will have on Story Road. Any cash contributions that may be required due to those impacts will be identified in the updated Traffic Impacts Study.

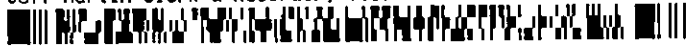
5. A traffic accessibility study has been completed for the Annafeld Master Plan and submitted as part of the First Filing. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. Based on the additional lots created with Annafeld Subdivision, First Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

South Frontage Road/Muldowney Lane	4.58%	\$11,450.00
Muldowney Lane/Elysian Road	3.17%	\$7,925.00
Elysian Road/East Lane	3.42%	\$8,550.00
Elysian Road/South Frontage Road	1.40%	\$3,500.00

These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage contributions and dollar amounts are as outlined within the Traffic Impacts Study for Annafeld Subdivision, First Filing as submitted with the preliminary plat.

#### **B. Alleys**

All alleys within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All alley 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. Alley pavement widths shall be 12-feet. The design cross-sections of said alleys shall be submitted to, and approved by, the City of Billings Public Works Department.

**C. Sidewalks**

Subdivider shall install handicap access ramps, where necessary, during street construction. 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.

In the event that portions of the required sidewalks within the subdivision are not constructed within three years of the date of recording of the final plat, the City may construct the remaining sidewalks and assess the individual lot owners for the costs associated with the sidewalk construction.

A sidewalk shall not be required along the south side of Elysian Road, due to the proximity of the proposed multi-use path, as allowed by 23-406 (B)(13), BMCC.

**D. Street Lighting**

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for First Filing by private contract or SID. A Street Light Maintenance District will be created for operation and maintenance of the lighting installed in First Filing.

**E. Traffic Control Devices**

1. Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
2. No traffic signals are required within this subdivision.
3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

**F. Access**

Access to the subdivision will be provided by Elysian Road. A secondary emergency access will be provided to East Lane, to be utilized until such



time as future filings of the Annafeld Masterplan are developed. The secondary emergency access will be along the existing City trunk sanitary sewer easement. The access road shall be designed to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of 20-foot-wide. Alley access is also provided to all residential lots within the subdivision.

**G. Billings Area Bikeway and Trail Master Plan**

The Billings Area Bikeway and Trail Master Plan and the Zoo Montana to Riverfront Park Trail Feasibility Study both recommend a multi-use trail along the southern boundary of the Annafeld Planned Development. A public park on the upper bench area north of the Yellowstone River interface is being dedicated as part of First Filing, providing the opportunity for a future extension of the trail to the east and west.

A multi-use trail will be constructed along the south boundary of Elysian Road. Said multi-use trail shall extend from the east boundary of the subdivision to the easterly right-of-way line of East Lane. The multi-use trail or a temporary trail shall be constructed in conjunction with Phase I. A temporary trail may be constructed in lieu of the permanent trail to be utilized until such time as full construction of Elysian Road is completed. The alignment, and composition of the temporary path shall be approved by the City of Billings.

A pedestrian bridge associated with the multi-use trail along Elysian Road for crossing of the Hogan's Slough will be constructed. The Subdivider agrees to contribute up to 50 percent of the cost of the crossing, including design and permitting costs. The cash contribution for the crossing will be made at the time of Phase I construction. If the cash contribution is not sufficient to cover 50 percent of the crossing costs, the City retains the right to create an SID to recover additional design and construction costs.

**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 Mullowney 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 and alleyways.

#### **V. STORM DRAINAGE**

- ##### **A.**
- A stormwater management plan shall be submitted to the Engineering Division prior to final plat approval. The storm drainage system consists of a curb and gutter surface collection and curb inlets that drain into storm



drainage piping, as well as surface conveyance in some areas. The storm drain piping will discharge into mechanical stormwater filtration manholes, then into Hogan's Slough, or shall be routed through the water quality treatment pond located within the public park area on the southerly end of the subdivision, which will then also discharge 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, and associated improvements will be privately owned and maintained by the HOA. O&M requirements and HOA maintenance and fiscal responsibilities shall be as outlined within the Annafeld Subdivision, First Filing, Phase 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 and franchise 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 12-inch water mains in Walter Creek Boulevard and Mollie Rose Lane, and 8-inch water mains in Anna's Garden Lane, and Norma Jean Lane. The 12-inch water main in Walter Creek Boulevard will connect to the 16-inch water main trunk in Elysian Road, providing the feed for First 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.

Installation of the 8-inch water main in Story Road, to the easterly boundary of the subdivision shall be constructed at the time of construction of the Story Road crossing of Hogan's Slough.

**B. Sanitary Sewer**

Sanitary sewer service to the subdivision will be provided by connecting to the existing 24-inch gravity sewer trunk main along the easterly edge of the subdivision and continuing west through the subdivision. A lateral sanitary sewer will be extended from the trunk within Walter Creek Boulevard,



Anna's Garden Lane, Mollie Rose Lane and Norma Jean Lane. 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.

Paved access to the existing trunk sanitary sewer manhole located on Lot 4, Block 1 will be provided at the time of lot development.

**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 alley right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the alleys.

**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 area of dedication required under section 76-3-621(1),MCA. The Subdivider and City agree that the parkland dedication has been met through the dedication of public parks within the Annafeld Planned Unit Development. The public parks will be developed by private contract or S.I.D.

Operation and maintenance of the public park areas will be by a park maintenance district created for the subdivision and administered by the City of Billings.

A park masterplan for the public park areas within Annafeld Subdivision, First Filing will be prepared by the Subdivider for review and approval by the City of Billings Parks and Recreation Department. The park masterplan shall be submitted within 120 days of filing of the final plat. The park masterplan will define the improvements and timing of construction of the park improvements.

**VIII. POSTAL DELIVERY**

The Subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.

**IX. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study has been performed for the subdivision. The report dated January 19, 2016, is available for review at the City of Billings Planning Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

**X. PHASING OF IMPROVEMENTS**

The Subdivider does not desire to commence development of all the lots within the subdivision, but does desire to file the approved final plat of Annafeld Subdivision, First Filing and to sell and convey lots in said subdivision in phases. In accordance with the foregoing, the Subdivider and the City agree as follows:

- A. Prior to filing of the final plat, the Subdivider will enter into a private contract for the Phase I infrastructure improvements or shall monetarily secure said improvements.

As used herein, the Phase I lots to be served by the initial private contract are more particularly described as follows:

**Phase 1:** Lots 1-22 and Lot 24, Block 1, Lots 2-5, Block 2, Lots 2-4 and Lots 11-25, Block 3, Lots 1-3, Block 4, all in Annafeld Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana. (48 Lots)

- B. The remaining improvements will be installed by the Subdivider at a future date. The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the future phase improvements, and the Subdivider further acknowledges that no building permits for lots within the future phases shall be issued until a private contract has been executed and necessary funding guarantees have been provided for the construction and installation of the public improvements to serve said lots. As used herein, the lots to be served by the said future phase improvements are more particularly described as follows:

**Phase 2:** Lot 23, Block 1, Lots 1 and Lots 6-8, Block 2, Lots 5-10 and Lots 26-34, Block 3, Lot 4, Block 4, all in Annafeld Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone



County, Montana. (25 Lots)

Pursuant to the foregoing agreement, the Subdivider shall execute and record a Declaration of Restriction on Transfers and Conveyances for said future phase lots, to be recorded concurrently with the recording of this agreement. Said Declaration notifies all third parties that said lots may not be legally sold, conveyed, or transferred until a Release executed by the City of Billings, and substantially in the form of Exhibit A attached hereto, has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No lots shall be released until a Certificate substantially in the form of Exhibit B attached hereto has been executed by the Department of Public Works stating that the above conditions have been met, which Certificate must accompany any request for a release. By the acceptance and recording of the agreement, the City does hereby authorize the Department of Public Works, and the Mayor and City Clerk of the City, to review any request for release and to execute such certificates and releases as may be necessary to evidence a release from the restriction against sale, conveyance, and transfer of lots in the subdivision.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, as one unit, all lots in the subdivision, nor shall the requirements for installation of improvements become effective as a result thereof; provided, however, that such sale shall be subject to the restrictions herein provided against the transfer of individual lots until the conditions set forth above have been met.

#### **XI. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by 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 private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

#### **XII. LEGAL PROVISIONS**

- 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.

SIA

3831830

10/27/2017 03:37 PM Pages: 16 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER"

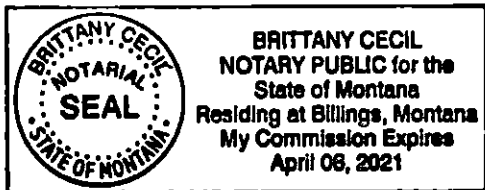
MCCALL DEVELOPMENT, INC.

By: Bradley McCall

Its: Treasurer

STATE OF MONTANA     )  
                                      : ss  
County of Yellowstone     )

On this 21<sup>st</sup> day of August, 2017, before me, a Notary Public in and for the State of Montana, personally appeared Bradley McCall, known to me to be the Treasurer of MCCALL DEVELOPMENT, INC. who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Brittany Cecil  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
~~My commission expires:~~ \_\_\_\_\_



**SIA****3831830**10/27/2017 03:37 PM Pages: 17 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT

This agreement is hereby approved and accepted by the City of Billings, this 10<sup>th</sup>  
day of October, 2017.

"CITY"

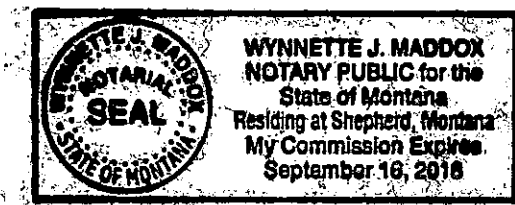
**CITY OF BILLINGS, MONTANA**

By: Thomas W. Hanel  
Mayor

Attest: Denise R. Bohlman  
City Clerk

STATE OF MONTANA     )  
                                      : ss  
County of Yellowstone    )

On this 23<sup>rd</sup> day of October, 2017, before me, a Notary Public in  
and for the State of Montana, personally appeared Thomas W. Hanel and  
Denise R. Bohlman, 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.



Wynnette J. Maddox  
Notary Public in and for the State of Montana  
Printed Name: Wynnette J. Maddox  
Residing at: Shepherd MT  
My commission expires: 9-16-2018

**SIA****3831830**10/27/2017 03:37 PM Pages: 18 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT**WAIVER OF RIGHT TO PROTEST**

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and Founders of the hereinafter described real property, do hereby waive for a period of 20 years after the date that the final subdivision plat is filed, the right to protest the formation of one or more special improvement district(s) 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 incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and are supported by sufficient independent consideration to which the undersigned is a party, and shall run with the land and shall be binding upon the undersigned, its 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 that is the subject of this waiver is more particularly described as follows:

ANNAFELD SUBDIVISION, FIRST FILING

SUBDIVIDER/OWNER

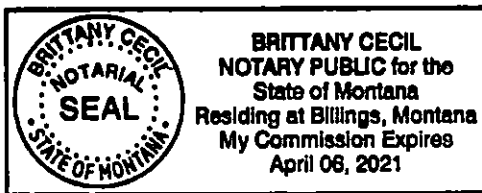
MCCALL DEVELOPMENT, INC.

By: Bradley McCall  
Its: Treasurer

STATE OF MONTANA       )  
                                      : ss  
County of Yellowstone    )

On this 21st day of August, 2017, before me, a Notary Public in and for the State of Montana, personally appeared Bradley McCall, known to me to be the person who executed the foregoing instrument as the Treasurer 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.



Brittany Cecil  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**RES****3843083**

03/06/2018 04:04 PM Pages: 1 of 41 Fees: 287.00

Jeff Martin Clerk &amp; Recorder, Yellowstone MT



After Recording, Return to:  
Candace L. Kimmet  
Karell Dyre Haney PLLP  
175 N. 27<sup>th</sup> Street, Suite 1303  
Billings, MT 59101

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR  
ANNAFELD SUBDIVISION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (this "Declaration") is made this 6<sup>th</sup> day of March, 2018, by **McCALL DEVELOPMENT, INC.**, a Montana corporation, with mailing address at 1536 Mullowney Lane, Ste 100, Billings, MT 59101 (hereinafter referred to as the "Declarant").

**RECITALS:**

- A. Declarant is the owner of all the real property situated in Yellowstone County, Montana more particularly described on the attached Exhibit A (the "Property") which is a planned mixed use real estate development.
- B. Declarant is interested in the future use and operation of the Property, and desires to establish covenants, conditions, and restrictions governing the use and operation of the Property, and any additional property made subject to this Declaration (collectively, the "Community"), as set forth herein.
- C. Declarant proposes that the Community be used and operated pursuant to restrictions, covenants and conditions stated herein for the benefit of the present and future owners of the Community.

**NOW, THEREFORE**, Declarant hereby declares that all of the property within the Community shall be held, sold and conveyed subject to the following covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of the Community. These covenants, conditions, and restrictions shall run with the Community property and shall be binding on all parties having any right, title or interest in any of the property in the Community and their heirs, successors, and assigns, and shall inure to the benefit of the Declarant and its successors and assigns.

**ARTICLE I  
DEFINITIONS**

**1.1 “Architectural Review Committee” or “ARC”** shall mean and refer to the committee established to administer the Design Standards contained within the Code.

**1.2 “Assessments”** shall mean and refer collectively to the following charges:

- (A) General Assessment. The term “General Assessment” is the amount payable each year by each Owner (other than the Declarant) to meet the General Assembly’s annual budgeted common expenses pursuant to the provisions of Section 7.1.
- (B) Individual Parcel Assessment. An “Individual Parcel Assessment” is a charge made to a particular Owner (other than the Declarant) for charges relating only to that Owner or such Owner’s Parcel, as provided in Section 7.1.
- (C) Special Assessment. A “Special Assessment” may be charged to each Owner and such Owner’s Parcel (other than the Declarant) for capital improvements or emergency expenses, in accordance with the provisions of Section 7.1.

**1.3 “Board of Governors”** shall mean and refer to the board of directors of the General Assembly.

**1.4 “Builder”** shall refer to any builder who is approved as a builder by the Declarant, in the Declarant’s sole discretion.

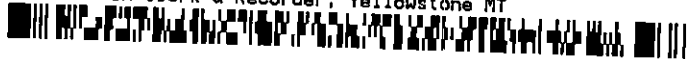
**1.5 “Building”** in the singular and **“Buildings”** in the plural shall respectively mean and refer to each and all Residential Structures, Community Buildings, and Commercial Structures, Garages, commercial, retail, governmental, office, and other structures, constructed, installed, erected, placed, or maintained on any Parcel within the Community.

**1.6 “Commercial District”** shall mean and refer to the Parcels in the Central District, all of which shall be designated and established as commercial/retail areas or Live-Work Units; such District may, but need not be, be established under a separate set of covenants and may be subject to separate fees and assessments.

**1.7 “Commercial Structures”** shall mean and refer to all Improvements used primarily by, for, or intended for the conduct of private sector retail or office activity.

**1.8 “Community Buildings”** shall mean and refer to Buildings used primarily by, for, or intended for the conduct of public functions.

**1.9 “Code”** shall mean and refer to Annafeld Design Code, which shall consist of the following:



- (A) The design standards, written or otherwise, which guide the design of Buildings and Community (the “Design Standards”);
- (B) The Amended Planned Unit Development for Annafield, recorded with the Clerk and Recorder of Yellowstone County, Montana under Document No. 3826023, which establishes setbacks, density, street standards, lot coverage, and other similar matters;
- (C) The overall master plan for the Community as depicted on the attached Exhibit B; and
- (D) The design review procedures of ARC, which describe the steps for approval of all Buildings, landscaping, and other Improvements to any Parcel.

The Code does not need to be recorded to be effective but shall be available from the Board of Governors. The Board of Governors may adopt additional rules and regulations to implement the Code. The rules and regulations may include information about the design approval process, submittal forms, a review and approval process, and other regulations. Notwithstanding any provision to the contrary in this Declaration or Code, any site or building plans for any Improvements, Buildings, Commons or other structures to be located within the Community, shall be approved by the ARC and Declarant.

**1.10 “Commons”** shall mean and refer to the areas, Improvements, and Common Ways that are developed or set aside within the Community and are now or hereafter conveyed to the General Assembly, together with the improvements thereon, for the common use and enjoyment of all Owners, but excluding any of the foregoing that are dedicated to public use. Such Commons shall include, by way of example and not by way of limitation, mail pavilions, if any.

**1.11 “Common Ways”** shall mean and refer to the public and private streets, alleys, bridges, and rights-of-way for the same within the Community which are intended for automobile traffic.

**1.12 “Community Use Parcel”** shall mean and refer to those Parcels or Lots containing Civic Structures or Community Buildings. Community Use Parcels are not subject to General Assessments or Special Assessments (but are subject to Individual Parcel Assessments) and are not entitled to any voting rights.

**1.13 “Civic Structures”** shall mean and refer to all Improvements used primarily by, for, or intended for the conduct of governmental or municipal functions or the General Assembly.

**1.14 “Declarant”** is defined in the opening paragraph.

**1.15 “Director”** shall mean a director of a District Board.



**1.16 “District” or “Districts”** shall mean and refer to the geographic areas in the Community determined by the Declarant from time to time as governing areas within the Community. The Declarant contemplates that the Community, if fully developed, will contain the following five (5) named Districts: Garden District, River District, Park District, Farm District, and the Central District. The Declarant shall initially establish the boundaries of each District as the Declarant plats the Community. Prior to the Turnover Date, the Declarant may at any time expand, contract, or otherwise alter the boundaries of any District or change the name of any District.

**1.17 “District Assembly”** shall mean and refer to the Montana nonprofit corporation or unincorporated association formed by the Declarant and whose members shall consist of all Owners living within a District.

**1.18 “District Board” or “District Assembly Board”** shall mean and refer to the Board of Directors of each District Assembly established by the Declarant to govern each District as set forth in this Declaration.

**1.19 “Dwelling” or “Dwellings”** shall mean and refer to the individual homes constructed or to be constructed upon the respective Lots used primarily for the habitation by one or more individuals as their dwelling place. Dwellings shall include apartments, condominiums, cottages, live-work units, lofts, row homes, single-family homes, and townhomes. Dwellings shall not include accessory buildings such as Garages or storage sheds.

**1.20 “Garage”** shall mean and refer to any attached or detached Building or portion of a Building whose principal use is designed for the storage of one or more automobiles.

**1.21 “General Assembly”** shall mean and refer to *The Annafeld General Assembly*, a Montana nonprofit corporation without members, its successors, and assigns.

**1.22 “Governors”** shall mean a director of the General Assembly.

**1.23 “Improvements”** shall mean and refer to any and all Buildings, structures, or other devices constructed, erected, placed, or maintained upon any Parcel which in any way affects, alters, or causes a change in the exterior appearance of such Parcel or any Building situated thereon. Improvements shall include, by way of illustration and not limitation, all Buildings, structures, sheds, foundations, covered patios, weather vanes, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Parcel and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Building situated on any Parcel. The term “Improvements” shall also mean any grading, excavation, or fill work undertaken on any Parcel and shall include the planting or removal of plants, trees or other landscaping materials; provided, however, that notwithstanding the foregoing, the removal of dead or diseased trees, shrubbery or other plant life or material, the planting of additional trees, shrubbery, flowers, plant life, or other plant matter on a Parcel following the installation of the



initial landscaping for such Parcel (as approved by ARC) shall not be deemed to be "Improvements" to a Parcel.

**1.24 "Live-Work Units"** shall mean and refer to the Buildings that are situated within the Community and used as both Residential and Commercial Structures.

**1.25 "Lot" or "Lots"** shall mean and refer to the separately designated and numbered lots shown on a Plat, or the separately designated and numbered lots indicated on any supplemental plat of property subjected to this Declaration from time to time.

**1.26 "Occupant"** includes any family members, guests, tenants, agents, servants, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees, and any other person who occupies or uses any Residential Structure within the Community. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Residential Structure.

**1.27 "Owner" or "Owners"** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Parcel which is a part of the Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**1.28 "Parcel"** shall mean and refer to any separately delineated and designated plot of ground or block of airspace within the Community including any plot designated as a Lot, Unit, or Commons.

**1.29 "Plat"** shall mean and refer to the plat of Annafeld Subdivision, First Filing recorded under Document No. 3831829 in the Office of Clerk and Recorder of Yellowstone County, Montana, which is incorporated herein by reference and which plat reflects, among other matters, the Lots, the Commons, and certain utility easements. "Plat" shall also mean and refer to any additional subdivided property made subject to this Declaration from time to time by amendment in the manner provided herein.

**1.30 "Property"** is defined in Recital paragraph A.

**1.31 "Residential Structures"** shall mean and refer to all Improvements containing one (1) or more Dwelling(s).

**1.32 "Rules and Regulations"** shall mean and refer to rules and regulations for the Community adopted by the Board of Governors from time to time, which Rules and Regulations are subject to modification and amendment from time to time and at any time by the action of the Board of Governors. The Rules and Regulations currently in effect are attached hereto as Exhibit C and are incorporated by reference into this Declaration.

**1.33 "Turnover Date"** shall mean and refer to the earlier of (a) the date on which neither the Declarant nor any affiliate of the Declarant owns any Parcel within the Community or



(b) the date on which Declarant elects, in its sole and absolute discretion, to relinquish all its rights hereunder.

1.34 “Unit” shall mean and refer to a part of a Building including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for any type of independent use, and having lawful access to a Common Way, which has been submitted under the Montana Unit Ownership Act.

## ARTICLE II DECLARATION APPLICATION

2.1 **Application.** This Declaration shall apply to the Community.

2.2 **Interest in Community.** All persons, corporations, partnerships, associations or other entities who shall hereafter acquire any interest in and to the Community or any part thereof, shall be subject to, and held to agree and covenant with the owners, now or in the future, of the other property in the Community, to conform to and observe the covenants, conditions, and restrictions stated in this Declaration.

