

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

**SUBDIVISION IMPROVEMENTS AGREEMENT**  
**THE NINES**  
**YELLOWSTONE COUNTY**  
**Table of Contents**

<b>I.</b>	Variances	SIA-2
<b>II.</b>	Conditions that Run with the Land	SIA-2
<b>III.</b>	Transportation	SIA-3
	A. Streets	SIA-3
	B. Sidewalks	SIA-4
	C. Traffic Control Devices	SIA-4
	D. Access	SIA-4
	E. Billings Area Bikeway & Trail Master Plan	SIA-5
	F. Mail Boxes	SIA-5
	G. Survey Monuments	SIA-5
	H. Maintenance	SIA-5
<b>IV.</b>	Emergency Service	SIA-6
<b>V.</b>	Storm Drainage	SIA-7
<b>VI.</b>	Utilities	SIA-8
	A. Water	SIA-8
	B. Sanitary Sewer	SIA-8
	C. Power, Telephone, Gas, and Cable Television	SIA-8
<b>VII.</b>	Parks/Open Space	SIA-9
<b>VIII.</b>	Irrigation	SIA-9
<b>IX.</b>	Rural Special Improvements District for Maintenance	SIA-9
<b>X.</b>	Weed Management Plan	SIA-10
<b>XI.</b>	Soils/Geotechnical Study	SIA-10
<b>XII.</b>	Phasing of Improvements	SIA-11
<b>XIII.</b>	Financial Guarantees	SIA-12
<b>XIV.</b>	Legal Provisions	SIA-12



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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.

**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**

- A. A variance is requested for the road name Crooked Stick Lane.

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

- A. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that owners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- B. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- C. No water shares have been transferred to the individual lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners unless otherwise noted herein. All water shares associated with the property will be transferred to the homeowners' association.
- D. This subdivision is being built in an area where agricultural activities exist. Activities such as large equipment on roadways, dust, smoke, odors, and noise should be expected from nearby agricultural operations.
- E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts, which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this agreement. The Subdivider and

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

- F. 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.

**B. Sidewalks**

Sidewalks are proposed along the frontages on the south side of Crooked Stick Lane, north side of Amen Corner Lane, and the east side of Medinah Loop and Amen Corner Lane. Sidewalk on the internal streets identified herein shall be installed at the time of individual lot development (Block 2, Lots 1, 2, 4, 8, 9, 12, 13, 16, 17, and 20; Block 3, Lots 1, 3, and 5 through 8; Block 4, Lots 21 through 27, and Lot 37). The sidewalk shall consist of a five-foot-wide boulevard type sidewalk with a minimum 12-foot-wide boulevard for roadside ditches constructed with the street improvements.

Subdivider shall install sidewalks along street frontages of South 64th Street West, Crooked Stick Lane, and Amen Corner Lane along Lot 6, Block 2 and private parks in Blocks 2, 3, and 4 and install accessibility ramps to future sidewalks at the intersections, which shall be completed with the subdivision improvements.

**C. Traffic Control Devices**

1. No traffic signals are required for this subdivision. Stop signs shall be installed on Crooked Stick Lane at the intersection of 64th Street West and on Amen Corner Lane at the intersection of 64th Street West. Type III *Road Closed* barriers shall be installed at the terminus of the temporary dead ends for each phase.
2. Street name signs for streets within the subdivision shall be furnished and installed in accordance with the current Yellowstone County Public Works standards at the time of construction.
3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices.

**D. Access**

A 60-foot-wide right-of-way shall be dedicated to the public by Subdivider for all internal streets, except for Crooked Stick Lane and South 60th Street West, which are future collector designated streets that shall have 70-foot rights-of-way.

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.

#### **IV. EMERGENCY SERVICE**

##### **A. Fire Protection Facilities**

The subdivision is included within the boundaries of the Billings Urban Fire Service Area (BUFSA). Property within BUFSA is assessed for fire service and is served by the Billings Fire Department.

Fire Protection facilities shall be provided via a dry hydrant system(s) with a 30,000-gallon underground water storage tank. The system(s) shall be capable of providing a minimum of 1,000 gallons per minute at draft.

