

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

**SUBDIVISION IMPROVEMENTS AGREEMENT**  
**THE NINES**  
**YELLOWSTONE COUNTY**  
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## **SUBDIVISION IMPROVEMENTS AGREEMENT THE NINES SUBDIVISION**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **P3COLEMAN, LLC**, whose address for the purpose of this agreement is P.O. Box 1555, Billings, Montana 59103, hereinafter referred to as "Subdivider," and **YELLOWSTONE COUNTY**, Montana, hereinafter referred to as "County."

### **WITNESSETH:**

**WHEREAS**, the plat of The Nines Subdivision, located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on the \_\_th day of \_\_\_\_\_, 20\_\_, the Yellowstone County Board of Planning recommended conditional approval of a preliminary plat of The Nines Subdivision; and

**WHEREAS**, at a regular meeting conducted on the \_\_th day of \_\_\_\_\_, 20\_\_, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of The Nines Subdivision; and

**WHEREAS**, a Subdivision Improvements Agreement is required by the County prior to the approval of the final plat.

**WHEREAS**, the provisions of this agreement shall be effective and applicable to The Nines Subdivision, upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The subdivision shall comply with all requirements of the Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of Yellowstone County, and the laws and administrative rules of the State of Montana.

owner specifically agree that they are waiving valuable rights and do so voluntarily.

- F. Culverts and associated drainage swales shall not be filled in or altered by the Subdivider or subsequent lot owners.
- G. When required by future road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way at no cost to the County, and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
- H. Future maintenance of all public (or common) improvements shall be done through one (1) or more RSID(s) created as part of the SIA for this subdivision.
- I. Lot owners should be aware that lots connected to the community water system and/or multiple-user drainfield system shall pay fees for use, operation, and maintenance of said facilities as established by the Homeowners' Association.

### **III. TRANSPORTATION**

#### **A. Streets**

The Subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by Yellowstone County.

*Rights-of-way widths.* Crooked Stick Lane and South 60th Street West shall have 70-foot rights-of-way. All other streets shall have 60-foot rights-of-way. A 60-foot half right-of-way has been dedicated across the frontage of The Nines Subdivision of South 64th Street.

*Pavement widths and surface types.* All streets shall be built to grade with a satisfactory engineered subbase, base course, and asphalt surface. The internal subdivision streets will be 28-foot-wide (24-foot-wide paved surface with two-foot-wide gravel shoulders) public streets with drainage ditches on both sides. Culverts shall be provided to convey stormwater across roadways and driveways. The engineered design cross-sections of said streets shall be submitted to the Yellowstone County Public Works Department.

All driveway approaches shall be piped in accordance with the approach standards of Yellowstone County Public Works.

No-access strips are provided along the entirety of South 64th Street West and South 60th Street West except for the accesses for Crooked Stick Lane and Amend Corner Lane. No-access strips are also provided along most of Crooked Stick Lane and Amend Corner Lane to limit access to only those lots that must access directly from the said streets.

The County Public Works Department will issue a permit for an approach to South 64th Street West prior to opening of the dedicated rights-of-way by the County Commissioners, if the required public improvements outlined herein are secured by letter of credit or a letter of commitment to lend funds from a commercial lender.

**E. Billings Area Bikeway & Trail Master Plan (BABTM)**

The subdivision is within the jurisdictional area of the BABTM. South 64th Street West and Crooked Stick Lane are identified with proposed long range bike lanes. Sufficient right-of-way is dedicated with The Nines Subdivision to allow for future bike lane installations. No improvements are required or proposed at this time.

**F. Mail Boxes**

Centralized mail delivery boxes shall be provided for the subdivision as required by the United States Postal Service (USPS). Design and location of the boxes shall be reviewed by the USPS prior to installation.

**G. Survey Monuments**

Survey monuments shall be installed as required by Yellowstone County and the Montana Subdivision and Platting Act.

**H. Maintenance**

Maintenance of the street improvements shall be the responsibility of the Rural Special Improvement District for Maintenance (RSID-M) as described in Section IX of this agreement.

development of Phase II for maintenance of the dry hydrant to be installed upon development of Phase II. Lots within all future phases of the subdivision shall be included in the RSID-M for the dry hydrant installed during Phase II.

**V. STORM DRAINAGE**

**A. Facilities**

All drainage improvements shall comply with the provisions of Section 4.7 of the Yellowstone County Subdivision Regulations (2017), and a Stormwater Management Plan shall be submitted to and approved by the Montana Department of Environmental Quality (MDEQ), or its designee.

All stormwater facilities located within or adjacent to the subdivision are integral parts of the street drainage system and shall remain so until such time as a storm drain trunk system becomes available and is utilized by the subdivision.

Stormwater improvements of the subdivision shall consist of any collection, conveyance, storage, or discharge facility which is an integral part of each particular phase's drainage system as described in the Stormwater Management Plan approved by the MDEQ Certificate of Subdivision Plat Approval, as filed with the Clerk and Recorder.