2.3 **Additions to Existing Property.** The Declarant may cause additional properties to be made subject to this Declaration by executing and recording an amendment to this Declaration, all without the consent of any Owner, mortgagee or holder of any deed of trust encumbering the Community. The properties thus added may include areas and facilities that are to constitute a portion of the Commons. An amendment to this Declaration that adds to the Community may contain special covenants and restrictions as to Parcels, Dwellings, Buildings, and/or Commons so added to the Community.

## ARTICLE III PROPERTY RIGHTS

3.1 **Commons.**

(A) **Right of the General Assembly.** The General Assembly, subject to the rights reserved to the Declarant and the rights and obligations of the Owners set forth in this Declaration as it may be amended and/or supplemented from time to time, shall have the right to and shall be responsible for the exclusive management and control of the Commons and improvements thereon, together with the fixtures, equipment, and other personal property of the General Assembly related thereto. The Board of Governors shall be responsible for the maintenance, upkeep and repair of the Commons and for making any capital improvements and alterations thereto as set forth herein.

(B) **Sidewalks and Parking Lots and On-Street Parking.** Notwithstanding anything provided in this Declaration to the contrary, the use, maintenance, and repair obligations of various parking areas and sidewalks in the Commercial District shall be regulated in the following manner: (i) if accepted by the City of Billings, some parking lots and sidewalks shall become public parking lots and sidewalks, and (ii) if not dedicated to the City of Billings by the





Declarant or its successors in interest, some parking lots and sidewalks shall be available for public use but maintained by the General Assembly as specified in either the declaration of covenants, deed, or other instrument executed by the Declarant and recorded in the Office of the Clerk and Recorder of Yellowstone County, Montana. On-street parking within any of the Common Ways shall be maintained by the City of Billings in the case of any dedicated public way and by the General Assembly in the case of any private street deemed part of the Commons.

(C) **Maintenance Occasioned by Acts or Omissions of Owners.** In the event that the Board of Governors determines that any maintenance, cleaning, repair, or replacement for which the General Assembly is responsible is caused by either the negligent or willful acts or omissions of any Owner or Occupant, then the Board of Governors, in addition to the exercise of any other rights and remedies set forth in this Declaration, may give such Owner written notice of the Board of Governors' intent to provide such necessary maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, which notice shall set forth in reasonable detail what action is deemed necessary to be taken by such Owner. Except in the event of emergency situations, such Owner shall have five (5) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such five-day period, to commence such maintenance, cleaning, repair, or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to promptly comply with the provisions hereof after said notice, the Board of Governors may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, in which event said costs shall be a personal obligation of such Owner, shall constitute an Individual Parcel Assessment to such Owner, and shall be subject to the lien and foreclosure set forth herein. If, and to the extent that, the Board of Governors undertakes any action against an Owner pursuant to this Section, then all costs and expenses incurred by or on behalf of the General Assembly, including, without limitation, reasonable administrative costs and expenses, attorneys' fees, and court costs, if any, and any other costs and expenses incurred by the Board of Governors in curing any default by such Owner shall be due and payable on demand by such Owner and such costs and expenses shall also be deemed to constitute Individual Parcel Assessments payable by such Owner and shall be recoverable by the Board of Governors in accordance with the terms and provisions of the Declaration.

(D) **Owners' Easements and Rights of Enjoyment in the Commons.** Subject to the terms and provisions of this Declaration, each Owner and Occupant shall have a nonexclusive, perpetual right and easement of ingress, egress, use, and enjoyment over, across, upon, in, and to the Commons, which easement shall include, without limitation, the right of access to and from, and use of, the Commons and the right to use access, utility, water, sewer, drainage, and ponding easements therein. Such right and easement shall be appurtenant to and shall pass with the title to each Parcel that is part of the Community, shall not be severable therefrom, and shall be subject to the following provisions:

- (i) the right of the General Assembly to charge reasonable admission and other fees for the use of any recreational facility situated upon the Commons;



- (ii) the right of the General Assembly to suspend any Owner's voting rights and right of such Owner, and such Owner's family, guests, and invitees to use the recreational facilities for any period during which any Assessment against such Owner's Lot remains unpaid; and the right to suspend the same for a period not to exceed sixty (60) days for any infraction of the General Assembly's published rules and regulations;
- (iii) the right of the General Assembly or the Declarant to dedicate all or any part of the Commons to any public agency, authority, or utility for such purposes and subject to such conditions as may be deemed advisable by the General Assembly;
- (iv) the right of each other Owner and Occupant to the use of the Commons, as provided and limited in this Article;
- (v) the restriction that no Owner or Occupant shall operate, drive, ride, store, park, or otherwise place any motorized vehicles on, in, or about any part of the Commons other than on, in, or about the Common Ways as expressly permitted in this Declaration;
- (vi) the restriction that any motorized vehicle otherwise permitted under this Declaration to operate on, in, or about the Common Ways, the driver, and occupants of any such motorized vehicle must at all times comply with all City, County, State, and other applicable regulations, rules, ordinances, codes, or laws of any kind in connection with the operation or use of such vehicle, including without limitation, all required licenses, permits, insurance, and operation requirements;
- (vii) the easements, uses, limitations, conditions, reservations, and restrictions hereinafter provided in this Declaration;
- (viii) the Rules and Regulations as established from time to time by the Board of Governors;
- (ix) the right of the Declarant and any Builder to use the Commons for sign placement purposes during periods of construction and development;
- (x) the right of the Declarant and the Governors, on behalf of the General Assembly, to negotiate with any public agency for the conveyance of all or any part of the Commons, for any public purpose, and to execute such instruments as may be necessary for such purpose, subject to the proceeds of any such conveyance being held by the General Assembly in trust for the Owners; and



- (xi) the Declarant's and any affiliate of the Declarant's right to use the Commons as set in this Declaration and the rights reserved to the Declarant as provided elsewhere in this Declaration.

Each Owner and Occupant shall use and exercise their easement rights over the Commons in a reasonable manner so as not to endanger or harm others, create a nuisance for others, or cause any obstruction or impediment to the use of the easements created by this Declaration by others authorized to use them. Any Owner may delegate, subject to the provisions of this Declaration and the Rules and Regulations, such Owner's right to enjoyment of the Commons to any Occupant who either resides on the Parcel or are accompanied by such Owner while using any of the Commons. Subject to the rights granted by the Declarant to third parties to use the Commons as allowed under this Declaration, the Board of Governors may adopt additional rules and regulations from time to time which limit, restrict, or prohibit the use of any recreational facilities constituting part of the Commons by any person who is not an Owner or which impose fees or charges on the use of any of the Commons by any persons who are not Owners.

(E) **Conveyance of Title.** Subject to the right of the Declarant to dedicate or convey all or portions of the Commons to a governmental entity, for-profit, or not-for-profit entity, title to the Commons shall be conveyed to the General Assembly no later than the Turnover Date. For those Commons that are easements or other rights, the General Assembly shall be the holder of those rights. Upon termination of the Declaration, title to the Commons shall vest in the then Owners as tenants in common. The rights of such tenants shall only be exercisable appurtenant to and in conjunction with their Parcel ownership and any conveyance or change of ownership shall convey ownership in the Commons, as no interest in the Commons shall be conveyed by any such tenant except in conjunction with the sale of such tenant's Parcel.

(F) **Limitation of Liability.** The Board of Governors shall endeavor to use reasonable judgment in maintaining the Commons and enforcing traffic control measures, but neither the Board of Governors nor the Declarant makes any representation or assumes any liability for any loss or injury. Neither the Board of Governors nor the Declarant shall be liable for any injuries or damage to person or property (i) caused by the elements, acts of God, or any Owner or other person, (ii) resulting from any surface or subsurface conditions or which may be caused by rain or any other surface water which may leak or flow from any portion of the Commons or another Lot or Parcel onto a Lot or Parcel or any Improvements thereon, (iii) resulting from theft, burglary, or other illegal entry onto any Lot or Parcel or any Improvements thereon or any of the Commons, (iv) resulting from improper design of the Commons or improvements therein, or (v) resulting from swimming, fishing or any other water activities in any of the river, creek or pond in the Commons.

No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the General Assembly or the Declarant to take some action or perform some function required to be taken by or performed by the General Assembly hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the General Assembly or from any action taken by the General Assembly to comply with any applicable governmental regulations of any applicable governmental authority.



**3.2 Surface Water or Stormwater Management System.** The General Assembly shall have the right to maintain and cause all Owners to maintain proper drainage within the Community in accordance with the City of Billings and State of Montana, as the same may be amended from time to time. In the exercise of this right, the General Assembly shall have a blanket easement and right on, over, across, under, and through all portions of the Community to maintain and to correct drainage of surface water provided, however, that as provided below, each Owner shall be solely responsible for providing and maintaining adequate soil erosion measures and drainage facilities on such Owner's Parcel. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with applicable governmental regulations; provided, however, that the General Assembly shall not be obligated to undertake any of the foregoing actions. Notwithstanding the foregoing, following conveyance by the Declarant, each Owner shall provide and maintain on that Owner's Parcel adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff from and coming onto such Owner's Parcel or resulting from any Improvements being or having been constructed on such Owner's Parcel. Each Owner shall also insure that that Owner's Parcel and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of the City of Billings, (b) all stormwater drainage and runoff requirements and regulations of the City of Billings and (c) all over applicable governmental regulations. **Each Owner, by acceptance of a deed to that Owner's Parcel, shall and does hereby indemnify, defend and agree to hold the Declarant, the ARC, the General Assembly and the District Assembly within which such Owner's Parcel is located, together with their respective agents, employees, officers, directors, shareholders, members, managers, and representatives harmless from and against any and all other amounts suffered, paid, or incurred by any of them in connection with any action, suit, or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or any breach by such Owner's Occupants, contractors, subcontractors, guests, agents, employees, or invitees) of any of the terms and provisions of this Section.** The General Assembly shall be responsible for the operation, maintenance, repair and replacement of storm sewer systems, ponds, retention basins, detention basins, and other storm water control easements and facilities in the Community located outside of the public right of way in compliance with the O&M Manual approved by the City of Billings.

**3.3 Assembly Right to Grant Easements and Certain Easements Over Lots and Commons.** The General Assembly shall have the right to grant permits, licenses, and easements over the Commons for utilities, access, and other purposes necessary or desirable for the operation of the Community. A perpetual, nonexclusive easement is hereby established in favor of the General Assembly, its employees, agents, contractors, successors, and assigns for a reasonable right of entry on any Parcel to perform repairs or to do other work reasonably necessary for the proper maintenance of the Commons and/or to perform any of the powers, rights and duties available to or imposed upon the General Assembly by this Declaration and/or the Bylaws of the General Assembly, including, without limitation, enforcing the covenants and restrictions imposed by this Declaration.

**3.4 Declarant's Rights.** Prior to the Turnover Date, the Declarant may, in its sole discretion, at any time and from time to time, make changes that the Declarant believes will



better accomplish the objectives of the Community, adjust to market conditions, or respond to changing land use conditions both within and without the Community, including, any of the following:

(A) **Development.** The Declarant may, in its sole discretion, at any time and from time to time:

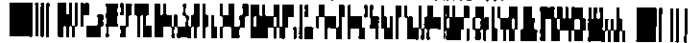
- (i) amend and modify any portion of the Code or this Declaration;
- (ii) change District boundaries at any time by expanding, altering, or contracting any of the same or change the name of any District;
- (iii) add property to the Community;
- (iv) release all or any portion of the Community from the provisions of this Declaration, including, without limitation, any Lot, Parcel or Commons;
- (v) change the use of any Parcel or classification of any transect zone or uses permitted within a transect zone; and
- (vi) erect ground source heat pipes, sinks or pumps, or other technology, devices or equipment as alternative sources of energy production within any part of the Commons.

The Declarant may exercise any of the foregoing development rights by executing and recording an amendment to this Declaration or, in the case of a change of use of a transect zone by recording an amendment to the Amended Planned Unit Development, all without the consent of any Owner, mortgagee, or holder of any deed of trust encumbering the Community. In addition, the Declarant may record one or more revised or amended plats if the Declarant deems it necessary in connection with the same.

(B) **Reservation of Right to Receive Certain Funds.** The Declarant further reserves the right to receive any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by it for joint main sewers, sanitary sewers, storm sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, traffic signals, recording fees, Community fees, consultation fees, or any fees, charges, and expenses incurred with respect to the development and creation of the Community.

(C) **Consent of Declarant Required for Changes.** Prior to the Turnover Date, no modification of the Code or this Declaration may be made without the prior written consent of Declarant. From and after the occurrence of the Turnover Date, the ARC may make any of the modifications to the Design Standards subject to the prior written consent of the same by the Board of Governors.

(D) **Signage Easement.** Until the Turnover Date, there is reserved to the Declarant and each Builder a nonexclusive easement over all Lots and Commons, for a distance of ten (10)



feet behind any Lot line or Commons boundary line that parallels a street, for the purpose of erecting and maintaining street intersection signs, directional signs, promotional or sales signs, entrance features, lights, stone, wood, or masonry wall features and/or related landscaping.

(E) **Commercial Areas.** The Declarant intends to develop commercial Parcels within the Community, as the same may be modified from time to time, as a Commercial District intended to be an integral part of the community. The Commercial District may be subject to special conditions and assessments. Alternatively, the Commercial District within the Community may be subject to additional or supplemental restrictive covenants and otherwise be maintained by a separate association.

(F) **Display Homes, Sales and Management Offices.** The Declarant reserves for itself, its successors, and assigns and such third parties or entities as the Declarant may designate, including other Builders, the right to build, maintain, operate, and relocate from time to time one or more sales offices, management offices, and an unlimited number of display homes within the Community and/or to use Buildings that may be designated for civic use for purposes of selling Parcels and otherwise promoting and managing the Community.

(G) **Commercial Use of Images.** Prior to the Turnover Date, no part of the Commons nor any other exteriors of any Improvements of any Commercial or Residential Structures or parts thereof, including any Parcels and Improvements therein, may be photographed, sketched, painted, or otherwise reproduced for any promotional, publishing, academic, or commercial use (including, without limitation, its use as a background for the display of fashions or other goods) without the prior written consent of the Declarant. Such exteriors may be reproduced without the consent of, or payment to, the Owner of such Parcel. Notwithstanding the foregoing, an Owner may photograph any part of the Community for personal, non-commercial reasons and may independently grant reproduction rights for any Parcel and any Improvements thereto owned exclusively by that Owner, in which case the consent of the Declarant shall not be required by such Owner. The Declarant may collect a fee for its consent to the use of Commons or Common area images or for the providing of support services to photographers or others.

(H) **Use of the Name Annafeld.** The name "Annafeld" is a business asset of the Declarant and is currently registered or in the process of registration for state trademark protection. An Owner may use the name "Annafeld" to describe the location of their home or a business, or may advertise a business as being located in the Community, provided, any such use that is associated with a business shall also use a symbol or explanation disclosing trademark or service mark registration of the name "Annafeld" by the Declarant. Owners may not use the name "Annafeld" in any other manner without the express permission of the Declarant, which may be arbitrarily denied. No business entity, regardless of the type or nature of the business, that contains the words "Annafeld" in its name, or uses those words or any variation in spelling or construction of those words, in its course of business or in its advertising, will be permitted to be located in the Community, to advertise in the Community, or to do business in the Community, except with the prior, written consent of the Declarant, which may be withheld in the Declarant's sole discretion. Upon any violation of this restriction, the Declarant may, in its sole discretion, (i) seek immediate injunctive relief to restrain such use, (ii) obtain liquidated damages from such violator in the amount of \$1,000 per day for each violation for so long as



such violation continues, and (iii) seek such other remedies as may be available under law or in equity. Any Owner that is leasing all or any part of a Parcel shall place this restriction on the use of the name "Annafeld" in the lease for such space and shall be responsible for any violation of this restriction by any such tenant. Each Owner shall indemnify and hold the Declarant harmless from and against any demands, claims, damages, liabilities, causes of action, losses, costs and expenses, including, without limitation, attorneys' fees and costs of suit, arising from or in connection with any violation of this restriction by such Owner or such Owner's tenants, agents, employees, contractors, successors, and assigns and consents to the immediate entry of injunctive relief against such Owner and any such tenants, agents, employees, contractors, successors, and assigns for violation of this restriction.

(I) **Dedication and Conveyance of Commons.** As provided elsewhere in this Declaration, the Declarant has reserved the right to dedicate any of the Common Ways as public roadways to the City of Billings, and the Declarant is authorized, without obtaining the consent or the approval of any Owners or mortgagees, to grant easements or otherwise convey by deed any other portion of the Commons to any third parties. While the Declarant intends that all or part of the Commons will be conveyed to the General Assembly, the Declarant expressly reserves the right not to convey all or any part of the Commons or to convey the same subject to the Declarant's right to (i) dedicate all or part of the Commons to the City of Billings for public use, (ii) convey parts of the Commons to a separate, independent operating entity (which may be a for-profit or nonprofit entity) which may require the payment of a membership fee in order to use the improvements contained therein, (iii) retain or reacquire for no consideration fee title to such land for the purpose of building structured parking or other Improvements, including those that are occupied by persons for residential, commercial or civic use therein, all without compensation or reimbursement to the General Assembly. If the Declarant desires to retain or reacquire any part of the Commons as aforesaid, it may do so by giving notice to the General Assembly at any time, and upon the giving of such notice, the General Assembly shall immediately convey such designated land to the Declarant by special warranty deed.

(J) **Reservation of Easement by Declarant.** The Declarant does hereby establish and reserve, for itself and the General Assembly and its respective agents, employees, representatives, invitees, successors, and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through, and upon all of the Commons for the purpose of (i) providing access to and from any Parcels or any other real property (whether situated within or outside of the Community) owned by the Declarant or any affiliate of the Declarant, (ii) installing, maintaining, repairing, and replacing any Improvements to any portion of the Community or to any of the Commons, including, without limitation, sidewalks, walkways, traffic, informational, and directional signs, (iii) using and enjoying any and all of the Commons for such purposes as the Declarant may deem appropriate, and (iv) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall the Declarant have any obligation to undertake any of the foregoing.

The Declarant further reserves the right, but shall not have any obligation, to (i) grant to other third parties this non-exclusive right and easement, in common with the Declarant, the General Assembly, and all Owners, to use any of the Commons and (ii) convey by quit claim deed to the General Assembly at any time and from time to time any real property and any



Improvements thereto to be utilized as part of the Commons, as the Declarant, in its sole and absolute discretion, may determine.

(K) **Open-Air Market and Festivals.** The Declarant reserves, for itself, its agents, employees, representatives, designees, invitees, successors, and assigns the permanent and perpetual right to use any portions of the Commons as an open-air market for the rental of space for pushcarts, kiosks, stands, or similar temporary sales structures. Such uses may be for special events or on a recurring or daily basis. Declarant also reserves, for itself, its agents, designees, employees, representatives, invitees, successors, and assigns, the right to use portions of the Commons for festivals or other events intended to enrich and enliven the Community. Declarant further reserves a right of access through the Commons for all such purposes. Declarant may, but is not obligated to, assign such rights to the General Assembly or to any other third party at any time.

(L) **Conservation Areas.** The Declarant reserves the right, in its sole and absolute discretion, at any time and from time to time to grant conservation easements or otherwise convey by deed to any third party, including, without limitation, a tax-exempt entity qualified under Section 501(c)(3) of the Internal Revenue Code of 1954, as revised, any portion of or rights in any of the Commons, without any requirement that the consent or approval of any Owner, mortgagee, or the General Assembly be obtained.

(M) **Exemptions from Design Standards.** Notwithstanding anything provided in this Declaration to the contrary, the Declarant may, in its sole and absolute discretion, grant exceptions or exemptions from any of the terms and provisions of relating to the Design Standards or otherwise modify, extend, release, or waive any of the terms and provisions of the Design Standards pursuant to a written instrument executed by the Declarant. The issuance or granting of any exemption or exception by the Declarant to any one Parcel shall not obligate the Declarant to grant any such similar exemption or exception to any other Parcel.

**Each Owner, by acceptance of a deed to any Parcel, does hereby acknowledge and agree that the Declarant shall have the right to take any and all of the foregoing actions specified in this Section without any obligation or requirement that the consent or approval of any Owner or mortgagee be obtained.**

**3.5 Builders' Rights.** In addition to all rights that Builders may otherwise have under this Declaration, Builders shall also have the following rights with respect to and in connection with their development of portions of the Property owned by such Builder within the Community ("Builder Property"). Such rights shall expire upon the Builder's transfer of any portion of the Builder Property to a party other than Declarant (but only with respect to the portion transferred).

(A) The right to dedicate and convey any of the Commons located on the Builder Property of such Builder to the City of Billings for public use or to the General Assembly, provided that the General Assembly consents in writing to such dedication and conveyance;

(B) The non-exclusive right to photograph, sketch, paint or otherwise reproduce the exterior of any Improvements or Commercial or Residential Structures or parts of such Builder's





Builder Property within the Community for any promotional use in connection with the sale of the Builder Property without the prior written consent of the Declarant; and

(C) The non-exclusive right to use the name “Annafeld” for reasonable commercial purposes in connection with the development or sale of the Builder Property. Any such use shall use a symbol or explanation disclosing trademark or service mark registration of the name “Annafeld” by the owner of such mark. Builder may not use the name “Annafeld” in any other manner without the express permission of the Declarant, which may be arbitrarily denied.

#### ARTICLE IV MEMBERSHIP

4.1 **Membership.** Every Owner of a Parcel within a District (excluding the General Assembly or the City of Billings) shall be a member of the District Assembly (a “Member” and collectively, the “Members”) within which such Parcel is located. Membership in the District Assembly shall be appurtenant to and may not be separated from ownership of any Parcel. The General Assembly shall not have members but shall be comprised of representatives appointed by each of the Boards of Directors of each of the District Assemblies, as set forth in the Bylaws thereof.