Phase I of the subdivision is located within one-half road mile of the existing approved 30,000-gallon dry hydrant located on Elder Grove Lane. No new dry hydrant facilities are required for Phase I of the subdivision.

Upon development of Phase II, the Subdivider shall submit plans and specifications of the dry hydrant system to the Billings Fire Department for review and approval prior to installation of the system. The tank shall be installed prior to release of the Declaration of Restriction on Transfers and Conveyances for lots within future phases or prior to construction of any buildings in future phases of the subdivision at the location shown on the plat. The dry hydrant system shall be inspected, acceptance tested, and approved by the Billings Fire Department prior to construction of any buildings in phase 2 or 3 of the subdivision.

##### **B. Maintenance**

Maintenance of the fire protection facilities shall be the responsibility of the Rural Special Improvement District for Maintenance (RSID-M) as described in Section IX. of this agreement. Maintenance shall include the maintenance of all fire protection facilities located within the easement as indicated on the plat, including the underground tank and associated fixtures and appurtenances and maintaining the water level within the tank such that the tank is full at all times. It is agreed that, should the Billings Fire Department need water from the tank to fight fire outside the subdivision, they will do so; and, upon completion of firefighting, they will refill the tank immediately at no cost to the special improvement district.

Lots located within Phase I of the subdivision will be included in the existing RSID-M for maintenance of the existing dry hydrant located on Elder Grove Lane. A new RSID-M will be established at the time of

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.

## **VI. UTILITIES**

### **A. Water**

Municipal public water service is not available in the subdivision at this time. The subdivision will be served by a public community water system for domestic water supply and irrigation supply to a limited number of residential lots. The Montana Department of Environmental Quality approval E.Q. #\_\_\_\_\_ shall be submitted with the final plat. A separate irrigation water system for the subdivision, supplied by the Big Ditch, will provide irrigation to lots and common areas in the subdivision. Installation of said community domestic water system and irrigation water system shall be by the Subdivider constructed prior to final plat or financially guaranteed. Maintenance of said water systems shall be the responsibility of the Homeowners' Association.

### **B. Sewer**

Municipal public sewer service is not available in the subdivision at this time. The subdivision will be served by a combination of multiple-user and individual wastewater disposal systems as approved by Montana Department of Environmental Quality. These systems shall be located and installed as shown on the site layout approved by Montana Department of Environmental Quality approval E.Q. #\_\_\_\_\_, which shall be submitted with the final plat. Installation of said multiple-user systems shall be by the Subdivider constructed prior to final plat or financially guaranteed. Maintenance of said multiple-user systems shall be the responsibility of the Homeowners' Association.

Individual septic, dosing tanks, and individual drainfields to be installed on the individual lots will be the responsibility of the future lot owner at the time of lot development.

### **C. Private Utilities**

All telephone, gas, electrical power, and cable television lines (where said utilities are actually available and existing to subdivision) shall be installed prior to street paving.

The Subdivider shall install private utilities within private utility easements where possible. Extension of private utilities into each lot shall be the responsibility of the individual lot owners. The location of all such off-site facilities within the existing public rights-of-way shall be subject to

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)**

A Rural Special Improvements District for Maintenance (RSID-M) shall be created by the Subdivider prior to the filing of the final plat, which shall include, but not be limited to, the maintenance of fire protection facilities, public streets, and roadside stormwater swales located within public rights-of-way, as indicated on the plat.

Prior to filing the final plat, Phase I lots of the subdivision shall be brought into the existing RSID-M for the dry hydrant located on Elder Grove Lane. A separate RSID-M for maintenance of public streets, and roadside stormwater swales located within public rights-of-way, as indicated on the plat shall be created with all subdivision lots included.

Prior to release of the Declaration of Restrictions on Transfers and Conveyances for Phase II, an RSID-M shall be created by the Subdivider for the maintenance of the dry hydrant to be installed in the Phase II improvements. The RSID-M shall consist of all lot owners for Phase II, Phase III, and any potential future subdivision phases.