**B. Maintenance**

Maintenance of the stormwater facilities within public rights-of-way shall be the responsibility of the Rural Special Improvements District for Maintenance (RSID-M) as described in Section IX. of this agreement. Maintenance shall include all stormwater collection and conveyance facilities including, but not limited to roadside ditches and culverts located within the public rights-of-way as indicated on the plat.

Maintenance of stormwater facilities located within common area lots shall be the responsibility of the Homeowner's Association created at the time of the filing of the final plat. Maintenance shall include the maintenance of all stormwater collection, conveyance, storage, detention/retention, and discharge facilities located within the common area as indicated on the plat.

approval of the County Public Works Department and shall be installed underground. The Subdivider shall coordinate installation with the various utility companies.

## **VII. PARKS/OPEN SPACE**

3.7 acres of park is required for The Nines Subdivision. 9.7 acres of private park is created with The Nines Subdivision. The private parkland shall remain as a park owned by the Homeowners' Association and not be sold or used for any other purpose other than a park in the future.

### **A. Facilities**

Private parks within the subdivision will be constructed with the subdivision improvements and phased with the development. Each park will have an underground irrigation systems installed and will be seeded with a turf grass mixture as approved by the developer upon final grading associated with street construction.

### **B. Maintenance**

Maintenance of private parkland shall be the responsibility of the Homeowner's Association created at the time of the filing of the final plat.

## **VIII. IRRIGATION**

A. The Nines Subdivision is located within the Big Ditch Company's service area and the property is currently irrigated by water from a ditch lateral. The lateral serving the site originates at an existing head gate from the main canal near its crossing of King Avenue West.

B. No irrigation laterals within the subdivision boundary or in immediately adjacent rights-of-way serve other properties. All irrigation laterals within the subdivision boundary will be removed during development.

C. Irrigation of the common areas and developed lots will be through an irrigation system supplied by the existing Big Ditch lateral. All water shares associated with the property will be transferred to the Homeowners' Association.

## **IX. RURAL SPECIAL IMPROVEMENTS DISTRICT FOR MAINTENANCE (RSID-M)**

## **XII. PHASING OF IMPROVEMENTS**

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

- A.** *Required improvements.* The first phase of the subdivision shall consist of the development of Lots 1 through 13 and Lot 27 in Block 1; Lots 1 through 20 in Block 2; Lots 1 through 3 in Block 3; and Lots 1 through 15 and Lots 40 through 41 in Block 4 (54 lots total). The second phase of the subdivision shall consist of the development of Lots 14 through 20 in Block 1; Lots 4 through 8 in Block 3; Lots 16 through 25 in Block 4; and Lot 1 in Block 5 (23 lots total). The third phase of the subdivision shall consist of the development of Lots 21 through 26 in Block 1 and Lots 26 through 39 in Block 4 (20 lots total).

The improvements in each phase shall include street improvements, community water improvements, multi-user sanitary sewer improvements, stormwater improvements, private park improvements, dry hydrant (Phase II), and the private utility improvements as described in this agreement.

- B.** *Timing of improvements.* The second phase of the subdivision shall begin after completion and acceptance of Phase I, and the third phase of the subdivision shall begin after completion and acceptance of Phase II. Subsequent phases may be combined or added, in part, to each other so long as improvements are contiguous, but are anticipated to proceed in the aforementioned order. Construction of phased subdivision improvements is anticipated to commence on the following dates:

Phase II	April 2023
Phase III	April 2025

- C.** *Release of lots and restrictions on lot sales.* The phased improvements shall be constructed and installed utilizing private contracts. The Subdivider shall not be entitled to proceed with a phase of the development until the private contract for the improvements required with respect to such phase is executed and/or the necessary funding guarantees have been provided.

Pursuant to the foregoing agreement, the Subdivider shall execute and record a Declaration of Restriction on Transfers and Conveyances for said phased lots, substantially in the form of Exhibit A attached hereto, to be

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.
- 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.
- G.** Subdivider agrees to create any required (or expansion of existing) RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

“COUNTY”

COUNTY OF YELLOWSTONE  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Attest: \_\_\_\_\_  
County Clerk and Recorder

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, known to me to be representatives of the Board of Commissioners and the County Clerk and Recorder for Yellowstone County, Montana, the persons who signed the foregoing instrument and acknowledged to me that they executed the same. Witness my hand and seal the day and year hereinabove written.

\_\_\_\_\_  
Notary Public in and for the State of Montana

**WAIVER OF RIGHT TO PROTEST**

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 Rural Special Improvement Districts (RSID's), which Yellowstone County may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

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

All of \_\_\_\_\_ Subdivision, according to the plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SUBDIVIDER/OWNER**

**P3COLEMAN, LLC**

By: \_\_\_\_\_  
Kelly Coleman

It's: \_\_\_\_\_

STATE OF MONTANA        )  
                                      : ss  
County of Yellowstone    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the member of **P3COLEMAN, LLC**, the limited liability company executing the within instrument, and acknowledged to me that they executed the same on behalf of said limited liability company, having first been authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year herein above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana

Return to:  
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**EXHIBIT A**  
**DECLARATION OF RESTRICTION ON**  
**TRANSFERS AND CONVEYANCES**

**THE NINES SUBDIVISION**

**THIS DECLARATION** is made this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,  
by **P3COLEMAN, LLC**, hereinafter referred to as “Declarant.”