#### ARTICLE V BOARD OF GOVERNORS OF THE GENERAL ASSEMBLY AND BOARD OF DIRECTORS OF DISTRICT ASSEMBLIES

5.1 **Powers and Duties of the Board of Governors.** The Board of Governors of the General Assembly shall manage the Commons and affairs of the Community as described herein. The Board of Governors shall have and is vested with all powers and authorities, except as may be expressly limited by law or this Declaration, to supervise, control, direct, and manage the Commons, affairs, and activities of the Community, to determine the policies of the General Assembly, to do or cause to be done any and all lawful things for and on behalf of the General Assembly, to levy Assessments, to exercise or cause to be exercised any and all of its powers, privileges, or franchises, and to seek the effectuation of its objects and purposes. Without limiting the generality of the foregoing, the Board of Governors shall:

- (A) administer the affairs of the Community;
- (B) engage, if deemed necessary or appropriate, the services of a professional managing agent to discharge any of the General Assembly’s duties hereunder, upon such terms and for such compensation and with such authority as the Board of Governors may approve;
- (C) formulate policies for the maintenance, management, operation, repair, and replacement of the Commons and improvements and obtain such services that provide for the public health, safety and welfare of the Commons as the Governors may consider advisable;



(D) adopt and enforce administrative rules and regulations governing the maintenance, management, operation, repair, and replacement of the Community and improvements, and to amend such rules and regulations from time to time; provided, any such rules and regulations affecting Live-Work Units must be approved by either (i) a majority of the Owners of such Units or (ii) the Board of Governors;

(E) provide for the maintenance, management, operation, repair, and replacement of the Commons and improvements, including, without limitation, mowing, landscaping, planting, seeding, pruning, and care of shrubbery, removal of plants, maintenance, repair, and replacement of streets and street lights located within or adjacent to Common Ways (unless such maintenance, repair, and replacement shall be performed by a municipal entity), and for the operation, maintenance, repair and replacement of storm sewer systems, ponds, retention basins, detention basins, and other storm water control easements and facilities in the Community located outside of the public right of way;

(F) provide for payments for (i) any and all maintenance, management, operation, repair and replacement of the Commons and improvements therein and (ii) any and all professional services rendered by professionals retained by the Board of Governors in accordance with such rates and agreements as the Board of Governors shall determine;

(G) provide for the levying and collection of Assessments pursuant to this Declaration, including, without limitation, General, Special and Individual Parcel Assessments;

(H) provide for the designation, hiring, and removal of employees and other personnel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the Community and improvements, and to delegate any such powers to a managing agent (and any such employees or other personnel that may be the employees of said managing agent);

(I) estimate the amount of the annual budget and provide the manner of assessing and collecting from the Owners their respective shares of such common expenses, as hereinafter provided;

(J) collect funds owing to the General Assembly from persons or entities other than Owners who, by provision of this Declaration, are entitled to use the Commons and who are obligated to share in expense for the improvement and maintenance of the Commons;

(K) grant easements and rights-of-way over the Commons to such utility companies or public agencies or others as the Governors shall deem necessary or appropriate and to make rules and regulations, not inconsistent with the law and this Declaration, for the use and operation of the Commons and in every and all respects governing the operation, funding, and usage thereof;

(L) receive, hold, convey, dispose, and administer, in trust, for any purpose mentioned in the Declaration, any gift, grant, conveyance, or donation of money or real or personal property;



(M) make all contracts and incur all liabilities necessary, related, or incidental to exercise the Board of Governors' power and duties hereunder;

(N) dedicate any Common Ways or portions thereof to appropriate agencies and to vacate or abandon easements in accordance with applicable legal procedures;

(O) obtain liability and hazard insurance on the Commons, as well as, in the Board of Governors' discretion, insurance protecting the Governors from any and all claims for damages arising out of any decision, act, or failure to act, of the Governors acting in their capacity as Governors;

(P) coordinate polices with and, as the Board of Governors deems appropriate, contract with nonprofit entities as may be managing or operating entertainment venues in the Community;

(Q) provide for the establishment, levying and collection of Assessments for the establishment and promotion of various funds for the promotion of the Community, pursuant to this Declaration;

(R) exercise all other necessary or appropriate powers and duties commonly exercised by a Board of Governors and all powers and duties of the Governors as stated in the Declaration;

(S) fund, plan and coordinate recreational, cultural, entertainment or other similar programs and events for the benefit of the Community;

(T) purchase a fidelity bond for any person or persons handling funds belonging to the General Assembly or Owners as the Board of Governors deems appropriate;

(U) enforce the Declaration with respect to the Commons and activities therein and any and all restrictions governing the Commons, and to take any and all necessary steps to secure the enforcement and compliance of the same; and

(V) exercise any and all other powers or acts as are authorized by the Declaration

**5.2 Powers and Duties of the District Assembly Boards of Directors.** The Boards of Directors of each District Assembly shall manage those parts of their District lying outside of the Commons and the affairs of the District Assembly with respect thereto. The District Assemblies shall not have the power to levy Assessments, which power is expressly reserved to the Board of Governors. The District Assembly may apply to the Board of Governors for funding for projects that the District desires to undertake. Without limiting the generality of the foregoing, each District Assembly Board within its District shall:

(A) administer the affairs of the District Assembly and of that part of the District lying outside of the Commons;



(B) estimate the amount of the annual District Assembly budget and provide the same to the Board of Governors for approval with respect to any funding required thereunder;

(C) make all contracts and incur all liabilities necessary, related or incidental, to exercise the Board of Director's powers and duties hereunder;

(D) obtain, in the Board of Governors' discretion, insurance protecting the Board of Directors from any and all claims for damages arising out of any decision, act, or failure to act, of the District Assembly Board of Directors acting in their capacity as Directors;

(E) fund, plan and coordinate recreational, cultural, entertainment or other similar programs and events for the benefit of the District;

(F) coordinate policies with other District Assemblies and the Board of Governors;  
and

(G) exercise any and all other powers or acts as are authorized by the Declaration.

## ARTICLE VI BUDGET

**6.1 Common Expenses.** Each annual budget of the General Assembly shall estimate total expenses to be incurred by the General Assembly in carrying out its responsibilities. These expenses shall include, without limitation, the following (collectively, the "Common Expenses"):

- (A) Salaries, fringe benefits and other compensation paid, and out-of-pocket expenses reimbursed, by the General Assembly for its employees, agents, managers, officers, members of the Board of Governors and any third-party contractors;
- (B) Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the General Assembly;
- (C) Utility charges for any utilities serving any of the Commons and charges for other common services for the Community, including, without limitation, trash collection and security services, if applicable;
- (D) The costs of any insurance policies purchased for the benefit of the General Assembly as required or permitted by this Declaration, including, without limitation, fire, flood, and other hazardous coverage, commercial general liability coverage, and such other insurance coverage as the Board of Governors determines to be in the best interest of the General Assembly, including errors and omissions insurance, fidelity bonds, directors' and officers' liability insurance, and any other liability insurance coverage for the benefit of the General Assembly, the members of the Board of Governors, any officers, employees, agents, or representatives of the General Assembly (including members of the ARC);



- (E) The expenses of maintaining, operating, repairing, and replacing all portions of the Commons and any other amenities and facilities serving the Community (whether located within or outside of the Community) which the General Assembly is responsible for hereunder or which the Board of Governors, in its sole discretion, determines from time to time would be in the best interest to so maintain, operate, repair, or replace;
- (F) Ad valorem real and personal property taxes assessed and levied upon any of the Commons;
- (G) The expenses of the ARC that are not paid in full by plan review charges;
- (H) The costs and expenses for conducting recreational, cultural, entertainment or other similar programs and events for the benefit of the Owners and Occupants;
- (I) Such amounts as the District Assemblies may request from the Board of Governors as permitted under this Declaration;
- (J) All other fees, costs, and expenses incurred by the General Assembly in accordance with the terms and provisions of this Declaration or which the Board of Governors, in its sole discretion, determines to be appropriate to be paid by the General Assembly, including, without limitation, taxes and governmental charges not separately assessed against Parcels;
- (K) The establishment and maintenance of a reasonable reserve fund or funds (i) for inspections, maintenance, repair, and replacement of any portions of the Commons for which the General Assembly is responsible to inspect, maintain, repair, or replace on a periodic basis; (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds; and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Governors; and
- (L) The establishment and maintenance of a fund or funds for the promotion of the Community and the commercial businesses therein, including, without limitation, providing print, electronic, television, radio and other advertising, billboards, and postage for mailings.

**6.2 Reserves.** The General Assembly may establish and maintain a working capital and contingency reserve fund in an amount to be determined by the Board of Governors (a "Reserve Fund"). A Reserve Fund shall be used as the Board shall deem fit to fund major maintenance, repair or replacement of the Commons or improvements thereon or toward other major expenses which are the responsibility of the General Assembly hereunder, and shall be added to and made a part of General Assessments provided for herein. Monies from a Reserve Fund may only be used for the purposes for which they have been established and shall be kept separate from other funds of



the Association. If any budget or the amount of General Assessments collected by the General Assembly at any time proves to be inadequate or insufficient for any reason to fully pay all Common Expenses of the General Assembly, then the Board of Governors may call a meeting of the members of the General Assembly for the purpose of approving Special Assessments. If the actual amount of General Assessments collected in any one year exceeds the actual costs incurred for the Common Expenses for such year, the excess shall be retained by the General Assembly as a reserve for subsequent years' Common Expenses or for any other purposes as may be determined by the Board, of Governors including, without limitation, the making of any capital improvements to the Commons.

## ARTICLE VII COVENANTS FOR ASSESSMENTS

**7.1 Creation of the Community Lien.** Except as otherwise provided herein, each Owner of a Parcel (other than the Declarant or any affiliate of the Declarant) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree (i) to pay to the General Assembly: (1) General Assessments; (2) Special Assessments for capital improvements or for emergencies such as a budget shortfall, such assessments to be established and collected as hereinafter provided; and (3) Individual Parcel Assessments which are established or assessed pursuant to Section 7.5; provided, however, no portion of the Commons are subject to any Assessments, and (ii) to waive any right said Owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said Assessments.

In addition to the foregoing Assessments, each Owner of a Parcel (other than the Declarant or any affiliate of the Declarant) by acceptance of a deed therefor, whether or not it be so expressed in the deed, is deemed to covenant and agree to pay each year to the General Assembly (or such other third-party nonprofit entity that Declarant shall direct) an annual fee in the amount of Fifty and 00/100ths Dollars (\$50.00), or such greater or lesser amount as shall be determined annually by the Board of Governors (the "Fee" and collectively, the "Fees") for the purpose of funding capital improvements for the Commons, such as park benches, statues, fountains, paths, civic improvements, art, recreational equipment, or other amenities, , and to waive any right said Owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for the Fees.

The Assessments and Fees, together with interest, costs, and reasonable attorney and paralegal fees, shall be a charge on each Parcel and improvements thereon and shall be, upon levying of the same, a continuing lien upon the Parcel against which the Assessment is made or Fee is charged. To evidence such lien, the Board of Governors shall prepare a written notice of lien setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the Owner and a description of the Parcel. Such notice shall be signed and verified by an agent of the Board of Governors, and shall be recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. Such lien shall attach from the date of recording such notice.



Each such Assessment or Fee, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Parcel at the time the Assessment or Fee became due. Notwithstanding the foregoing, no Assessments or Fees of any kind shall be charged against Parcels owned by the Declarant, any affiliate of the Declarant, or any Builder during their period of ownership; and neither the Declarant, any affiliate of the Declarant, nor any Builder shall have any obligation to pay Assessments or Fees relating to Parcels owned by the Declarant, any affiliate of the Declarant, or any such Builder at any time. In the event of co-ownership of any Parcel, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments and Fees.

All Assessments shall commence as to each Parcel as provided hereinbelow and be paid in such a manner and on such dates as may be fixed by the Board of Governors. All Assessments and Fees shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu, of or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof with respect to any Parcel or any improvements thereto, Commons or any other portion of the Community or any other cause or reason of any nature.

**7.2 Purpose of Assessment.** The Assessments levied by the General Assembly shall be used exclusively to promote the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Community, for the improvement and maintenance of the Community and Commons, any recreational facilities constructed by Declarant or others for use by the Owners, and otherwise to fulfill and perform the General Assembly's rights, duties, obligations, and functions pursuant to this Declaration. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the General Assessments and the Special Assessments as well as certain Common Expenses to be incurred may not benefit all of the Owners and Occupants equally but that the levy of such General Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Community. The Board of Governors may, in its discretion, pay some part of the Assessments to one or more for-profit or nonprofit entities that own, lease, or operate Improvements within or about the Community that may benefit the Owners.

**7.3 General Assessments.** Pursuant to the provisions of Article VI, the Board of Governors shall determine and approve annually an annual budget covering the estimated Common Expenses for the upcoming year and any additional amounts for a Reserve Fund, if any, which budget shall include the amount payable by each Parcel as provided herein. The amount set forth in such budget shall constitute the aggregate amount of General Assessments for all of the Community for the then applicable year. General Assessments shall be allocated among the Parcels in accordance with their respective "Allocated Values" (defined below). The following values ("Allocated Values") set forth in the table below are assigned and allocated among the Parcels within the Community:

<u>Parcel</u>	<u>Allocated Value</u>
Lot containing Single Family Home	1.0 Per Dwelling on Lot
Unit	0.5 Per Unit



Lot containing Multi-Family Apartments

0.5 Per Dwelling on Lot

**7.4 Special Assessments.** In addition to the General Assessments authorized in Section 7.3, the Board of Governors may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred or to be incurred by the General Assembly, including, without limitation, costs which have been, are, or will be incurred for capital improvements which are not paid for from General Assessments or to cover any unexpected budget shortfall; provided, however, that any such Special Assessments must be approved by a three-fifths vote of the Board of Governors cast at a duly convened meeting of the General Assembly. The Board of Governors may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board of Governors' discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Article VII. Special Assessments shall be allocated among the Parcels in accordance with their respective Allocated Values.

**7.5 Individual Parcel Assessments.** The Board of Governors may, in its sole discretion, at any time and from time to time, levy and assess as Individual Parcel Assessments against any Parcel:

(A) fines against an Owner and such Owner's Parcel in accordance with the terms and provisions hereof or adopted by the Architectural Review Committee or the General Assembly pursuant to any of the terms and provisions of this Declaration;

(B) any costs or expenses, including, without limitation, collection costs, attorneys' fees, court costs, and any administrative costs and expenses incurred by or on behalf of the Architectural Review Committee, the District Assembly, or the General Assembly as a result of the failure of any Owner or any Occupant to observe and perform their respective duties and obligations under this Declaration, the Code or the Rules and Regulations;

(C) any special services provided by the General Assembly to a Parcel at the request of the Owner thereof; and

(D) fees, charges, and other costs incidental to the use of any of the Commons for which a charge for the use thereof has been established by the Board of Governors. The Individual Parcel Assessments provided for in this Section 7.5 shall be levied by the Board of Governors and the amount and due date of such Individual Parcel Assessment shall be specified in a note to such Owner.

**7.6 Timing of Issuance of Budget.** Copies of the estimated annual budget shall be furnished by the Governors to the Owners not later than thirty (30) days prior to the beginning of such calendar year. Any institutional holder of a first mortgage or first deed of trust on any Parcel shall receive at no cost, if it so requests in writing, said statement from the Governors. On or before the first day of each succeeding calendar year, and without further notice, the Owners of each Parcel shall pay, as the respective annual General Assessment for such Parcel, such Parcel's share of the expenses for such calendar year as shown by the annual budget. In the event





that the Governors shall not approve an estimated annual budget or shall fail to determine new General Assessments for any calendar year or shall be delayed in doing so, the Owners shall continue to pay each year the annual General Assessment as last determined. All Owners shall pay the annual General Assessments to the managing agent for the General Assembly or as may be otherwise directed by the Governors.

**7.7 Accounting.** The Board of Governors shall cause to be kept a separate account for each Parcel showing the respective Assessments charged to and paid by the Owners of such Parcel, and the status of such account from time to time. Upon ten (10) days written notice to the Governors, and the payment of a reasonable fee therefor, any Owner or holder of a first mortgage or first deed of trust on any Parcel shall be furnished a statement of the respective account for such Parcel setting forth the amount of any unpaid Assessments that may be due and owing.

**7.8 Storm Water Assessment.** In addition to other Special Assessments authorized by this Article, the Governors may make a separate special assessment for the operation, maintenance, repair and replacement of storm sewer systems, ponds, retention basins, detention basins, and other storm water control easements and facilities. The assessment provided for by this paragraph shall be allowed and applicable until the operation, maintenance, repair and replacement of such sewer system and such canals and other storm water control easements and facilities are accepted for maintenance by an appropriate public governmental agency, body, or utility company. The Governors may also make a separate special assessment pursuant to this paragraph as necessary for compliance with all Community and other ordinances, rules, and regulations of the City of Billings.

**7.9 Additional Property and Changes in Boundaries.** Each Owner of a Parcel, by acceptance of a deed to such Parcel, acknowledges and agrees that the General Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Parcels are combined, subdivided or re-subdivided by the Declarant; (ii) any portion of the Community becomes Commons; (iii) additional property is added to the Community; or (iv) any portion of the Community is exempted from Assessments as provided in this Declaration.

**7.10 Commencement of Annual General Assessments.** Each Owner shall pay that Owner's first annual General Assessment upon the closing of the purchase of that Owner's Parcel, adjusted according to the number of months remaining in the calendar year. Thereafter, annual Assessments shall be paid as provided herein. In addition to the foregoing, each Owner purchasing a Parcel from the Declarant or a Builder shall pay an initial set-up fee to be deposited with the General Assembly and which shall be in such amount as the Declarant shall determine. In addition to the foregoing, any subsequent Owner purchasing a Parcel from an Owner other than the Declarant or a Builder shall also pay an initial set-up fee to be deposited with the General Assembly and which shall be in such amount as the Declarant shall determine. The Declarant expressly reserves the right to change the amount of the set-up fee at any time.

**7.11 Non-payment of Assessments.** Any Assessment or Fee not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of ten percent (10%) per annum or (ii) the maximum rate per annum allowed by law. The Board of



Governors shall have the authority to exercise and enforce any and all rights and remedies as provided in this Declaration or as otherwise available at law or in equity, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Parcel in like manner as a construction lien relating to non-payment of any such Assessment. In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Parcel and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner may be required to pay the costs, expenses and attorney fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney and paralegal fees incurred. The General Assembly on behalf of the other Owners shall have the power to bid on the Parcel at a foreclosure or other legal sale and to acquire and hold, lease, mortgage the same. Any lienholder holding a lien on a Parcel may pay, but shall not be required to pay, any unpaid Assessments payable with respect to any such Parcel, and upon such payment, such lienholder shall have a lien on said Parcel for the amounts paid of the same rank as the lien of the encumbrance without the necessity of having to file a notice or claim of such lien.

In addition to the foregoing, the Board of Governors shall have the right to suspend any Owner's voting rights and the right of such Owner, and such Owner's family, guests and invitees to use the recreational facilities in the Commons for any period during which any Assessment against such Owner's Parcel remains unpaid. No Owner may waive or otherwise escape liability for any of the Assessments or Fees established herein by non-use or abandonment of such Owner's Parcel or the Commons.

**7.12 Unexpended Assessments and Special Assessments.** All funds paid from time to time by Owners for Assessments and Special Assessments, from time to time on hand and unexpended, shall be deemed to be owned equally and in common by the Owners.

**7.13 Subordination of the Lien to Mortgages.** The liens of the General Assessments or Special Assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust encumbering the Parcel. Sale or transfer of any Parcel shall not affect the liens for General Assessments or Special Assessments; however, the sale or transfer of any Parcel pursuant to mortgage foreclosure or any proceeding in lieu thereof relating to a lien recorded prior to the General Assembly's own lien filing shall extinguish the lien of such General Assessments or Special Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from liability for any General Assessments or Special Assessments thereafter becoming due or from the lien thereof.

## ARTICLE VIII GENERAL COVENANTS AND RESTRICTIONS

**8.1 Creation of Covenants and Restrictions.** Each Owner of a Parcel, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to the following terms, provisions, covenants, and restrictions which run with the land and are perpetual and appurtenant to the Parcels:



(A) **Approval of Business Uses by Declarant.** Prior to the Turnover Date, no business may locate in the Community without first obtaining the approval of the Declarant, which approval may be withheld based upon the following criteria: (i) the nature of the business, (ii) the experience of the business operator, (iii) the reputation of the business owner, (iv) the capitalization of the business, or (v) such other criteria that Declarant may determine to be in the best interest of the development. Prior to entering into any contract to sell or lease all or any part of a Parcel in the Commercial District, the Owner thereof shall give notice to the Declarant specifying (i) the name of the proposed buyer or tenant, (ii) the location of the Parcel being conveyed, (iii) the nature of the proposed business, (iv) the experience of the business operator in such business, (v) the reputation of the business owner, (vi) the capitalization of the business, and (vii) such other information as the Declarant may specify. Within ten (10) days after the receipt of all such information in form satisfactory to the Declarant, the Declarant shall either approve or disapprove such transfer. In the event of approval, then the Parcel may be sold or leased to such proposed buyer or tenant and the business commenced in the Community. In the event of disapproval, then the Parcel may not be so sold and the business may not be opened in the Community.