**X. WEED MANAGEMENT PLAN**

- A.** All noxious weeds on the latest Yellowstone County Noxious Weed List must be controlled on all properties in the subdivision. A Noxious Weed Plan must be filed and updated annually for approval by the Yellowstone County Weed Board. It must contain the noxious weeds being addressed and the plan for control of those weeds. All cost of noxious weed control is the responsibility of the property owners (of record). The right-of-way noxious weed control is the responsibility of the Subdivider. Once the Maintenance District is formed, it then becomes the responsibility of the District.
- B.** A revegetation plan will be submitted as part of the management plan. A seeding recommendation will be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.

**XI. SOILS/GEOTECHNICAL STUDY**

A geotechnical study is not required by the Yellowstone County Subdivision Regulations as part of this plat. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.

## **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

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 Yellowstone County and substantially in the form of Exhibit B 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 C attached hereto has been executed by the Yellowstone County 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 County does hereby authorize the Yellowstone County Public Works, County Commissioners, and Clerk of the County to review any requests 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.

- D.** *Financial guarantees for improvements.* The phased improvements will be installed by the Subdivider in the future. The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the phased improvements, and Subdivider further acknowledges that no building permits for lots within any phase shall be issued until a private contract has been executed and necessary funding guarantees have been provided for the construction and installation of the complete and final public improvements necessary to serve said lots, and to provide necessary access and traffic circulation for the traffic generated by those lots.

### **XIII. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Planning Board and Board of County Commissioners. 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 designed by and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the State of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying the improvements have been completed in accordance with approved, seal stamped, record drawings, along with all required post-construction certification per Section 4.6.C. of the Yellowstone County Subdivision Regulations.

### **XIV. LEGAL PROVISIONS**

- 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:  
Sanderson Stewart  
1300 North Transtech Way  
Billings, MT 59102

**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:

1. Except as hereinafter provided, the Declarant does hereby agree and declare that the following described lots shall not be sold, transferred, or conveyed to any third party unless and until a release has been executed and recorded in accordance with the provisions hereinafter appearing:

*Proposed Phase II:*

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; all in The Nines Subdivision in Yellowstone County, according to the official plats on file in the office of the Clerk and Recorder of Yellowstone County, Montana.

*Proposed Phase III:*

Lots 21 through 26 in Block 1 and Lots 26 through 39 in Block 4; all in The Nines Subdivision in Yellowstone County, according to the official plats on file in the office of the Clerk and Recorder of Yellowstone County, Montana.

2. It is the express purpose and intent of this Declaration to restrict or preclude sale, transfer, or conveyance of the above-described lots until such time as a private contract has been executed or the necessary funding guarantees have been provided for the construction and installation of those public improvements required under the above-described Subdivision Improvements Agreement which, by reference thereto, is hereby incorporated herein as though fully set forth at this point. It is anticipated, however, that the Declarant will develop The Nines Subdivision in distinct phases, upon providing for the installation and construction of the public improvements necessary to serve the particular phase. In that regard, a release of some but not all of the above-described lots may be executed and recorded from time to time, in accordance with the provisions hereinafter appearing, and upon the recording of said release, the covenants and restrictions contained herein with respect to the lots described in said release shall be deemed canceled and terminated, and of no further force and effect.
3. Upon compliance with the requirements for a private contract or the necessary funding guarantees specified above, a release for the lot or lots affected thereby shall be executed and recorded by Yellowstone County,

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.

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

“DECLARANT”

P3COLEMAN, LLC

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

Its: \_\_\_\_\_

STATE OF MONTANA     )  
                                  ) ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of P3COLEMAN, LLC, and who acknowledged to me that said company executed the same. Witness my hand and seal the day and year hereinabove written.

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

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

are hereby released and discharged, and shall be of no further force and effect, as the same relate to the following real property situated 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. \_\_\_\_\_.

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

P3COLEMAN, LLC

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

Its: \_\_\_\_\_

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of P3COLEMAN, LLC, and who acknowledged to me that said company executed the same. Witness my hand and seal the day and year hereinabove written.

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





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

## 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: \_\_\_\_\_