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner of all of the lots in The Nines Subdivision, situated in the N½SW¼ of Section 17, Township 1 South, Range 25 East, P.M.M, Yellowstone County, Montana, hereinafter referred to as the “Subdivision;” and

**WHEREAS**, in connection with the filing of the plat for the Subdivision, the Declarant executed that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 20 \_\_\_\_, to Yellowstone County, which Agreement contains restrictions against the sale, conveyance, or transfer of certain lots in the Subdivision until such time as a private contract has been executed and/or the necessary funding guarantees have been provided for the installation and construction of required public improvements; and

**WHEREAS**, in order to more fully evidence the restriction against sale, conveyance, or transfer and to give third parties notice of such restrictions, the Declarant desires to execute and record this Declaration of Restriction.

**NOW, THEREFORE**, in consideration of these premises, the Declarant, for themselves and their successors and assigns, does hereby declare:

pursuant to the provisions contained in Paragraph 3 of the said Subdivision Improvements Agreement. The execution and recording of said release shall be deemed conclusive evidence to all third parties purchasing or acquiring any lot described therein that the restriction against sale, conveyance, or transfer of said lot has been removed.

4. UNTIL SUCH RELEASE IS EXECUTED AND RECORDED, THIS DECLARATION SHALL SERVE AS NOTICE TO ALL THIRD PARTIES PURCHASING OR ACQUIRING ANY OF THE ABOVE-DESCRIBED LOTS OF THE EXPRESS RESTRICTIONS AGAINST ANY SUCH SALE, CONVEYANCE, OR TRANSFER AND OF THE TERMS AND CONDITIONS OF THE SAID SUBDIVISION IMPROVEMENTS AGREEMENT, AND SHALL FURTHER SERVE AS NOTICE THAT YELLOWSTONE COUNTY MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED IN THE SUBDIVISION IMPROVEMENTS AGREEMENT SHOULD THE TERMS OF THIS DECLARATION BE VIOLATED.
5. The terms, conditions, and restrictions contained in this Declaration shall not preclude or restrict the ability of the Declarant to (a) sell, convey, and transfer all of the above-described lots, or those lots remaining subject to the terms of this Declaration, as one unit or group to a third party, parties, or entities; provided, however, that such sale shall be subject to this Declaration and the lots shall continue to be subject to the restrictions herein provided against the sale, transfer, and conveyance until a release has been executed and recorded; or (b) enter into sale and purchase agreements for individual lots; provided, however, that the deeds or other conveyance documents shall not be delivered to the prospective buyer nor shall the closing under any such sale and purchase agreements occur until such time as a release covering the affected lot has been executed and recorded.
6. The terms and conditions of this Declaration shall run with the land and shall be binding upon and shall inure to the benefit of the Declarant, Yellowstone County, and their successors and assigns.

Return to:  
Engineering, Inc.  
1300 North Transtech Way  
Billings, MT 59102

## **EXHIBIT B RELEASE**

### **THE NINES SUBDIVISION**

**THIS RELEASE** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the undersigned, **P3COLEMAN, LLC**, and **YELLOWSTONE COUNTY**, a municipal corporation.

**WHEREAS**, the hereinafter described real property is subject to that certain Declaration of Restriction on Transfers and Conveyances (the "Declaration") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and recorded this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, under Document No. \_\_\_\_\_ in the office of the Yellowstone County Clerk and Recorder; and

**WHEREAS**, said real property is also subject to the terms of that certain Subdivision Improvements Agreement by and between the undersigned dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and recorded this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, under Document No. \_\_\_\_\_, in the office of the Yellowstone County Clerk and Recorder; and

**WHEREAS**, in accordance with the provisions of said Subdivision Improvements Agreement and the Declaration that a private contract has been executed and/or the necessary funding guarantees have been provided for the installation and construction of all required public improvements to serve the hereinafter described real property.

**NOW, THEREFORE**, in consideration of these premises, the undersigned do hereby declare and agree that all restrictions and conditions contained in said Declaration



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## CERTIFICATE

### THE NINES SUBDIVISION

The undersigned, the duly authorized representative of the Yellowstone County Public Works, Yellowstone County, Montana, does hereby certify that a private contract has been executed and/or the necessary funding guarantees have been provided to construct and install the public improvements required to serve the following described property in Yellowstone County, Montana:

Lot(s) \_\_\_\_\_, Block \_\_\_\_\_, in The Nines Subdivision, in Yellowstone County, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County, under Document No. \_\_\_\_\_.

This Certificate is being executed to show compliance with the terms of that certain Subdivision Improvements Agreement dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between P3COLEMAN, LLC, and YELLOWSTONE COUNTY, and that certain Declaration of Restriction on Transfers and Conveyances, dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, covering The Nines Subdivision, and to provide the basis for the execution and recording of a Release from the terms of said Declaration pursuant to the terms of said Agreements.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

YELLOWSTONE COUNTY PUBLIC WORKS  
YELLOWSTONE COUNTY, MONTANA

By: \_\_\_\_\_

Title: \_\_\_\_\_