(B) **Certain Uses Prohibited.** Notwithstanding the above subsection (A), prior to the Turnover Date, the following businesses are prohibited in the Community, unless owned, operated, or expressly permitted in writing by the Declarant or an affiliate of the Declarant: (i) real estate sales or brokerage offices for any type of real estate, (ii) property management companies, (iii) apartment rental services, (iv) a bank, credit union or other financial institution, (v) automated teller machines; (vi) a mortgage company, or (vii) any similar type of business. No Commercial or Residential Structure, Parcel, or any portion thereof shall be used for any noxious or offensive activity nor for any purpose prohibited by law or ordinance or which may become a nuisance, in the reasonable judgment of the Governors, to other Owners or Occupants. Notwithstanding the foregoing, by acceptance of a deed for their Parcel, whether or not the same is expressed in the deed, the Owners acknowledge that the Community shall consist of entertainment-related activities, restaurants, places that serve alcoholic beverages, commercial, and retail sales establishments and the presence of such activities and the odors, noise, and lights associated with such activities shall not be deemed to be nuisances or noxious or offensive activities.

(C) **Maintenance of Parcels.** The maintenance and repair of all Parcels and all Improvements situated thereon or therein, including, without limitation, all lawns, shrubbery, landscaping and the grounds on or within a Parcel, shall be the sole responsibility of the Owner of such Parcel. The Owner of each Parcel shall, in addition to the foregoing maintenance requirements, maintain, if required by the General Assembly, any portion of the Commons (or greenspace or right-of-way within the Common Ways) lying between the property line of such Owner's Lot and the curb of the adjacent Common Way.

(D) **Other Restrictions Affecting Parcels.** The Code and the Rules and Regulations set forth other terms, provisions, covenants, conditions, and requirements which shall be applicable to all, or only portions of, the Parcels within the Community. The Code, the Rules and Regulations may regulate placement and maintenance of garbage and trash containers and other matters affecting the attractiveness or safety of Parcels.



(E) **Rules and Regulations.** The initial Rules and Regulations are attached to and included in the bound volume of documents provided to all initial Parcel purchasers. The Rules and Regulations do not need to be recorded to be effective, but shall be available from the Board of Governors and will be provided to the Owners or posted in some conspicuous place in the Community. By this reference, the Rules and Regulations, as the same may be amended from time to time, are incorporated into and made a part of this Declaration. The Rules and Regulations are subject to modification and amendment, from time to time and at any time, solely by the action of the Board of Governors and without any prior notification to, or approval by, any of the Owners. The Board of Governors shall also have the right to adopt additional rules and regulations which shall be incorporated into and form a part of the Rules and Regulations. The Board of Governors shall provide notice to the Owners of any modification or amendment to the Rules and Regulations and any adoption of additional rules and regulations to be incorporated into the Rules and Regulations.

(F) **Compliance and Permits.** Each Owner shall maintain that Owner's Parcel and Dwelling in compliance with all applicable zoning ordinances and regulations of the City of Billings and Yellowstone County, Montana. To the extent that the City of Billings or any other governmental authority shall require permits for the erection of any improvements upon a Parcel, including, without limitation, fences, decks or other structures or improvements, the Owner of such Parcel shall be responsible for obtaining the same.

(G) **No Fuel Tanks.** No tank, bottle or container of fuel relating to any Dwelling shall be erected, placed or permitted above the surface level of any Parcel, except as may be required by the Declarant or an affiliate of the Declarant in the construction of a Dwelling.

(H) **No Temporary Structure as Residence.** No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used on any Parcel at any time as a temporary or permanent residence.

(I) **Insurance.** Nothing shall be done or kept on any Parcel that will increase the rate of, or result in cancellation of, insurance for any other Parcel or its contents, without the prior written consent of the General Assembly.

(J) **Soliciting.** The General Assembly may regulate or prohibit soliciting within the Community.

(K) **Nuisances and Illegal Activities.** No illegal activity shall be carried on upon any area of the Community, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may have a detrimental effect on the value of the Parcels, Community and/or Improvements.

## **8.2 Enforcement.**

(A) **Owner's Responsibility.** Each Owner and such Owners' Occupants shall conform and abide by the covenants contained in this Declaration and all of the Rules and Regulations.



Each Owner shall be responsible for assuring such compliance and any violation by an Owner's Occupants may be considered to be a violation by the Owner.

(B) **Remedies of Assembly.** In addition to the other rights and remedies provided elsewhere in this Declaration, the Rules and Regulations, or the Code, in the event of any violation of any of the provisions of this Declaration, the Rules and Regulations, or the Code by any Owner or Occupant, then the Board of Governors shall have the power and right, at its option to (i) impose monetary fines which shall constitute Individual Parcel Assessments, (ii) suspend an Owner's right, if any, to vote in the District Assembly, and (iii) suspend or terminate the privilege of such Owner and such Owner's Occupants to use all or any of the recreational facilities, if any, which constitute part of the Commons. Any action to be taken by the Board of Governors pursuant to this Section shall be subject to the satisfaction of the terms and provisions set forth below.

(C) **Notice, Hearing, and Fines.** In the event any Owner or Occupant is believed to be in violation of this Declaration, the Rules and Regulations or the Code, then the Board of Governors shall not impose a fine, suspend voting rights or suspend or terminate any other rights pursuant to Section 8.2(B) above unless written demand to cease and desist from such alleged violation shall be served upon the Owner responsible for such violation setting forth the information required by the terms and provisions of this Section 8.2(C) and providing such Owner the opportunity to appear before and be heard by the General Assembly. Any notices required by this Section 8.2(C) shall specify:

- (i) the alleged violation;
- (ii) the action required to abate such violation;
- (iii) the time period of not less than five (5) days during which the violation may be abated and corrected by such owner without further sanctions if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Rules and Regulations, or the Code may result in the imposition of sanctions; and
- (iv) the date, which shall be no earlier than five (5) days from the date of such written notice, and the time and place at which such Owner may appear before the next General Assembly meeting to be heard.

Each day an infraction continues shall be deemed a separate infraction subject to fine. However, the primary goal of this provision is not to punish but to conciliate and resolve problems. The Board of Governors may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fine charged at any stage bears interest at 10% per annum until paid in full. Any fines collected shall be contributed to the general fund of the General Assembly. The foregoing procedure shall only be applicable to the enforcement right specified in Section 8.2(B) above and shall not apply to the exercise of any other rights or remedies specified in any other section or provision of this Declaration, the Rules and Regulations or the Code.



(D) **Corrective Action for Parcel Maintenance.** If the General Assembly within which a Parcel is located determines after notice that any Owner has failed to maintain any part of such Owner's Parcel (including any Building or the yard, shrubbery, landscaping, and any wall, fence, garden structure, or other Improvements thereto) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration, the Rules and Regulations, or the Code, then the General Assembly shall also have the right (but not the obligation) without liability to enter upon such Parcel to correct, repair, restore, paint, and maintain any part of such Parcel and to have any objectionable items removed from the Parcel. All costs and expenses paid or incurred by the General Assembly in connection therewith shall constitute an Individual Parcel Assessment against the Owner of such Parcel.

### 8.3 **Architectural Review Committee.**

(A) **Membership.** The ARC shall initially be comprised of three (3) members. The initial members shall be appointed by the Declarant. All decisions of the Architectural Review Committee shall require majority consent of the committee. In the event of the death or resignation of any member of the ARC, the remaining members shall have full authority to designate a successor.

(B) **Architectural Control.** No Improvement shall be erected, placed or altered on any Parcel until the construction plans and specifications, a plan showing the location of the Improvement and a landscaping plan have been submitted to and approved by the ARC as to quality of workmanship and materials, diversity of color and design, compliance with the provisions of this Declaration and the Code, and as to location with respect to topography and finish grade elevation. Said plans, specifications and site plans shall show the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the plans for landscaping, and the grading plan. A copy of such plans and specifications as finally approved shall be deposited with the Architectural Review Committee.

(C) **Procedure and Fees.** The Architectural Review Committee shall not be entitled to any compensation for services performed for the initial approval of an Improvement. Thereafter, said Architectural Review Committee may charge each Owner a "request for action" or "approval" fee for each request for approval by that Owner. The Architectural Review Committee's approval or disapproval shall be in writing. In the event the Architectural Review Committee fails to approve or disapprove within 30 days after all required plans and specifications or any other matters requiring approval have been submitted to it, approval shall not be required and this Declaration and Code requirements shall be deemed to have been complied with fully.

(D) **Basis of Approval.** The Architectural Review Committee shall review submitted plans and specifications as to quality of workmanship and materials, compliance with the provisions of this Declaration and the Code, location with respect to topography and finish grade elevation, and the effect of landscaping on neighboring Lots and on the aesthetics of the Community. In reviewing the application and the materials submitted and in reaching a decision thereon, the Architectural Review Committee shall use its best efforts and judgment to assure



that all Improvements shall produce and contribute to an orderly and aesthetically diverse design and appearance, of a quality required to maintain the Community as a first-class development. Approval by the Architectural Review Committee shall be based, among other things, on; (i) the adequacy of the Lot dimensions in relation to the plans; (ii) the effects of location and use of proposed Improvements on neighboring Lots and Commons; (iii) relation of Improvements and finished ground elevations to existing topography and grades; and (iv) the conformity of the plans to the requirements of this Declaration and the Code. Because the review does include judgments about aesthetics by the Architectural Review Committee and because the aesthetic considerations cannot be clearly defined in this Declaration, the decisions of the Architectural Review Committee will be subjective in nature. Each Owner, by acceptance of a deed to any Parcel subject to this Declaration, agrees to accept the decisions of the Architectural Review Committee as final and binding, and waives any right to challenge those decisions through legal action.

(E) **Records.** Until such time as a replacement Architectural Review Committee is designated, all plans, applications and requests shall be submitted to said Architectural Review Committee at the following address: 1536 Mullowney Lane, Ste 100, Billings, MT 59101.

(F) **Architectural Review Committee Liability.** Neither the Architectural Review Committee nor any member thereof shall be liable for damages to any person submitting request for approval or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests.

(G) **Variance.** The Architectural Review Committee shall have the power and absolute discretion to authorize a variance from any of the requirements of this Declaration or the Code if it finds that the strict application thereof would, in its sole discretion and opinion, result in difficulties or undue hardship to the Owner or in the event the architecture of the proposed Improvement is such as to present in its opinion a particularly pleasing appearance compatible with the development.

(H) **Successor to Architectural Review Committee.** Declarant may turn over control of the Architectural Review Committee to the General Assembly any time, and shall turn over control on the Turnover Date. At such time as Declarant turns over control, the General Assembly's Board of Governors shall designate not less than three or more than five persons to serve and act as the Architectural Review Committee for all purposes hereunder.

## ARTICLE IX EASEMENTS

9.1 **Encroachment Easement.** Should any portion of any Dwelling, including the roof, as constructed on any Parcel by the Declarant or any Builder overhang or encroach on an adjacent Parcel or on any Commons and such encroachment is the result of unintentional placement, settling or shifting of any Improvements, then the Owner of the overhanging or encroaching Dwelling shall have an easement on such adjacent Parcel or Commons, as the case may be, to permit the overhanging or encroaching portion of such construction to remain in the same state and location as when said Dwelling was first occupied for residential use. Such



easement shall be appurtenant to and shall pass with title to the Parcel on which said improvements were constructed.

**9.2 Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities shall be designated on a separately recorded document. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Parcel and all improvements in it shall be maintained continuously by the Owner of the Parcel, except for those improvements for which a public authority or utility company is responsible. Every utility easement on each Parcel shall constitute an easement for utility purposes to serve any other Parcel or Commons. If any utilities and connections therefor serving a Parcel are located in part on a Parcel other than the Parcel being served by such utilities and connections, the utility company, the Owner of the Parcel being served, and contractors and employees of such company or Owner shall have the right and easement to enter upon the Parcel in which the utility line or connection is located for the repair, maintenance and replacement of such line and/or connection.

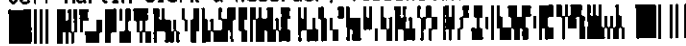
**9.3 Construction Easement.** Until the Turnover Date, the Commons and that portion of each Parcel not occupied by a Dwelling shall be subject to an easement allowing the Declarant and/or its employees, agents, contractors, and subcontractors to enter upon, over, across, and through the Commons and Parcel for the purpose of construction on adjoining Parcels, Commons and streets, including, without limitation, installing improvements therein and adjusting grades and slopes to facilitate storm water drainage.

**9.4 Easements for Encroachments within Commercial Structures.** With respect to all Parcels containing any Commercial Structures, the Declarant does hereby declare and establish a permanent and perpetual reciprocal appurtenant easement for encroachments of up to 12 inches (measured from the common property line of Parcels containing such Commercial Structures) by which the Building on one Parcel may encroach onto the adjacent Parcel to the extent such encroachment results from the unintentional placement, settling, or shifting of a Building on a Parcel containing such Commercial Structure.

**9.5 Reservation of Easements for Declarant and Others to Facilitate Access, Development, and Maintenance.** The construction of the Community is intended to follow design principles that allow interconnectivity of streets with neighboring communities. The Declarant hereby establishes and reserves for itself, its affiliates, the General Assembly, the City of Billings, each public utility company and their respective agents, employees, representatives, invitees, successors, and assigns, the following easements which may be assigned for the benefit of other properties owned by the Declarant, any affiliate of the Declarant, or their assigns that are adjacent to or reasonably near the Community (including property separated from the Community by a public road) whether or not such properties are developed as part of the Community:

(A) **Common Ways.** A permanent and perpetual non-exclusive easement over, across, through, under, and upon all Common Ways for the use of the same for vehicular and pedestrian





purposes, along with a permanent and perpetual non-exclusive easement for appropriate use of any pedestrian or bicycle paths thereon.

(B) **General Access.** A permanent and perpetual non-exclusive easement over, across, through and upon all of the Community for the purpose of (a) providing ingress to and from such real property in connection with performing (i) any inspections of the same to determine compliance with the terms and provisions of this Declaration and (ii) any of the duties of the Declarant, the General Assembly, any District Assembly, the Architectural Review Committee, or any of their respective agents, employees, representatives, invitees, successors and assigns, hereunder and under the Code; (b) mowing, removing, clearing, cutting, or pruning underbrush, weeds, stones, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance within the Community; and (c) exercising any of the rights and remedies granted or created by this Declaration, including, without limitation, the rights and remedies of the General Assembly set forth created or reserved in this Declaration; provided, however, that the foregoing easement shall not impose any duty or obligation on the Declarant, the General Assembly, any District Assembly, or the Architectural Review Committee to perform any of the foregoing actions.

(C) **Signage.** A permanent and perpetual non-exclusive easement over, across, through, and upon a strip of land ten (10) feet in width on each Parcel lying parallel to and running along the exterior boundary of each Parcel and any Common Ways that are directly adjacent to and abut such Parcel for the purpose of constructing, installing, maintaining, repairing, replacing and the use of traffic, informational, and directional signage, and related Improvements; provided, however, that neither the Declarant nor the General Assembly shall have any obligation to construct any of the foregoing Improvements.

(D) **Encroachments.** A permanent and perpetual non-exclusive easement over, across, through, and upon all Parcels for minor encroachments which may result from any Improvements which have been constructed on the Commons.

#### 9.6 **Easements between Parcels.**

(A) **Generally.** The design for the Community is intended to maximize land usage and sense of community by providing parks and open space while offering small, private yards for individual use. As provided by the Code, certain Buildings within may be attached or may be placed on or near the property line of a Parcel. The easements in this Section are intended to provide guidelines for reasonable cooperation between neighbors. The General Assembly may make rules for maintenance and use of easement areas and shared Improvements that shall be applied uniformly to all Parcels similarly configured within a District. No easements for light, air or view shall be deemed to be created or exist in favor of any Owner or such Owner's Parcel.

(B) **Subdivision.** Parcels may not be subdivided or separated into smaller lots nor may any portion of a Lot be separately conveyed, except by the Declarant or with the specific consent of the Architectural Review Committee. However, this shall not prohibit corrective deeds or similar corrective instruments. The Declarant may redefine Parcels at any time by dividing or combining Parcels or portions of Parcels and adjusting the boundary of any Parcel. The



Declarant shall also have the right to modify subdivision plats to make adjustments to Parcel boundary lines with the consent only of those Owners whose Parcel boundaries are to be changed.

(C) **Structural Party Walls.** The Owner of each Parcel upon which the exterior wall of a Building has been constructed on the property line of such Parcel does hereby grant to the Owner of the adjacent Parcel the permanent and perpetual right and easement to maintain and utilize the exterior wall of any such Building which forms a party wall between the two Parcels for both vertical and lateral support and the construction and attachment thereto of another Building. A wall will be considered a party wall only if it provides structural support for the Buildings, or parts of a Building, on more than one (1) Parcel and is situated on the property line of a Parcel. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner of each building that abuts such wall. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's Parcel or the party wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

(D) **Exterior Walls and Fences.** An exterior wall which supports a Building on any one Parcel or which encloses a courtyard on one Parcel which has been constructed along the property line of such Parcel and any fence constructed along the property line of any Parcel (collectively, an "Abutting Wall or Fence") shall not be considered a party wall or subject to the provisions of Section 9.6(C) above unless and until the Owner of the adjacent Parcel elects to construct and attach another Building thereto. To the extent the party wall easement created and granted pursuant to Section 9.6(C) above is not exercised by the Owner of the adjacent Parcel, then the provisions of this Section 9.6(D) shall be applicable to the use of the Abutting Wall or Fence. The Owner who constructs an Abutting Wall or Fence along the property line of such Owner's Parcel does hereby grant to the Owner of the adjacent Parcel the permanent and perpetual right and easement to erect and maintain on and along the Abutting Wall or Fence trellises, landscaping, and other landscaping-related improvements as well as attaching to such Abutting Wall or Fence additional walls or fencing subject to the following terms and conditions:

- (i) If any such trellises, landscaping, or other landscaping-related improvements or any additional walls or fencing are attached to such Abutting Wall or Fence, then the Owner of the adjacent Parcel installing the same shall (i) be responsible for any damage to the Abutting Wall or Fence caused by or resulting from such landscaping or other landscaping-related improvements or any additional walls or fencing attached to such Abutting Wall or Fence; (ii) be solely responsible for routine, nonstructural maintenance and repair (including painting) of that portion of the Abutting Wall or Fence which fronts any portion of such Owner's Parcel; and (iii) any such landscaping or other landscaping-related improvements or additional fencing or walls installed on or adjacent to the Abutting Wall or Fence shall not block the view from any windows of the Building which constitutes part of the Abutting Wall or Fence or be allowed to grow along or onto any windows or roofing on any such Building which constitutes part of such Abutting Wall or Fence; and



- (ii) Notwithstanding anything provided to the contrary herein, in the event the Owner of the Building or fence which constitutes an Abutting Wall or Fence elects to make any structural alterations or repairs to the Building or fence which constitutes an Abutting Wall or Fence, such Owner shall be entitled to make such alterations and repairs, and to otherwise enter upon the adjoining Parcel to undertake the same including, if reasonably necessary or required for such structural repairs, removing any and all landscaping or other landscaping-related improvements and any additional fences or walls which the adjoining Owner may have constructed or installed on or attached to the Abutting Wall or Fence.

(E) **Yard Easements.** To allow most efficient use of a Parcel while complying with any applicable setback requirements, a portion of a Parcel along a Parcel line may be subject to an easement for use by the adjoining Parcel Owner. Such easements may be designated on the recorded subdivision plat, in the Code, a separate declaration of easements or on the deed from the Declarant to the first Owner of such Lot other than the Declarant. Such use easements may be up to five feet (5') wide and shall run along a boundary line. Subject to regulation under the Design Code, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and may place air-conditioning equipment, fences, decks or patios and other fixtures (but not a primary structure or building) upon the easement area.

## ARTICLE X INSURANCE

**10.1 Insurance, Generally.** Each Dwelling and Commercial Structure and other Improvements located in the Community shall be insured against loss or damage by fire and other hazards as are covered under standard special perils insurance policies. The Board of Governors shall from time to time establish rules and regulations governing the obtaining and maintenance of such insurance either by the Owners, as the Board of Governors shall determine in its sole discretion, and each Owner shall comply with such rules and regulations. In all events, the obtaining and maintenance of such insurance shall be governed by the following:

(A) Each Dwelling and Commercial Structure and other Improvements located in the Community shall at all times be insured in an amount equal to the full replacement cost thereof.

(B) Each Owner shall provide the Board of Governors, upon request, with evidence of insurance required to be maintained under this Article by delivering a certificate of insurance to the Board of Governors evidencing such coverage in form reasonably acceptable to the Board of Governors, and upon renewal or replacement of any such policy, upon request of the Board of Governors, a current certificate of such renewal or replacement policy shall be delivered to the office of the General Assembly.

(C) Each policy shall provide that the insurer waives any right of subrogation against the Board of Governors, the applicable District Assembly and the Directors and Governors thereunder, their respective employees, agents, or contractors.



(D) Each policy shall provide that the same shall not be canceled, terminated, or amended without thirty (30) days prior written notice to the Board of Governors hereunder.

**10.2 Application of Proceeds.** In case of fire or other casualty covered by such insurance, the insurance proceeds shall be applied to reconstruction or repair of the improvements. The affected Dwelling or Commercial Structure and Improvements shall be restored to substantially the same condition in which the same existed prior to the fire or other casualty, with the same vertical and horizontal dimensions as before.

## ARTICLE XI ENFORCEMENT

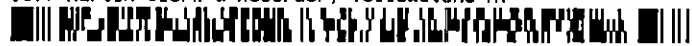
**11.1 Enforcement, Generally.** The General Assembly, the Governors, any Owner, the Declarant, or any Builder shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, easements, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration and all such rights shall be cumulative and not exclusive, and shall include the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, this Declaration, it being understood and agreed that the breach or prospective breach of this Declaration will cause irreparable harm which cannot be adequately compensated by damages. The result of every act or omission whereby any of the terms herein are violated in whole, or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law against a nuisance, either public or private, shall be applicable against every such result. Failure by the General Assembly, the Declarant, any Builder, the Governors, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**11.2 Costs of Enforcement.** If the General Assembly, the Governors, any Owner, the Declarant, or any Builder employs an attorney because of a violation of one or more of the provisions of this Declaration, or commences an action for the enforcement of this Declaration, and is wholly or partially successful in such action, the offending party shall be obligated to pay, on demand, all costs, charges and expenses, including reasonable attorney and paralegal fees, incurred by the General Assembly, the Governors, any Owner, the Declarant, or any Builder, as applicable.

## ARTICLE XII GENERAL PROVISIONS

**12.1 Severability.** Invalidation of any one of the covenants, conditions, or restrictions contained in this Declaration by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

**12.2 Amendment.** Prior to the Turnover Date, this Declaration may be amended by (i) a vote of three-fifths of the Governors with the concurrence of the Declarant or (ii) solely the Declarant, in such case all Owners, and mortgagees or holders of a deed of trust encumbering the Community, by acceptance of a deed, mortgage, or deed of trust, shall be deemed to consent to



any such amendment made solely by Declarant. Thereafter, this Declaration may be amended by (i) a vote of three-fifths of the Governors and a majority of each of the District Assembly Boards or (ii) a vote of a majority of the Owners, provided, any amendment that affects the Commercial District shall be approved by Owners having a majority of the votes within the Commercial District. Any such amendment before or after the Turnover Date may provide more or less restrictive terms and create lessor or greater burdens on any Owner, Lot, or Parcel, so long as the required vote as set forth herein is obtained and, if applicable, has the concurrence of the Declarant. Any such amendment shall be valid upon recordation in the Office of the Clerk and Recorder of Yellowstone County, Montana. Notwithstanding the foregoing, so long as the Declarant or any affiliate of the Declarant owns any Parcel in the Community, the Declarant may veto any proposed amendment to the Declaration or any proposed Rule or Regulation, modification, amendment, or termination thereof.

**12.3 Term.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Community, for a term of fifty (50) years from the date this Declaration is recorded, after which the said covenants and restrictions shall be automatically extended for successive periods of twenty (20) years each unless an instrument signed by the then Owners of at least seventy-five percent (75%) of the Parcels in the Community has been recorded, agreeing to terminate this Declaration as of the end of any such period. No such agreement of termination shall be effective unless made and recorded six (6) months in advance of the effective date of such termination.

**12.4 Governing Law.** This Declaration has been made in the State of Montana, and shall be governed by the laws of the State of Montana.

[Signature page to follow.]

RES

3843083

03/05/2018 04:04 PM Pages: 35 of 41 Fees: 287.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants, Conditions, and Restrictions on the day and year first above written.

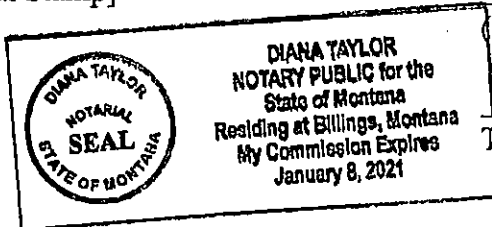
McCALL DEVELOPMENT, INC.

By: Brian McCall  
Its: Treasurer

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone    )

This record was acknowledged before me on March 6, 2018 by  
Brian McCall as Treasurer of or for McCALL DEVELOPMENT,  
INC.

[Official Stamp]



Diana Taylor  
(Signature of notarial officer)

\_\_\_\_\_  
Title of officer (if not shown in stamp)

**RES****3843083**03/06/2018 04:04 PM Pages: 37 of 41 Fees: 287.00  
Jeff Martin Clerk & Recorder, Yellowstone MT**EXHIBIT A****The Property**

The following lots in Annafeld Subdivision, First Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3831829:

**Garden District:**

Block 1: Lots 1 through 10, inclusive,  
Block 3: Lots 1 through 12, inclusive,  
Block 4: Lots 1 through 4, inclusive,

**River District:**

Block 1: Lots 11 through 23, inclusive,  
Block 2: Lots 1 through 12, inclusive,  
Block 3: Lots 13 through 34, inclusive,  
Block 5: Lot 1, and  
Block 6: Lot 1

**RES**

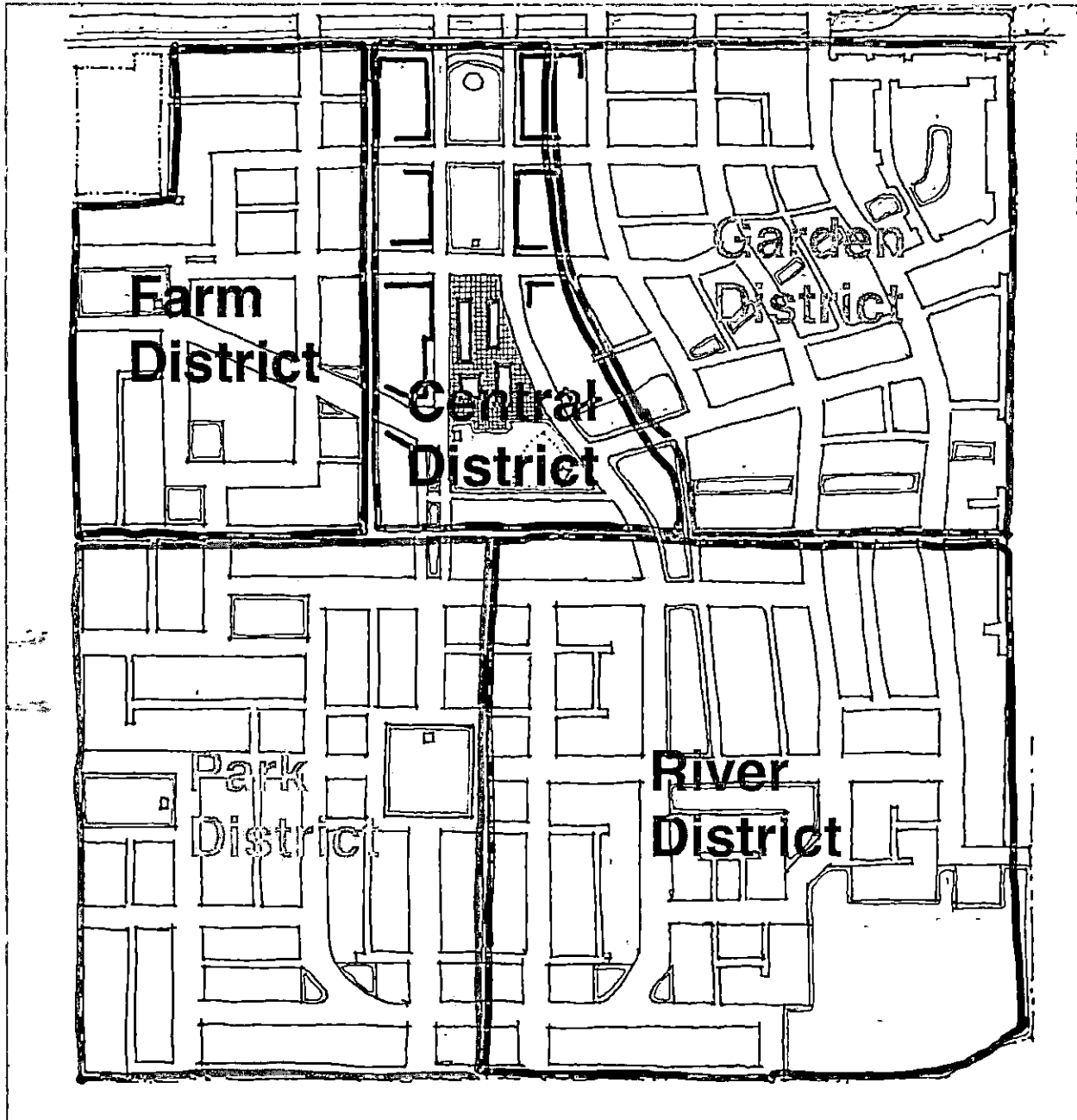
**3843083**

03/05/2018 04:04 PM Pages: 38 of 41 Fees: 287.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



**EXHIBIT B**

**Master Plan**





## EXHIBIT C

**Rules and Regulations  
of  
Annafeld Subdivision**

(A) **Trash; Approved Receptacles.** No area of the Community shall be used or maintained as a dumping ground. No trash, rubbish, garbage, trashcan or other receptacle therefor, other than those receptacles approved by the General Assembly shall be placed on any Parcel outside of a Dwelling or in a Commercial District. No incinerators are permitted in the Community. Except for recycling containers, all trash, garbage and other waste shall be kept in receptacles screened from view except on collection days. Receptacles for the storage or disposal of such material shall be kept in a clean and sanitary condition.

(B) **Signs.** Except as is permitted of the Declarant and its affiliates, no signage of any kind shall be displayed to the public view on any Parcel except in compliance with the Code and approval of the Architectural Review Committee, as provided in this Declaration.

(C) **Maintenance.** Each Owner shall maintain that Owner's Parcel in a neat attractive manner, including, without limitation, maintenance of the lawn and shrubbery. No Owner shall permit the lawn upon such Owner's Parcel, whether grass, legume or ivy, to grow in excess of six (6) inches in height. The foregoing requirement regarding lawn maintenance shall not apply to any Builder or Declarant prior to the sale of the Parcel at retail to an Owner other than a Builder.

(D) **Limitation on Pets/Livestock.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Parcel other than as permitted under the Code. Notwithstanding the foregoing, dogs, cats, or other household pets may be kept, provided with the exception of the Commercial District, they shall not be kept, bred, or maintained for any commercial purposes and provided that such household pets shall not exceed four (4) dogs and/or cats, collectively, in number per Dwelling at any one time. Each Owner shall comply with all ordinances, zoning, and regulations of the City of Billings relating to the supervision, control, responsibility, and maintenance of animals and/or pets in residential areas and shall maintain control of their pet at all times. No pets shall be allowed to run loose on the Commons. Owners shall be responsible for promptly cleaning up after their pets and for payment for any damage caused by their pets. Owners shall pay a fine, imposed by the Board of Governors, of \$50.00 for a second violation of any of these pet restrictions and a fine of \$100.00 for each violation thereafter. Such fines shall be an Individual Parcel Assessment, payable only by the offending Owner.

(A) **Accessory Buildings.** Accessory buildings are allowable so long as they comply with the zoning requirements and the provisions of this Declaration. Accessory buildings may not block vehicle or pedestrian access to Parcels, shall not be constructed within any easement and must be approved by the ARC.

(B) **Landscaping.** All Parcel areas not used as a building site, or under cultivation as a family garden, shall be landscaped in the manner set forth in the landscaping plan for the Parcel



approved by the ARC. Landscaping shall be maintained on a regular seasonal basis, including mowing lawns at least once every 14 days during the lawn growing season. Maintenance of all landscaping and other improvements on a Parcel shall be the responsibility of the Owner. Maintenance shall include, but not be limited to, watering, pruning and routine fertilizing and mulching of all plantings and plant beds, replacement of dead, dying and/or diseased trees and shrubs, prompt removal of weeds, trash and debris from plant beds and areas adjacent to shrubs and trees so as to keep said landscaping in a healthy, attractive and neat condition. If the Owner, after reasonable notice, fails or refuses to install required landscaping, or maintain it as required above, the Architectural Review Committee, through its duly authorized agents or employees, shall have the right to enter upon said Parcel at reasonable hours to perform said landscaping and/or maintenance. The costs of the materials and labor to perform such landscaping and/or maintenance shall be assessed against said Parcel as a Special Assessment and collected as provided in herein.

(C) **Swimming Pools.** No above-ground swimming pools shall be permitted.

(D) **Snow Removal.** Owners shall be responsible for snow removal from driveways and sidewalks on their Parcel and in the right-of-way adjoining their Parcel.

(E) **Vehicle and/or Equipment Storage.** No inoperable, dilapidated or junk vehicles of any nature may be kept upon any Parcel except in a fully enclosed garage. The exterior storage of boats, trailers, travel trailers, campers, motorcycles, recreational vehicles, automobiles or trucks, of any nature is prohibited unless screened from public view. No equipment or vehicles shall be parked or stored on lawns or driveways. No vehicle shall be parked in an alley or in a location which obstructs access to an alley at any time. Off-alley parking in designated spaces is permitted. No commercial vehicles, including trucks, semi-trailers or trailers, and no recreational vehicles of any type may be parked on any street or driveway except when making pick-ups or deliveries to a Parcel for loading or unloading or during construction.

(F) **Antennae/Wind Powered Electric Generators.** No wind powered electric generators shall be placed or maintained upon any portion of a Parcel without prior written approval of the Architectural Review Committee. No antennas or satellite dishes exceeding one meter in diameter or diagonal measurement, or any other device shall be installed on the exterior of any Building, on a Parcel, or on the Commons.

(G) **Lighting.** Exterior lighting installed on any Parcel shall either be indirect or of such controlled focus and intensity that such lighting will not disturb the adjacent Owners.

(H) **Mailboxes.** Mailboxes shall be clustered and will be provided by the Builder at the Builder's sole cost and expense. Mailboxes and keys to the box shall be replaced if necessary, with a mailbox identical in all respects with that originally provided, at the sole cost and expense of the Owner(s).

**RES****3843083**03/06/2018 04:04 PM Pages: 41 of 41 Fees: 287.00  
Jeff Martin Clerk & Recorder, Yellowstone MT**SUBORDINATION BY LENDER**

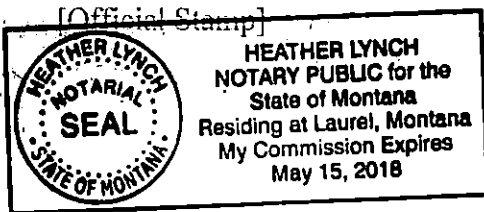
The undersigned beneficiary of various Deeds of Trust on the Property hereby covenants and agrees that all such Deeds of Trust and any and all of the liens, rights and obligations thereof, and all right, title and interest of the undersigned in or to the Property shall be and shall continue to be subject and subordinate to this Declaration.

**WESTERN SECURITY BANK,  
a Division of Glacier Bank**

By: *Jerry Simonson*Its: *Vice President*

STATE OF MONTANA     )  
                                      :SS  
County of Yellowstone    )

This record was acknowledged before me on March 5<sup>th</sup>, 2018 by  
Jerry Simonson as Vice President of **WESTERN SECURITY BANK, a**  
**Division of Glacier Bank.**



*[Signature]*  
(Signature of notarial officer)

*Notary Public*  
Title of officer (if not shown in stamp)

After recording, please return to:  
Candace L. Kimmet  
Karell Dyre Haney PLLP  
175 North 27<sup>th</sup> Street, Suite 1303  
Billings, MT 59101

**RES**

**3870643**

12/11/2018 11:11 AM Pages: 1 of 3 Fees: 21.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



**FIRST AMENDMENT**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR**  
**ANNAFELD SUBDIVISION**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ANNAFELD SUBDIVISION (this "First Amendment") is hereby made and entered into by MCCALL DEVELOPMENT, INC., a Montana corporation ("Declarant"), to amend the Declaration of Covenants, Conditions, and Restrictions for Annafeld Subdivision filed with the Clerk and Recorder for Yellowstone County on March 6, 2018 under Document No. 3843083 (the "Declaration").

**RECITALS**

- A. Pursuant to Section 12.2 of the Declaration, the Declaration may be amended solely by the Declarant prior to the Turnover Date ("Declarant's Right to Amend").
- B. The Turnover Date has not yet occurred.
- C. This First Amendment is hereby duly approved and adopted by Declarant, as evidenced by its signature below, pursuant to Declarant's Right to Amend and in accordance with the terms of the Declaration.

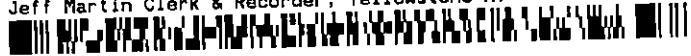
**NOW THEREFORE**, the Declaration is hereby amended as follows:

- 1. **Section 9.2.** The following is added to the end of Section 9.2 of the Declaration:  
  
"If any repair or maintenance work performed on underground utility lines located on public property or the Commons disrupts the surface improvements located on such property, then it shall be the responsibility of the Owners benefitted by such lines to pay for all repair and replacement costs to restore such improvements to their previous existing condition."
- 2. **Defined Terms.** Except as otherwise provided in herein, all capitalized terms used herein shall have the meanings ascribed to them in the Declaration.
- 3. **Ratification.** Except as specifically amended herein, the terms and conditions of the Declaration are hereby ratified.

RES

3870643

12/11/2018 11:11 AM Pages: 2 of 3 Fees: 21.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



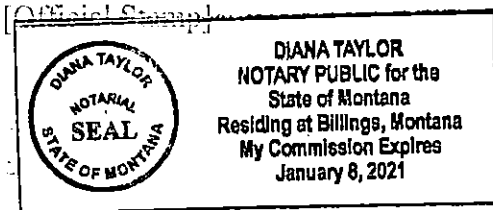
IN WITNESS WHEREOF, this First Amendment is executed this 10<sup>th</sup> day of December, 2018.

MCCALL DEVELOPMENT, INC.,  
a Montana corporation

By: [Signature]  
Its: Treasurer

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone    )

This record was acknowledged before me on Dec. 10, 2018 by Bradley McCall as Treasurer of or for MCCALL DEVELOPMENT, INC., a Montana corporation.



Diana Taylor  
(Signature of notarial officer)  
Notary  
Title of officer (if not shown in stamp)

**RES****3870643**12/11/2018 11:11 AM Pages: 3 of 3 Fees: 21.00  
Jeff Martin Clerk & Recorder, Yellowstone MT**EXHIBIT A****The Property**

The following lots in Annafeld Subdivision, First Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3831829:

**Garden District:**

- Block 1: Lots 1 through 10, inclusive,
- Block 3: Lots 1 through 12, inclusive,
- Block 4: Lots 1 through 4, inclusive,

**River District:**

- Block 1: Lots 11 through 23, inclusive,
- Block 2: Lots 1 through 12, inclusive,
- Block 3: Lots 13 through 34, inclusive,
- Block 5: Lot 1, and
- Block 6: Lot 1



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

**AMENDED SUBDIVISION IMPROVEMENTS AGREEMENT  
ANNAFELD SUBDIVISION, FIRST FILING  
CITY OF BILLINGS  
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**SIA****3880272**04/12/2019 03:46 PM Pages: 2 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT

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

## AMENDED SUBDIVISION IMPROVEMENTS AGREEMENT ANNAFELD SUBDIVISION, FIRST FILING

THIS AGREEMENT is made and entered into this 8<sup>th</sup> day of April, 2019, by and between MCCALL DEVELOPMENT, INC., whose address for the purpose of this agreement is 1536 Muldowney 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, First Filing, (formerly known as Josephine Landing Subdivision, First Filing) located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on the 4<sup>th</sup> day of May, 2016, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld Subdivision, First Filing; (formerly known as Josephine Landing Subdivision, First Filing); and

WHEREAS, at a regular meeting conducted on the 23<sup>rd</sup> day of May, 2016, the City Council conditionally approved a preliminary plat of Annafeld Subdivision, First Filing (formerly known as Josephine Landing Subdivision, First 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, First 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.





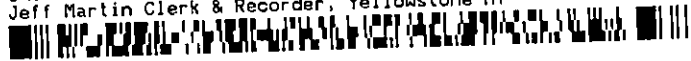
THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

None requested

II. CONDITIONS THAT RUN WITH THE LAND

- 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. 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 alley.
- 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 to 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 City of Billings for Annafeld Subdivision, First 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 the Yellowstone River Channel Migration Study sponsored by the Yellowstone River Conservation District Council and the U.S. Army Corp of Engineers has identified areas which may be susceptible to erosion by the Yellowstone River. Owners are encouraged to review the extent to which bank erosion may pose a threat to structures built in this subdivision.
- J. 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.
- K. 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, International Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All internal streets 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.
3. Elysian Road is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter and any necessary pavement widening will be constructed on the south side of Elysian Road frontage adjacent to the First Filing. Storm drain shall be installed as necessary, draining directly to Hogan's Slough and/or routed internally through the subdivision. A westbound left-turn bay is not required with First Filing but may be necessary with future filings of the Annafeld Planned Development. The curb and gutter installed with first filing will be designed such that it will accommodate a future turn bay. Elysian Road improvements will be completed by private contract or SID.
4. Story Road, from Walter Creek Boulevard to the Hogan's Slough crossing, will be constructed at the time of Phase II construction. 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 at this time. The Subdivider agrees to contribute up to 50 percent of the cost for the design, permitting, and construction of the Hogan's Slough crossing on Story Road. 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 an SID to recover additional design and construction costs.



The timing of the contribution 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, or Harmony Meadows 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.

With a future filing of Annafeld Subdivision, the Subdivider shall provide a Traffic Impacts Study update addressing the subdivision's connection to Story Road to the east and the impacts Annafeld Subdivision will have on Story Road. Any cash contributions that may be required due to those impacts will be identified in the updated Traffic Impacts Study.

5. A traffic accessibility study has been completed for the Annafeld Master Plan and submitted as part of the First Filing. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. Based on the additional lots created with Annafeld Subdivision, First Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

South Frontage Road/Mullowney Lane	4.58%	\$11,450.00
Mullowney Lane/Elysian Road	3.17%	\$7,925.00
Elysian Road/East Lane	3.42%	\$8,550.00
Elysian Road/South Frontage Road	1.40%	\$3,500.00

These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage contributions and dollar amounts are as outlined within the Traffic Impacts Study for Annafeld Subdivision, First Filing as submitted with the preliminary plat.

## **B. Alleys**

All alleys within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All alley 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. Alley pavement widths shall be 12-feet. The design cross-sections of said alleys shall be submitted to, and approved by, the City of Billings Public Works Department.

**C. Sidewalks**

Subdivider shall install handicap access ramps, where necessary, during street construction. 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.

In the event that portions of the required sidewalks within the subdivision are not constructed within three years of the date of recording of the final plat, the City may construct the remaining sidewalks and assess the individual lot owners for the costs associated with the sidewalk construction.

A sidewalk shall not be required along the south side of Elysian Road, due to the proximity of the proposed multi-use path, as allowed by 23-406 (B)(13), BMCC.

**D. Street Lighting**

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for First Filing by private contract or SID. A Street Light Maintenance District will be created for operation and maintenance of the lighting installed in First Filing.

**E. Traffic Control Devices**

1. Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
2. No traffic signals are required within this subdivision.



3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

**F. Access**

Access to the subdivision will be provided by Elysian Road. A secondary emergency access will be provided to East Lane, to be utilized until such time as future filings of the Annafeld Masterplan are developed. The secondary emergency access will be along the existing City trunk sanitary sewer easement. The access road shall be designed to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of 20-foot-wide. Alley access is also provided to all residential lots within the subdivision.

**G. Billings Area Bikeway and Trail Master Plan**

The Billings Area Bikeway and Trail Master Plan and the Zoo Montana to Riverfront Park Trail Feasibility Study both recommend a multi-use trail along the southern boundary of the Annafeld Planned Development. A public park on the upper bench area north of the Yellowstone River interface is being dedicated as part of First Filing, providing the opportunity for a future extension of the trail to the east and west.

A multi-use trail will be constructed along the south boundary of Elysian Road. Said multi-use trail shall extend from the east boundary of the subdivision to the easterly right-of-way line of East Lane. The multi-use trail or a temporary trail shall be constructed in conjunction with Phase I. A temporary trail may be constructed in lieu of the permanent trail to be utilized until such time as full construction of Elysian Road is completed. The alignment, and composition of the temporary path shall be approved by the City of Billings.

A pedestrian bridge associated with the multi-use trail along Elysian Road for crossing of the Hogan's Slough will be constructed. The Subdivider agrees to contribute up to 50 percent of the cost of the crossing, including design and permitting costs. The cash contribution for the crossing will be made at the time of Phase I construction. If the cash contribution is not sufficient to cover 50 percent of the crossing costs, the City retains the right to create a SID to recover additional design and construction costs.



#### **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 Muldowney 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 and alleyways.

**V. STORM DRAINAGE**

- A. A stormwater management plan shall be submitted to the Engineering Division prior to final plat approval. The storm drainage system consists of a curb and gutter surface collection and curb inlets that drain into storm drainage piping, as well as surface conveyance in some areas. The storm drain piping will discharge into mechanical stormwater filtration manholes, then into Hogan's Slough, or shall be routed through the water quality treatment pond located within the public park area on the southerly end of the subdivision, which will then also discharge 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, and associated improvements will be privately owned and maintained by the HOA. O&M requirements and HOA maintenance and fiscal responsibilities shall be as outlined within the Annafeld Subdivision, First Filing, Phase 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

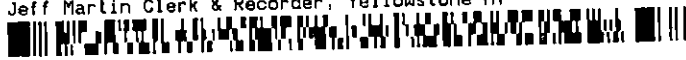
The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department - Engineering Division. The extension 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 and franchise 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 12-inch water mains in Walter Creek Boulevard and Mollie Rose Lane, and 8-inch water mains in Anna's Garden Lane, and Norma Jean Lane. The 12-inch water main in Walter Creek Boulevard will connect to the 16-inch water main trunk in Elysian Road, providing the feed for First 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.



Installation of the 8-inch water main in Story Road, to the easterly boundary of the subdivision shall be constructed at the time of construction of the Story Road crossing of Hogan's Slough.

**B. Sanitary Sewer**

Sanitary sewer service to the subdivision will be provided by connecting to the existing 24-inch gravity sewer trunk main along the easterly edge of the subdivision and continuing west through the subdivision. A lateral sanitary sewer will be extended from the trunk within Walter Creek Boulevard, Anna's Garden Lane, Mollie Rose Lane and Norma Jean Lane. 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.

Paved access to the existing trunk sanitary sewer manhole located on Lot 4, Block 1 will be provided at the time of lot development.

**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 alley right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the alleys.

**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 area of dedication required under section 76-3-621(1), MCA. The Subdivider and City agree that the parkland dedication has been met through the dedication of public parks within the Annafeld Planned Unit Development. The public parks will be developed by private contract or S.I.D.

Operation and maintenance of the public park areas will be by a park maintenance district created for the subdivision and administered by the City of Billings.



A park masterplan for the public park areas within Annafeld Subdivision, First Filing will be prepared by the Subdivider for review and approval by the City of Billings Parks and Recreation Department. The park masterplan shall be submitted within 120 days of filing of the final plat. The park masterplan will define the improvements and timing of construction of the park improvements.

#### **VIII. POSTAL DELIVERY**

The Subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.

#### **IX. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study has been performed for the subdivision. The report dated January 19, 2016, is available for review at the City of Billings Planning Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

#### **X. PHASING OF IMPROVEMENTS**

The Subdivider does not desire to commence development of all the lots within the subdivision but does desire to file the approved final plat of Annafeld Subdivision, First Filing and to sell and convey lots in said subdivision in phases. In accordance with the foregoing, the Subdivider and the City agree as follows:

- A. Prior to filing of the final plat, the Subdivider will enter into a private contract for the Phase I infrastructure improvements or shall monetarily secure said improvements.

As used herein, the Phase I lots to be served by the initial private contract are more particularly described as follows:

**Phase 1:** Lots 1-22 and Lot 24, Block 1, Lots 2-5, Block 2, Lots 2-4 and Lots 11-25, Block 3, Lots 1-3, Block 4, all in Annafeld Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana. (48 Lots)

- B. The remaining improvements will be installed by the Subdivider at a future date. The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the future phase improvements, and the Subdivider further

acknowledges that no building permits for lots within the future phases shall be issued until a private contract has been executed and necessary funding guarantees have been provided for the construction and installation of the public improvements to serve said lots. As used herein, the lots to be served by the said future phase improvements are more particularly described as follows:

**Phase 2:** Lot 23, Block 1, Lots 1 and Lots 6-8, Block 2, Lots 5-10 and Lots 26-34, Block 3, Lot 4, Block 4, all in Annafeld Subdivision, First Filing in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana. (25 Lots)

Pursuant to the foregoing agreement, the Subdivider shall execute and record a Declaration of Restriction on Transfers and Conveyances for said future phase lots, to be recorded concurrently with the recording of this agreement. Said Declaration notifies all third parties that said lots may not be legally sold, conveyed, or transferred until a Release executed by the City of Billings, and substantially in the form of Exhibit A attached hereto, has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No lots shall be released until a Certificate substantially in the form of Exhibit B attached hereto has been executed by the Department of Public Works stating that the above conditions have been met, which Certificate must accompany any request for a release. By the acceptance and recording of the agreement, the City does hereby authorize the Department of Public Works, and the Mayor and City Clerk of the City, to review any request for release and to execute such certificates and releases as may be necessary to evidence a release from the restriction against sale, conveyance, and transfer of lots in the subdivision.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, as one unit, all lots in the subdivision, nor shall the requirements for installation of improvements become effective as a result thereof; provided, however, that such sale shall be subject to the restrictions herein provided against the transfer of individual lots until the conditions set forth above have been met.

#### **XI. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by 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 private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

## **XII. LEGAL PROVISIONS**

- 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.

SIA

3880272

04/12/2019 03:46 PM Pages: 16 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER"

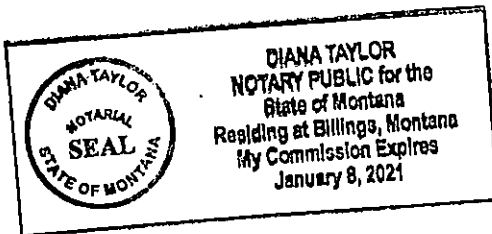
MCCALL DEVELOPMENT, INC.

By: Bradley McCall

Its: Treasurer

STATE OF MONTANA     )  
                                      : ss  
County of Yellowstone     )

On this 10 day of April, 2019, before me, a Notary Public in and for the State of Montana, personally appeared Bradley McCall, known to me to be the Treasurer of MCCALL DEVELOPMENT, INC. who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Diana Taylor  
Notary Public in and for the State of Montana  
Printed Name: Diana Taylor  
Residing at: Billings, MT  
My commission expires: 1-8-2021

SIA

3880272

04/12/2019 03:46 PM Pages: 17 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



This agreement is hereby approved and accepted by the City of Billings, this 8<sup>th</sup>  
day of April, 2019.

"CITY"

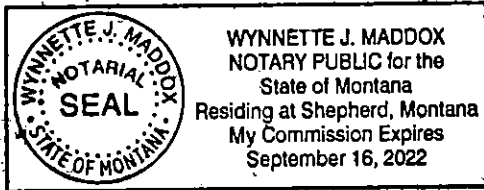
CITY OF BILLINGS, MONTANA

By: William A. Cole  
Mayor

Attest: Denise R. Bohlman  
City Clerk

STATE OF MONTANA     )  
                                      : SS  
County of Yellowstone    )

On this 11<sup>th</sup> day of April, 2019, before me, a Notary Public in  
and for the State of Montana, personally appeared William A. Cole and  
Denise R. Bohlman, 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.



Wynnette J. Maddox  
Notary Public in and for the State of Montana  
Printed Name: Wynnette J. Maddox  
Residing at: Shepherd MT  
My commission expires: 9.16.2022

**SIA****3880272**04/12/2019 03:46 PM Pages: 18 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT**WAIVER OF RIGHT TO PROTEST**

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and Founders of the hereinafter described real property, do hereby waive for a period of 20 years after the date that the final subdivision plat is filed, the right to protest the formation of one or more special improvement district(s) 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 incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and are supported by sufficient independent consideration to which the undersigned is a party and shall run with the land and shall be binding upon the undersigned, its 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 that is the subject of this waiver is more particularly described as follows:

**ANNAFELD SUBDIVISION, FIRST FILING****SUBDIVIDER/OWNER****MCCALL DEVELOPMENT, INC.**By: *Bradley McCall*Its: *Treasurer*

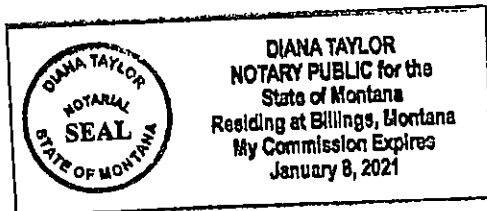
STATE OF MONTANA )

: ss

County of Yellowstone )

On this 10 day of April, 2019, before me, a Notary Public in and for the State of Montana, personally appeared Bradley McCall, known to me to be the person who executed the foregoing instrument as the Treasurer 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.



*Diana Taylor*  
Notary Public in and for the State of Montana  
Printed Name: *Diana Taylor*  
Residing at: *Billings, MT*  
My commission expires: *1-8-2021*



After recording, please return to:  
Candace L. Kimmet  
Karell Dyre Haney PLLP  
175 North 27<sup>th</sup> Street, Suite 1303  
Billings, MT 59101

RES

3914572

03/18/2020 01:01 PM Pages: 1 of 3 Fees: 21.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



**SECOND AMENDMENT**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR**  
**ANNAFELD SUBDIVISION**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ANNAFELD SUBDIVISION (this “First Amendment”) is hereby made and entered into by MCCALL DEVELOPMENT, INC., a Montana corporation (“Declarant”), to amend the Declaration of Covenants, Conditions, and Restrictions for Annafeld Subdivision filed with the Clerk and Recorder for Yellowstone County on March 6, 2018 under Document No. 3843083, as amended by the First Amendment to Declaration of Covenants, Conditions, and Restrictions for Annafeld Subdivision filed with the Clerk and Recorder for Yellowstone County on December 11, 2018 under Document No. 3870643 (collectively the “Declaration”).

**RECITALS**

- A. Pursuant to Section 12.2 of the Declaration, the Declaration may be amended solely by the Declarant prior to the Turnover Date (“Declarant’s Right to Amend”).
- B. The Turnover Date has not yet occurred.
- C. This Second Amendment is hereby duly approved and adopted by Declarant, as evidenced by its signature below, pursuant to Declarant’s Right to Amend and in accordance with the terms of the Declaration.

**NOW THEREFORE**, the Declaration is hereby amended as follows:

1. **Section 7.3.** The table in Section 7.3 is deleted and replaced by the following table:

<u>Parcel</u>	<u>Allocated Value</u>
Lot containing Single Family Home	1.0 Per Dwelling on Lot
Lot containing a Home that is part of a building spanning more than one Lot and containing multiple Homes, together with detached garage	0.5 Per Dwelling on Lot
Unit	0.5 Per Unit
Lot containing Multi-Family Apartments	0.25 Per Dwelling on Lot

2

**RES****3914572**

03/18/2020 01:01 PM Pages: 3 of 3 Fees: 21.00

Jeff Martin Clerk &amp; Recorder, Yellowstone MT

**EXHIBIT A****The Property**

The following lots in Annafeld Subdivision, First Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3831829:

**Garden District:**

- Block 1: Lots 1 through 10, inclusive,
- Block 3: Lots 1 through 12, inclusive,
- Block 4: Lots 1 through 4, inclusive,

**River District:**

- Block 1: Lots 11 through 23, inclusive,
- Block 2: Lots 1 through 12, inclusive,
- Block 3: Lots 13 through 34, inclusive,
- Block 5: Lot 1, and
- Block 6: Lot 1



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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
ANNAFELD SUBDIVISION, SECOND FILING  
CITY OF BILLINGS  
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**SIA****3902614**11/14/2019 11:49 AM Pages: 2 of 17 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT

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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
ANNAFELD SUBDIVISION, SECOND FILING**

THIS AGREEMENT is made and entered into this 28<sup>th</sup> day of October, 2019, 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, Second Filing located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on the 26th day of March, 2019, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld Subdivision, Second Filing; and

**WHEREAS**, at a regular meeting conducted on the 22nd day of April, 2019, the City Council conditionally approved a preliminary plat of Annafeld Subdivision, Second 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, Second 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.
- 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 alley.
- 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 to 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 homeowner's association for Annafeld Subdivision, Second 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 the Yellowstone River Channel Migration Study sponsored by the Yellowstone River Conservation District Council and the U.S. Army Corp of Engineers has identified areas which may be susceptible to erosion by the Yellowstone River. Owners are encouraged to review the extent to which bank erosion may pose a threat to structures built in this subdivision.
- J. 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.



- K. 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*.
- L. No trees are allowed to be planted in the alley. In addition, no shrubs taller than two feet are allowed to be planted in alleys.

### 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, International Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All internal streets 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.
3. Elysian Road is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter will be constructed on the south side of Elysian Road adjacent to the Second Filing and any necessary pavement widening to construct a parking lane and an eastbound and westbound travel lane. Storm drain shall be installed as necessary, draining to existing storm drain constructed with Annafeld Subdivision, First Filing. The improvements for Elysian Road improvements will be completed by private contract or by SID.

A westbound left-turn bay is not required with Second Filing, but will be required with future filings of the Annafeld Planned Development. The curb and gutter installed with Second filing will be designed such that it will accommodate a future turn bay. These additional Elysian Road improvements (including additional





widening, median and turn lane improvements) will be installed 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, Second Filing would be unlikely to utilize Story Road based on proximity to 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. A traffic impact analysis of the Story Road connection to Harmony Meadows Subdivision will be required with a future filing.

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. 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 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 has been completed for the Annafeld Subdivision, Second Filing. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. Based on the additional lots created with Annafeld Subdivision, Second Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

**South Frontage Road/Midland Road &**

Mullooney Lane	2.63%	\$6,575.00
Mullooney Lane/Elysian Road	2.50%	\$6,250.00
Elysian Road/East Lane	3.25%	\$8,125.00
Elysian Road/South Frontage Road	1.67%	\$4,175.00
East Lane/South Frontage Road	1.75%	\$4,375.00

These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage contributions and dollar amounts are as outlined within the Traffic Impacts Study for Annafeld Subdivision, Second Filing as submitted with the preliminary plat.

6. Subdivider shall install an all-way stop at the intersection of Elysian Road and Mullowney Lane. These improvements shall be installed by private contract or SID.

**B. Alleys**

All alleys within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All alley 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. Alley pavement widths shall be 12-feet. The design cross-sections of said alleys shall be submitted to, and approved by, the City of Billings Public Works Department. No trees are allowed to be planted in the alley. In addition, no shrubs taller than two feet are allowed to be planted in alleys.

**C. Sidewalks**

Subdivider shall install handicap access ramps, where necessary, during street construction. 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 the 5-foot wide boulevard sidewalk adjacent to private park (Lot 18, Block 4) at the time of private park development.



In the event that portions of the required sidewalks within the subdivision are not constructed within three years of the date of recording of the final plat, the City may construct the remaining sidewalks and assess the individual lot owners for the costs associated with the sidewalk construction.

A sidewalk shall not be required along the south side of Elysian Road, due to the proximity of the proposed multi-use path, as allowed by 23-406 (B) (13), BMCC.

**D. Street Lighting**

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for Second 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**

1. Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
2. No traffic signals are required within this subdivision.
3. Subdivider shall install an all-way stop at the intersection of Elysian Road and Mullowney Lane. These improvements shall be installed by private contract or SID.
4. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

**F. Access**

Access to the subdivision will be provided by Elysian Road, St George Blvd., Eva Marie Lane, Farmstead Avenue, Mollie Rose Lane, Annas Garden Lane and Norma Jean Lane. An additional existing emergency access will remain along the existing City trunk sanitary sewer easement to

East Lane. Alley access is also provided to all residential lots within the subdivision.

**G. Billings Area Bikeway and Trail Master Plan**

The Billings Area Bikeway and Trail Master Plan and the Zoo Montana to Riverfront Park Trail Feasibility Study both recommend a multi-use trail along the southern boundary of the Annafeld Planned Development. A public park on the upper bench area north of the Yellowstone River interface was dedicated with Annafeld Subdivision, First Filing, which provides an opportunity for a future extension of the trail to the east and west along Yellowstone River.

A multi-use trail has been constructed along the south boundary of Elysian Road. Said multi-use trail shall extend 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 west side of Annas Garden Lane, adjacent to Lots 1 and 12, Block 6, and on the south side of Norma Jean Lane, adjacent to Lots 1-5, Block 6. This multi-use path will ultimately provide a connection to a private park located in the center of the subdivision that will be created with a future filing.

**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 Mullen 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:

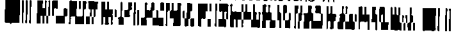
- An unobstructed gravel road or gravel road base must be within 150-feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum 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 and alleyways.

**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, Second 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 manholes, 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, Second 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 12-inch water mains in Mollie Rose Lane, and 8-inch water mains in Anna's Garden Lane, St George Blvd., Eva Marie Lane and Norma Jean Lane. 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 Subdivision, Second Filing will be provided by connecting to the existing 8-inch gravity sewer main located in Farmstead Avenue, Mollie Rose Lane, Annas Garden Lane and Norma Jean Lane. An existing 24-inch trunk sanitary sewer main extends through the subdivision. 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 alley right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the alleys.

**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 area of dedication required under section 76-3-621(1), MCA. The Subdivider and City agree that the parkland dedication has been met through the dedication of private park area within



Annafeld Subdivision, Second Filing and the remainder was met with additional public park dedication with Annafeld Subdivision, First Filing.

In addition, the lots within Annafeld Subdivision, Second Filing (not already participating in the park SID 1404 from Annafeld Subdivision, First Filing) shall 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, Second 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 shall provide centralized delivery boxes with sufficient pullout to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.





**X. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study has been performed for the subdivision. The report dated January 19, 2019, is available for review at the City of Billings Planning Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

**XI. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by 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 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 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.

SIA

3902614

11/14/2019 11:49 AM Pages: 15 of 17 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date Second above written.

"SUBDIVIDER"

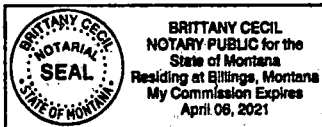
MCCALL DEVELOPMENT, INC.

By: *Bradley McCall*

Its: *Treasurer*

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

On this 27<sup>th</sup> day of September, 2019, before me, a Notary Public in and for the State of Montana, personally appeared Bradley McCall, known to me to be the Treasurer of **MCCALL DEVELOPMENT, INC.** who executed the foregoing instrument and acknowledged to me that he/she executed the same.



*Brittany Cecil*

Notary Public in and for the State of Montana

Printed Name: \_\_\_\_\_

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

(09/27/19) GTO/bc

SIA

3902614

11/14/2019 11:49 AM Pages: 17 of 17 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT

## 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 incident to the above 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 that is the subject of this waiver is more particularly described as follows:

ANNAFELD SUBDIVISION, SECOND FILING

SUBDIVIDER/OWNER

MCCALL DEVELOPMENT, INC.

By: *Bradley McCall*

Its: *Treasurer*

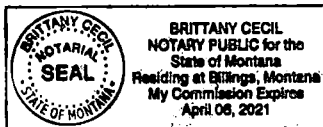
STATE OF MONTANA )

: ss

County of Yellowstone )

On this 27th day of September, 2019, before me, a Notary Public in and for the State of Montana, personally appeared Bradley McCall, known to me to be the person who executed the foregoing instrument as the Treasurer 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.



*Brittany Cecil*  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

After recording, please return to:  
Candace L. Kimmel  
Karell Dyre Haney PLLP  
175 North 27<sup>th</sup> Street, Suite 1303  
Billings, MT 59101

**DECLARATION OF EASEMENTS,  
COVENANTS AND RESTRICTIONS**

**MCCALL DEVELOPMENT, INC.**, a Montana close corporation, and **AMANDA C. OSTERWYK-MCKNIGHT and KRISTA L. OSTERWYK-MCKNIGHT** own all of the real property described below and hereby declare and grant the following easements (collectively, the "Easements", and each, an "Easement") and establish the following covenants and restrictions pertaining to the Easements, on the lots described below (collectively, the "Lots" and each, a "Lot").

**1. Easements.**

- (A) Each of the following Lots (collectively, the "Servient Lots", and each a "Servient Lot") shall be subject to an Easement more particularly described below:
- (i) Lots 9A, 10A, 11A, 12A, 13A, 14A, and 15A, Block 1, in Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3902613 shall have an easement approximately five (5) feet in width along their eastern boundary where such Lot borders an "Eastern Benefitted Lot" (defined below).
  - (ii) Lots 11 through 13, inclusive, Block 4, Lots 6 through 10, inclusive, Block 5, Lots 1 through 5, inclusive, Block 6, Lots 7 through 9, inclusive, Block 7, Lots 11 through 19, inclusive, Block 9, in Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3902613 shall have an easement approximately five (5) feet in width, parallel to and adjoining their entire western boundary.
  - (iii) Lots 2 through 5, inclusive, Block 5, Lots 2 through 6, inclusive, Block 7, and Lots 2 through 12, inclusive, Block 8, in Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to

the official plat on file in the office of the Clerk and Recorder of said County, under Document #3902613 shall have an easement approximately five (5) feet in width, parallel to and adjoining their entire northern boundary.

- (B) Each Easement described in subparagraph (A)(i) is for the benefit of the Lot adjoining and immediately east of the Easement (the "Eastern Benefited Lots"). Each Easement described this subparagraph (A)(ii) is for the benefit of the Lot adjoining and immediately west of the Easement (the "Western Benefited Lots"). Each Easement described this subparagraph (A)(iii) is for the benefit of the Lot adjoining and immediately north of the Easement (the "Northern Benefited Lots"). The Eastern Benefited Lots, Western Benefited Lots and Northern Benefited Lots are collectively referred to herein as the "Benefited Lots" and each a "Benefited Lot".
- (C) Each of the Easements described above are for preservation of recreational and aesthetic values, by extending the yard area of the Benefited Lot adjoining the Easement. Each Easement is non-exclusive and perpetual and is subject to the obligations and restrictions described below.

2. **Right to Access Easement by Owner of Servient Lot.** The owners of each Servient Lot shall have the right to use the Easement on that Servient Lot for construction, maintenance and repair of the home located on the Servient Lot, and for emergency services. In the event of an emergency, and during construction, the owners of the Servient Lot shall have the right to enter onto the Easement without prior notice. After construction is completed, if no emergency exists, the owners of a Servient Lots agree and covenant to give the owner of the adjoining Benefited Lot 48 hours notice before using the Easement located on that Servient Lot.

3. **Rights and Obligations of Lots Owners.** The owners of each Benefited Lot may place air-conditioning equipment, fences, decks or patios and other fixtures (but not a primary structure or building) on the Easement area and must plant and install landscaping upon the Easement. No landscaping shall be placed upon the Easement area until construction of the home, garage and driveway on the Servient Lot has been completed. If a Benefited Lot owner elects to construct a fence, a gate no narrower than 30 inches and no wider than 48 inches must be included and be designed in such a way as to allow the owner of the Servient Lot convenient access to the Easement area. Fences must be constructed in compliance with all provisions found in the Declaration of Covenants, Conditions, and Restrictions for Annafeld Subdivision as amended from time to time. The owner of each Benefited Lot shall maintain the Easement area serving that Benefited Lot. The owner of the Benefited Lot shall maintain insurance providing coverage for any improvements owned by the Benefited Lot owner and located on the Easement, it being understood that the insurance maintained by the owner of Servient Lot is not required to cover such improvements. Damage to the Easement area or any improvements on the Easement caused by the owner of either the Benefited Lot or the Servient Lot, or by the tenants, guests or family of the owner, shall be repaired by that owner at the sole expense of the owner responsible for the damage.

4. **Restrictions.** Subject to the terms of the Easements, the owners of each Benefited Lot and Servient Lot agree and covenant not to act in any way that would infringe upon the quiet enjoyment or use of the other's Lot once construction on each Lot has been completed. The owners of the Benefited Lots also agree and covenant not to perform or undertake any acts that would (i) affect or impact the subjacent or lateral support of the buildings on the Servient Lots, or each owner of a Servient Lot's ability to perform maintenance and repairs to the owner's property and structures adjoining the Easement, or (ii) unreasonably impair or obstruct the view or availability of natural lighting from the sun on the Servient Lot. The owners of each Servient Lot agree not to interfere with the Benefited Lot owners' Easement rights hereunder.

5. **Enforcement.**

- (A) **General.** All of the Easements may be enforced by an action for damages, for specific performance, and for an injunction, prohibitory or mandatory by the affected Lot owner. If an owner of either a Benefited Lot or Servient Lot violates any of the provisions contained herein, the non-violating Lot owner shall give written notice to the violating Lot owner specifying the violation and demanding prompt compliance. When applicable, the notice shall specify a reasonable remedial action. If the violating owner fails to comply and to complete remedial action within 10 days, when applicable, the non-violating owner may proceed with a court action for injunction and/or damages.
- (B) **Right to Repair.** If the owner of either a Benefited Lot or Servient Lot causes damage within the Easement and refuses to repair that damage after notice, the non-damaging owner may make the necessary repairs, and shall have a lien on the damaging owner's Lot for the cost of repair. If any owner of a Benefited Lot fails to maintain the improvements on the Easement serving that owner's Lot, or fails to obtain the required insurance, the owner of the Servient Lot may perform the maintenance or obtain the insurance and shall have a lien on the Benefited Lot for the costs of maintenance and/or insurance. A notice of any such lien shall be recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. The lien may be enforced in the same manner as a construction lien. Such lien shall not have priority over a first mortgage or trust indenture of record. In the event of foreclosure of the lien, or an action for injunction, specific performance or damages, the prevailing party shall be entitled to an award of costs and reasonable attorney fees.

6. **General Provisions.**

- (A) **Appurtenant.** The Easements shall be appurtenant and run with the land for the benefit of the owners of the Benefited Lots and shall be binding upon the owners of the Servient Lots and their respective heirs, successors, and assigns forever. All obligations of the Servient Lot owners and of the Benefited Lot owners set forth in this Declaration shall be appurtenant and covenants running with the land and shall be binding upon the obligated owners and their respective heirs, successors, and assigns forever. The Lots may be conveyed, hypothecated, encumbered, leased,

occupied, or otherwise used, improved or transferred in whole or in part, subject to this Declaration.

- (B) **Common Ownership.** The fact that the dominant and servient tenements of the Easements are now owned by the same party shall not extinguish or defeat the Easements, restrictions and covenants set forth herein, nor shall the Easements, covenants or restrictions be extinguished by subsequent merging of ownership of the dominant and servient tenements.

IN WITNESS WHEREOF, this Declaration is executed this 4<sup>th</sup> day of April, 2020.

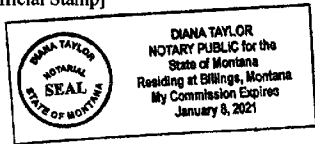
**MCCALL DEVELOPMENT, INC.**

By: *Brad McCall*  
Its: Treasurer

STATE OF MONTANA )  
 : ss.  
County of Yellowstone )

This record was acknowledged before me on 4-1, 2020 by Brad McCall as Treasurer of or for **MCCALL DEVELOPMENT, INC.**

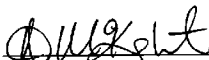
[Official Stamp]



*Diana Taylor*  
(Signature of notarial officer)

\_\_\_\_\_  
Title of officer (if not shown in stamp)





AMANDA C. OSTERWYK-MCKNIGHT

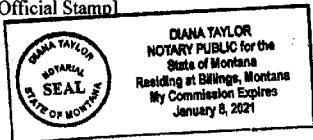
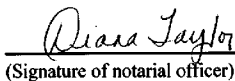


KRISTA L. OSTERWYK-MCKNIGHT

STATE OF MONTANA     )  
                                       : ss.  
 County of Yellowstone    )

This record was acknowledged before me on 4-1, 2020 by  
**AMANDA C. OSTERWYK-MCKNIGHT and KRISTA L. OSTERWYK-MCKNIGHT.**

[Official Stamp]

(Signature of notarial officer)

\_\_\_\_\_  
 Title of officer (if not shown in stamp)

**SUBORDINATION**

The undersigned beneficiary of various Deeds of Trust on the Lots hereby covenants and agrees that all such Deeds of Trust and any and all of the liens, rights and obligations thereof, and all right, title and interest of the undersigned in or to the Servient Lots shall be and shall continue to be subject and subordinate to the Easements and all right, title and interest created under and by the Easements in the Benefited Lot owners, and their heirs, successors and assigns.

**WESTERN SECURITY BANK,  
a Division of Glacier Bank**

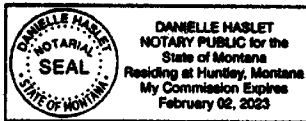
By: *Jan Peterson*  
Its: *SVP*

STATE OF MONTANA )  
 : ss.  
County of Yellowstone )

This record was acknowledged before me on March 31, 2020 by  
Jan Peterson as Senior Vice President of or for **WESTERN SECURITY  
BANK, a Division of Glacier Bank.**

[Official Stamp]

*Danielle Haslet*  
(Signature of notarial officer)



\_\_\_\_\_  
Title of officer (if not shown in stamp)

After recording, please return to:  
Candace L. Kimmet  
Karell Dyre Haney PLLP  
175 North 27<sup>th</sup> Street, Suite 1303  
Billings, MT 59101

**FIRST AMENDMENT**  
**TO**  
**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

**THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS** (this "Amendment") is hereby made and entered into by (i) **MCCALL DEVELOPMENT, INC.**, a Montana corporation (the "Declarant"), (ii) **JULIE A. SIMANTON and JOE W. SIMANTON** (the "Simanton Family"), and (iii) **TED R. LEWIS AND ANNE M. LEWIS** (the "Lewis Family" and together with the Simanton Family and the Declarant, the "Owners"), to amend the Declaration of Easements, Covenants and Restrictions recorded with the Clerk and Recorder for Yellowstone County, Montana on April 2, 2021 under Document No. 3916016 (the "Declaration").

**RECITALS**

- A. Owners wish to amend the Declaration in order to revise the legal description of some of the Easements.
- B. Owners own all of the Lots affected by the amendments set forth herein.

**NOW THEREFORE**, the Declaration is hereby amended as follows:

1. **Section 1(A)(i).** The following is added to the legal description set forth in Section 1(A)(i):

Lots 4A and 5A, Block 6, in Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3955743

2. **Section 1(A)(ii).** Section 1(A)(ii) is hereby deleted in its entirety and replaced with the following:

(1) Lots 11 through 13, inclusive, Block 4, Lot 6, Block 5, Lot 1, Block 6, Lots 7 through 9, inclusive, Block 7, Lots 11 through 19, inclusive, Block 9, in Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3902613; and (2) Lots 7A, 8A and 10A, Block 5, of Amended Plat of Lots 7-10, Block 5, and Lot 1A, Block 11, Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3959934 shall have an easement

approximately five (5) feet in width, parallel to and adjoining their entire western boundary.

3. **Defined Terms.** Except as otherwise provided in herein, all capitalized terms used herein shall have the meanings ascribed to them in the Declaration.

4. **Ratification.** Except as specifically amended herein, the terms and conditions of the Declaration are hereby ratified.

IN WITNESS WHEREOF, this Amendment is executed this 21 day of September, 2021.

**MCCALL DEVELOPMENT, INC.,**  
a Montana corporation

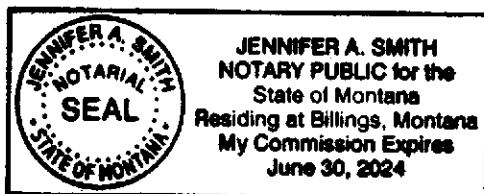
By: [Signature]  
Its: President

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone     )

This record was acknowledged before me on September 21, 2021 by Gregory J. McCall as President of or for **MCCALL DEVELOPMENT, INC.**

[Official Stamp]

[Signature]  
Notary Public



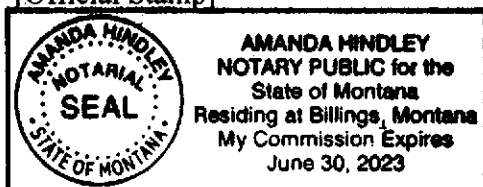
[Signature]  
**JULIE A. SIMANTON**

[Signature]  
**JOE W. SIMANTON**

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone     )

This record was acknowledged before me on September 13, 2021 by **JULIE A. SIMANTON and JOE W. SIMANTON.**

[Official Stamp]



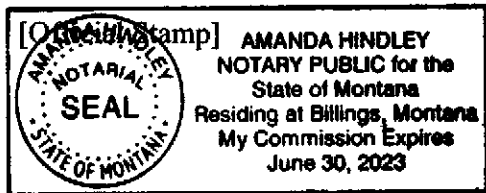
[Signature]  
Notary Public

  
\_\_\_\_\_  
**TED R. LEWIS**

  
\_\_\_\_\_  
**ANNE M. LEWIS**

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone    )

This record was acknowledged before me on September 24, 2021 by **TED R. LEWIS and ANNE M. LEWIS.**

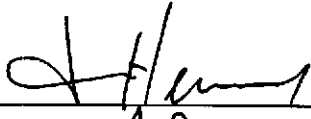


  
\_\_\_\_\_  
Notary Public

**SUBORDINATION**  
**(Western Security Bank)**

The undersigned beneficiary of various Deeds of Trust on the Lots affected by this Amendment hereby covenants and agrees that all such Deeds of Trust and any and all of the liens, rights and obligations thereof, and all right, title and interest of the undersigned in or to the Servient Lots affected by this Amendment shall be and shall continue to be subject and subordinate to the Easements and all right, title and interest created under and by the Easements in the Benefited Lot owners, and their heirs, successors and assigns.

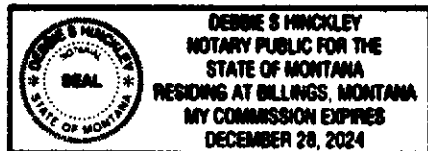
**WESTERN SECURITY BANK,**  
**a Division of Glacier Bank**

By:   
 Its: Att

STATE OF MONTANA                     )  
   : ss.  
 County of Yellowstone                )

This record was acknowledged before me on September 20, 2021 by  
Jordan Andrew as Lender of or for **WESTERN SECURITY**  
**BANK, a Division of Glacier Bank.**

[Official Stamp]



  
 (Signature of notarial officer)

Accounts Payable  
 Title of officer (if not shown in stamp)

After recording, please return to:  
Candace L. Kimmet  
Karell Dyre Haney PLLP  
175 North 27<sup>th</sup> Street, Suite 1303  
Billings, MT 59101

**EASE**

**3993314**

10/13/2021 09:32 AM Pages: 1 of 4 Fees: 32.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



**SECOND AMENDMENT**  
**TO**  
**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

**THIS SECOND AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS** (this “Amendment”) is hereby made and entered into by **(i) MCCALL DEVELOPMENT, INC.**, a Montana corporation (the “Declarant”) and **(ii) CARL O. HENNING and LACEY R. KOENIG** (“Lot 11 Owner” and together with the Declarant, the “Owners”), to amend the Declaration of Easements, Covenants and Restrictions recorded with the Clerk and Recorder for Yellowstone County, Montana on April 2, 2021 under Document No. 3916016, as amendment by that First Amendment to Declaration of Easements, Covenants and Restrictions recorded September 24, 2021, under Document No. 3991440 (collectively, the “Declaration”).

**RECITALS**

- A.** Owners wish to further amend the Declaration in order to revise the legal description of some of the Easements.
- B.** Owners own all of the Lots affected by the amendments set forth herein.

**NOW THEREFORE**, the Declaration is hereby amended as follows:

- 1. Section 1(A)(i).** The following is added to the legal description set forth in Section 1(A)(i):  
  
Lot 10, Block 4, in Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3902613.
- 2. Section 1(A)(ii).** Section 1(A)(ii) is hereby amended to remove the reference to Lot 11, Block 4.
- 3. Defined Terms.** Except as otherwise provided in herein, all capitalized terms used herein shall have the meanings ascribed to them in the Declaration.
- 4. Ratification.** Except as specifically amended herein, the terms and conditions of the Declaration are hereby ratified.



IN WITNESS WHEREOF, this Amendment is executed this 8<sup>th</sup> day of October, 2021.

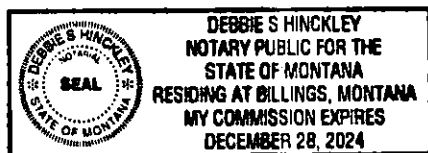
MCCALL DEVELOPMENT, INC.,  
a Montana corporation

By: [Signature]  
Its: President

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone    )

This record was acknowledged before me on October 8, 2021 by  
Gregory McCall as President of or for MCCALL DEVELOPMENT,  
INC.

[Official Stamp]



[Signature]  
Notary Public





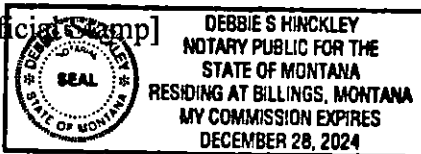
CARL O. HENNING

LACEY R. KOENIG

STATE OF MONTANA     )  
  : ss.  
County of Yellowstone     )

This record was acknowledged before me on October 8, 2021 by CARL O. HENNING.

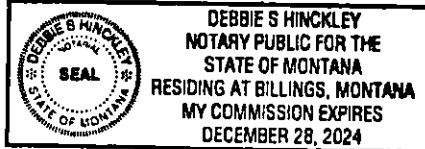
[Official Stamp]

  
Notary Public

STATE OF MONTANA     )  
  : ss.  
County of Yellowstone     )

This record was acknowledged before me on October 8, 2021 by LACEY R. KOENIG.

[Official Stamp]

  
Notary Public

**SUBORDINATION**  
**(Western Security Bank)**

The undersigned beneficiary of various Deeds of Trust on the Lots affected by this Amendment hereby covenants and agrees that all such Deeds of Trust and any and all of the liens, rights and obligations thereof, and all right, title and interest of the undersigned in or to the Servient Lots affected by this Amendment shall be and shall continue to be subject and subordinate to the Easements and all right, title and interest created under and by the Easements in the Benefited Lot owners, and their heirs, successors and assigns.

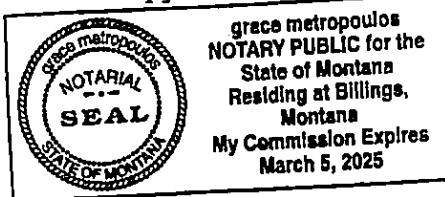
**WESTERN SECURITY BANK,**  
**a Division of Glacier Bank**

By: *[Signature]*  
Its: *Ap*

STATE OF MONTANA                    )  
  : ss.  
County of Yellowstone            )

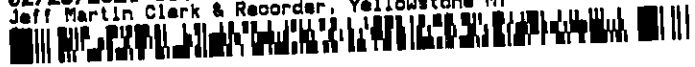
This record was acknowledged before me on Oct. 6<sup>th</sup>, 2021 by  
Jordan Hennessy as AVP of or for **WESTERN SECURITY**  
**BANK, a Division of Glacier Bank.**

[Official Stamp]



*Grace Metropoulos*  
(Signature of notarial officer)

\_\_\_\_\_  
Title of officer (if not shown in stamp)



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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
ANNAFELD SUBDIVISION, THIRD FILING  
CITY OF BILLINGS  
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**SIA****3961164**02/25/2021 03:17 PM Pages: 2 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT

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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
ANNAFELD SUBDIVISION, THIRD FILING**

**THIS AGREEMENT** is made and entered into this 25<sup>th</sup> day of February, 2021, 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, Third Filing located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on the 26th day of March, 2019, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld Subdivision, Third Filing; and

**WHEREAS**, at a regular meeting conducted on the 22nd day of April, 2019, the City Council conditionally approved a preliminary plat of Annafeld Subdivision, Third 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, Third 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.
- 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 alley.
- 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 to 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, Third 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 the Yellowstone River Channel Migration Study sponsored by the Yellowstone River Conservation District Council and the U.S. Army Corp of Engineers has identified areas which may be susceptible to erosion by the Yellowstone River. Owners are encouraged to review the extent to which bank erosion may pose a threat to structures built in this subdivision.
- J. 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.

- K. 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, International Building Code, 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-foot 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. Elysian Road is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter and any necessary pavement widening will be constructed



on the south side of Elysian Road frontage adjacent to the Third Filing. Improvements will also include widening of Elysian Road to construct a turn lane from Annafeld Parkway West east to the bridge at Hogan Slough. Full access will be provided at Walter Creek Boulevard and may be provided at St. George Boulevard. A roundabout may be constructed (but is not required by the City) at the intersection of Elysian Road and Annafeld Parkway East and West. If a roundabout is not constructed, a restricted access to Elysian Road must be provided at both Annafeld Parkway East and Annafeld Parkway West. Annafeld Parkway West is to be a one-way access with the travel direction to the south. The access for Annafeld Parkway West at Elysian Road shall allow only left-turn in and right-turn in movements from Elysian Road. Annafeld Parkway East is to be a one-way access to Elysian Road with the travel direction to the north. The access for Annafeld Parkway East at Elysian Road shall allow only northbound right-turn out movements. No northbound left-turn movements out or through movements will be allowed at the intersection of Annafeld Parkway East and Elysian Road. Storm drain shall be installed as necessary, draining directly to Hogan's Slough and/or routed internally through the subdivision. The design cross-section of said street shall be submitted to, and approved by, the City of Billings Public Works Department. Elysian Road improvements will be completed by private contract or SID.

5. 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, Third Filing would be unlikely to utilize Story Road based on proximity to 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. A traffic impact analysis of the Story Road connection to Harmony Meadows Subdivision is required with future filings.

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. 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 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.
6. A traffic accessibility study has been completed for the Annafeld Subdivision, Third Filing. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. Based on the additional lots created with Annafeld Subdivision, Third Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

**South Frontage Road/Midland Road &**

Muldowney Lane	2.54%	\$6,350.00
South Frontage Road/East Lane	2.02%	\$5,050.00
Muldowney Lane/Elysian Road	2.08%	\$5,200.00
Elysian Road/East Lane	4.25%	\$10,625.00
Elysian Road/South Frontage Road	2.02%	\$5,050.00

These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage contributions and dollar amounts are as outlined within the Traffic Impacts Study for Annafeld Subdivision, Third Filing as submitted with the preliminary plat.

**B. Alleys**

All alleys within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All alley 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. Alley pavement widths shall be



12-feet. The design cross-sections of said alleys shall be submitted to, and approved by, the City of Billings Public Works Department. No trees are allowed to be planted in the alley. In addition, no shrubs taller than two feet are allowed to be planted in alleys.

**C. Sidewalks**

Subdivider shall install handicap access ramps, where necessary, during street construction. 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 the 5-foot wide boulevard sidewalk adjacent to private parks (north side of Lot 17, Block 5; north side of Lot 19, Block 7; Lot 27, Block 8; Lot 1, Block 11;) at the time of private park development.

In the event that portions of the required sidewalks within the subdivision are not constructed within three years of the date of recording of the final plat, the City may construct the remaining sidewalks and assess the individual lot owners for the costs associated with the sidewalk construction.

A sidewalk shall not be required along the south side of Elysian Road, due to the proximity of the existing multi-use path, as allowed by 23-406 (B) (13), BMCC.

**D. Street Lighting**

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for Third 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**

1. Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
2. No traffic signals are required within this subdivision.



3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

**F. Access**

Access to the subdivision will be provided by Elysian Road, Farmstead Avenue, Mollie Rose Lane, Annas Garden Lane and Norma Jean Lane. An additional existing emergency access will remain along the existing City trunk sanitary sewer easement to East Lane. Alley access is also provided to all residential lots 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 shall extend 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 east side of St. George Boulevard, adjacent to Lots 11, 12, and 17, Block 5; Lots 11, 12 and 19, Block 7; and on the south side of Norma Jean Lane, adjacent to Lots 6, Block 6. This multi-use path will ultimately provide a connection to a private park located in the center of the subdivision that will be created with a future filing.

**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 Elysian 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 and alleyways.

## **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, Third 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, Third 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 12-inch water mains in Mollie Rose Lane and St. George Boulevard from Mollie Rose Lane to Norma Jean Lane, and Norma Jean Lane east of St. George Boulevard. 8-inch water mains in the remaining portion of St. George Boulevard, Eva Marie Lane, Annas Garden Lane, Johannis Meadow Lane, and River Park Drive. 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 Subdivision, Third Filing will be provided by connecting to the existing 8-inch gravity sewer main located in Farmstead Avenue, Mollie Rose Lane, Annas Garden Lane and Norma Jean Lane. A connection will also be made to the existing 24-inch trunk sanitary sewer main extends through the subdivision. 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 alley right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the alleys.



## **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 area of dedication required under section 76-3-621(1), MCA. The Subdivider and City agree that the parkland dedication has been met through the dedication of private park area within Annafeld Subdivision, Third Filing and the remainder was met with additional public and private park dedication with Annafeld Subdivision, First and Second Filings.

In addition, the lots within Annafeld Subdivision, Third Filing (not already participating in the park SID 1404 from Annafeld Subdivision, First Filing) shall 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, Third 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 shall provide centralized delivery boxes with sufficient pullout to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.

**X. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study has been performed for the subdivision. The report dated January 19, 2019, is available for review at the City of Billings Planning Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

**XI. 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.

**XII. 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 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



**SIA****3961164**02/25/2021 03:17 PM Pages: 15 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT

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.

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Jeff Martin Clerk & Recorder, Yellowstone MT



IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date Third above written.

“SUBDIVIDER”

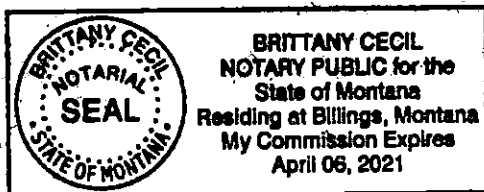
MCCALL DEVELOPMENT, INC.

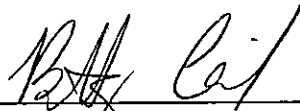
By: 

Its: Vice-President

STATE OF MONTANA     )  
                                      : ss  
County of Yellowstone    )

On this 29<sup>th</sup> day of January, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Bradley McCall, known to me to be the Vice-President of **MCCALL DEVELOPMENT, INC.** who executed the foregoing instrument and acknowledged to me that he/she executed the same.



  
Notary Public in and for the State of Montana  
Printed Name: Brittany Cecil  
Residing at: Billings, Montana  
My commission expires: April 6, 2021

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Jeff Martin Clerk & Recorder, Yellowstone MT



This agreement is hereby approved and accepted by the City of Billings, this 22nd  
day of February, 2021.

"CITY"



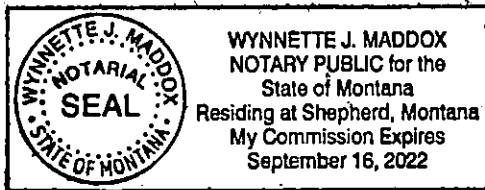
CITY OF BILLINGS, MONTANA

By: William A Cole  
Mayor

Attest: Denise R. Bohlman  
City Clerk

STATE OF MONTANA     )  
                                      : ss  
County of Yellowstone    )

On this 22nd day of February, 2021, before me, a Notary Public in  
and for the State of Montana, personally appeared William A Cole and  
Denise R Bohlman, 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.



Wynnette J Maddox  
Notary Public in and for the State of Montana  
Printed Name: Wynnette J Maddox  
Residing at: Shepherd MT  
My commission expires: 9-16-2022

**SIA****3961164**02/25/2021 03:17 PM Pages: 18 of 18 Fees: 5.00  
Jeff Martin Clerk & Recorder, Yellowstone MT**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 incident to the above 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 that is the subject of this waiver is more particularly described as follows:

ANNAFELD SUBDIVISION, THIRD FILING

SUBDIVIDER/OWNER

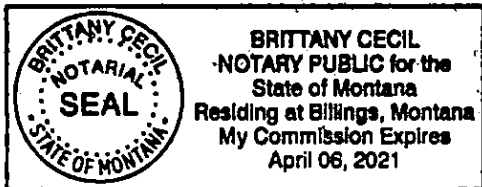
MCCALL DEVELOPMENT, INC.

By: *Bradley McCall*  
Its: *Vice President*

STATE OF MONTANA           )  
  ): ss  
County of Yellowstone       )

On this 29<sup>th</sup> day of January, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Bradley McCall, known to me to be the person who executed the foregoing instrument as the Vice President 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.



*Brittany Cecil*  
Notary Public in and for the State of Montana  
Printed Name: Brittany Cecil  
Residing at: Billings, Montana  
My commission expires: April 6, 2021

After recording, please return to:  
Candace L. Kimmet  
Karell Dyre Haney PLLP  
175 North 27<sup>th</sup> Street, Suite 1303  
Billings, MT 59101

RES

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09/23/2022 02:56 PM Pages: 1 of 6 Fees: 48.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



**THIRD AMENDMENT**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR**  
**ANNAFELD SUBDIVISION**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ANNAFELD SUBDIVISION (this "Third Amendment") is hereby made and entered into by MCCALL DEVELOPMENT, INC., a Montana corporation ("Declarant"), to amend the Declaration of Covenants, Conditions, and Restrictions for Annafeld Subdivision recorded with the Clerk and Recorder for Yellowstone County, Montana on March 6, 2018 under Document No. 3843083, as amended by the First Amendment to Declaration of Covenants, Conditions, and Restrictions for Annafeld Subdivision recorded with the Clerk and Recorder for Yellowstone County, Montana on December 11, 2018 under Document No. 3870643 and Second Amendment to Declaration of Covenants, Conditions and Restrictions for Annafeld Subdivision recorded with the Clerk and Recorder of Yellowstone County, Montana on March 18, 2020 under Document No. 3914572 (collectively the "Declaration").

**RECITALS**

- A. Pursuant to Section 2.3 of the Declaration, the Declarant may cause additional properties to be made subject to the Declaration by executing and recording an amendment thereto all without the consent of any Owner, mortgagee or holder of any deed of trust encumbering the Community ("Declarant's Right to Amend").
- B. This Third Amendment is hereby duly approved and adopted by Declarant, as evidenced by its signature below, pursuant to Declarant's Right to Amend and in accordance with the terms of the Declaration.

**NOW THEREFORE**, the Declaration is hereby amended as follows:

- 1. **Property**. The definition of Property set forth in Exhibit A to the Declaration is hereby amended and replaced with the attached **Exhibit A**.
- 2. **Exhibit B**. The Exhibit B attached to the Declaration is hereby replaced in its entirety with the attached **Exhibit B**.
- 3. **Defined Terms**. Except as otherwise provided in herein, all capitalized terms used herein shall have the meanings ascribed to them in the Declaration.
- 4. **Ratification**. Except as specifically amended herein, the terms and conditions of the Declaration are hereby ratified.



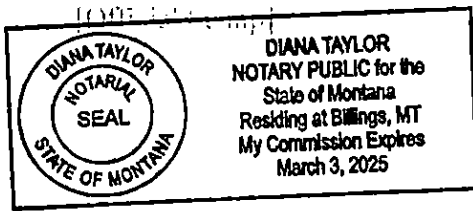
IN WITNESS WHEREOF, this Third Amendment is executed this 15<sup>th</sup> day of September, 2022.

MCCALL DEVELOPMENT, INC.,  
a Montana corporation

By: [Signature]  
Its: Chief Executive Officer

STATE OF MONTANA     )  
  : ss.  
County of Yellowstone     )

This record was acknowledged before me on Sep 15, 2022 by Breg McCall as Chief Executive Officer of or for MCCALL DEVELOPMENT, INC., a Montana corporation.



[Signature: Diana Taylor]  
(Signature of notarial officer)

\_\_\_\_\_  
Title of officer (if not shown in stamp)

**EXHIBIT A****The Property**

The following lots in Annafeld Subdivision, First Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3831829:

**Garden District:**

Block 1: Lots 5 through 10, inclusive, Portion of Lot 24 (Park),  
Block 3: Lots 2 through 12, inclusive, Lot 36 (Park), and  
Block 4: Lot 3,

**River District:**

Block 1: Lots 11 through 23, inclusive, Portion of Lot 24 (Park), and  
Lot 25 (Park),  
Block 2: Lots 1 through 5, inclusive, Lot 12, Lot 13 (Park), and  
Block 3: Lots 13 through 34, inclusive, and Lot 35 (Park),

The following lot in the Amended Plat of Lots 1 and 2, Block 4, Annafeld Subdivision, First Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3862576:

**Garden District:**

Block 4: Lot 2A,

The following lots in the Amended Plat of Lot 4, Block 1, Annafeld Subdivision, First Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3862926:

**Garden District:**

Block 1: Lot 4A, Lot 4B (Right of Way Tract),

The following lots in the Amended Plat of Lots 6 through 10, Block 2, Annafeld Subdivision, First Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3872956:

**River District:**

Block 2: Lots 6A, 7A, 9A, and 10A,



The following lots in Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3902613:

Garden District:

- Block 1: Lots 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 11A, 12A, 13A, 14A, 15A, 16A, and 17A,
- Block 3: Lots 1A, 1B, 1C, 1D, 1E, and 1F,
- Block 4: Lots 4A and 5 through 13, inclusive, Lot 14 (Park),
- Block 7: Lots 1 through 6, inclusive,
- Block 8: Lots 1 through 17, inclusive, and
- Block 9: Lots 1 through 19, inclusive,

River District

- Block 5: Lots 1 through 6, inclusive,
- Block 6: Lot 1, and
- Block 7: Lots 7 through 9, inclusive,

The following lots in the Amended Plat of Lots 2-5, Block 6, and Lot 1, Block 11, Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3955743:

River District:

- Block 6: Lots 2A, 4A, 5A, and Lot 11 (Park),

The following lots in the Amended Plat of Lots 7-10, Block 5, and Lot 1A, Block 11, Annafeld Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3959934:

River District:

- Block 5: Lots 7A, 8A, and 10A,

The following lots in Annafeld Subdivision, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3961163:

River District:

- Block 2: Lots 11, and Lots 14 through 23, inclusive,
- Block 5: Lots 11 through 16, inclusive, and Lot 17 (Park),
- Block 6: Lots 6 through 10, inclusive,
- Block 7: Lots 10 and 11, and
- Block 16: Lots 1 through 4, inclusive,



Garden District:

Block 8: Lots 18 through 26, inclusive, and 28 through 45, inclusive, and 27 (Park),  
Block 7: Lots 12 through 18, inclusive, and Lot 19 (Park),

Central District:

Block 10: Lots 1, 2, 4, and 5,  
Block 11: Lot 1 (Park), and  
Block 12: Lots 1 through 3, inclusive,

Park District:

Block 13: Lots 1 through 3, inclusive,  
Block 14: Lots 1 through 8, inclusive,  
Block 15: Lots 1 through 11, inclusive, and  
Block 16: Lots 5 through 7, inclusive,

The following lots in Annafeld Subdivision, Fourth Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 4018177.

Central District:

Block 10: Lots 3A, 3B, 3C, 3D, and 3E, inclusive,

Park District:

Block 13: Lots 4 through 12, inclusive,  
Block 14: Lots 9 through 16, inclusive,  
Block 15: Lots 12 through 16, inclusive, 18 through 25, inclusive, and Lot 17 (Park),  
Block 16: Lots 8 through 15, inclusive,  
Block 21: Lots 1 through 18, inclusive,  
Block 22: Lots 1 through 8, inclusive,  
Block 23: Lots 1 through 10, inclusive,  
Block 24: Lots 1 through 5, inclusive,  
Block 25: Lot 1 (Park),  
Block 26: Lots 1 through 3, inclusive, and  
Block 27: Lots 1 through 4, inclusive,

Garden District:

Block 18: Lots 1 through 15, inclusive, and Lot 16 (Park),  
Block 19: Lots 1 through 12, inclusive  
Block 20: Lots 1 through 5, inclusive,  
and all of Lot 6 East of Certificate of Survey No. 3592,

Farm District:

Block 20: All of Lot 6 North of Certificate of Survey No. 3592.

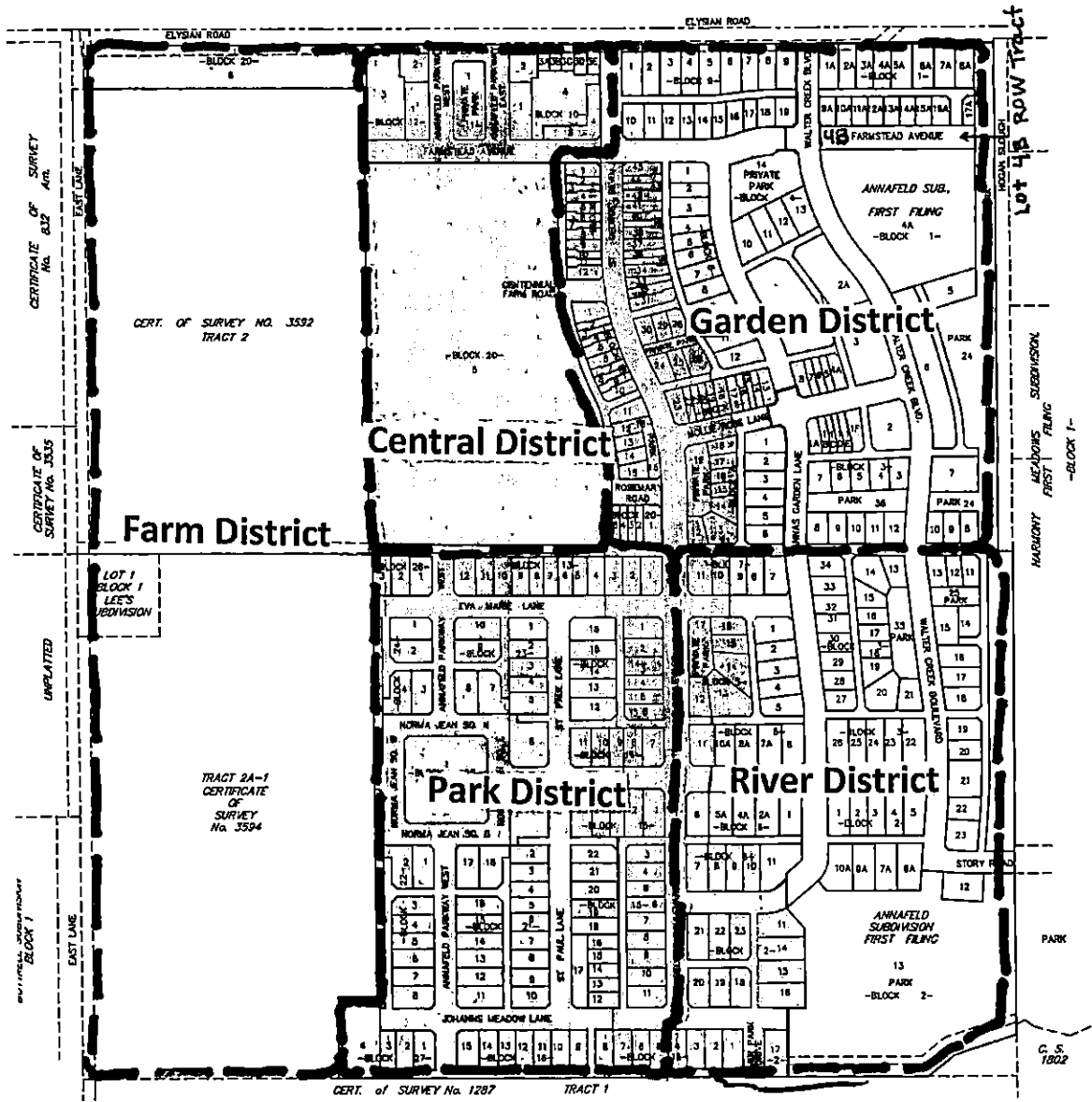
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Jeff Martin Clerk & Recorder, Yellowstone MT



EXHIBIT B





After recording, please return to:  
Candace L. Kimmet  
Karell Dyre Haney PLLP  
175 North 27<sup>th</sup> Street, Suite 1303  
Billings, MT 59101

**FIRST AMENDMENT**  
**TO**  
**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "Amendment") is hereby made and entered into by (i) MCCALL DEVELOPMENT, INC., a Montana corporation (the "Declarant") and (ii) JOSHUA RAY JONES and JENNA CORINNE JONES (the "Jones Family") and together with the Declarant, the "Owners"), to amend the Declaration of Easements, Covenants and Restrictions recorded with the Clerk and Recorder for Yellowstone County, Montana on September 24, 2021 under Document No. 3991439 (the "Declaration").

**RECITALS**

- A. Owners wish to amend the Declaration in order to revise the legal description of some of the Easements.
- B. Owners own all of the Lots affected by the amendments set forth herein.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Section 1(A)(iii). The reference to Lot 14, Block 2 in Section 1(A)(iii) is hereby deleted.

2. Section 1(A)(v). The following is hereby added as a new Section 1(A)(v):

Lot 11, Block 2, in Annafeld Subdivision, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3961163 shall have an easement approximately five (5) feet in width, parallel to and adjoining its entire southern boundary. The Easement described in this subparagraph (A)(v) is for the benefit of Lot 14, Block 2, in Annafeld Subdivision, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3961163 (the "Southern Benefited Lot").

3. Section 1(B). The last sentence of Section 1(B) is hereby deleted in its entirety and replaced with the following:

The Eastern Benefited Lots, Western Benefited Lots, Northern Benefited Lots, Northeastern Benefited Lots, and Southern Benefited Lot are collectively referred to herein as the "Benefited Lots" and each a "Benefited Lot".



4. **Defined Terms.** Except as otherwise provided in herein, all capitalized terms used herein shall have the meanings ascribed to them in the Declaration.

5. **Ratification.** Except as specifically amended herein, the terms and conditions of the Declaration are hereby ratified.

IN WITNESS WHEREOF, this Amendment is executed this 5 day of December, 2023.

MCCALL DEVELOPMENT, INC.,  
a Montana corporation

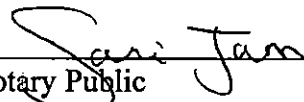
By: 

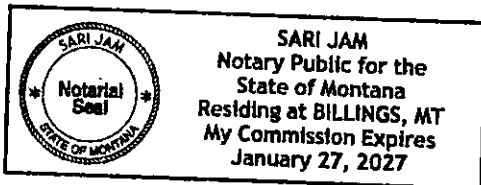
Its: Secretary/Treasurer

STATE OF MONTANA     )  
                                      : ss.  
County of Yellowstone     )

This record was acknowledged before me on December 5, 2023 by Carollee Smith as Secretary/Treasurer of or for MCCALL DEVELOPMENT, INC.

[Official Stamp]

  
Notary Public

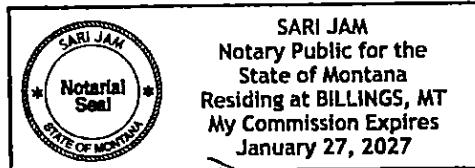




  
JOSHUA RAY JONES

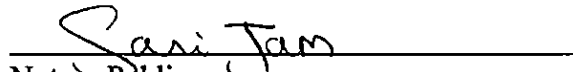
  
JENNA CORINNE JONES

STATE OF MONTANA     )  
                                      : SS.  
County of Yellowstone     )



This record was acknowledged before me on December 5, 2023 by JOSHUA RAY JONES.

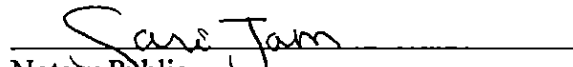
[Official Stamp]

  
Notary Public

STATE OF MONTANA     )  
                                      : SS.  
County of Yellowstone     )

This record was acknowledged before me on December 5, 2023 by JENNA CORINNE JONES.

[Official Stamp]

  
Notary Public

