

SUBDIVISION IMPROVEMENTS AGREEMENT
Sundance Subdivision

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(Yellowstone County)

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P Z-19-00120

SUBDIVISION IMPROVEMENTS AGREEMENT

Sundance Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between *REGAL LAND DEVELOPMENT, INC*, whose address for the purpose of this agreement is **P.O. Box 80445, Billings, MT 59108**, hereinafter referred to as "Subdivider," and **YELLOWSTONE COUNTY**, Montana, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of *Sundance Subdivision* and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Board of County Commissioners (BOCC) conditionally approved a preliminary plat of *Sundance 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 *Sundance 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 the 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

Subdivider has requested, and the County hereby grants, the following variances by the BOCC from the strict interpretation of the County's Subdivision Regulations.

1. No variances requested.

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners will be required to construct segments of the required sidewalk that fronts their property at the time of lot development.
- B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- D. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- E. There is attached hereto a Waiver waiving the right to protest the creation of the Rural Special Improvement District (RSID) 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 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 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 or their agent will obtain an Access Permit from County Public Works prior to any construction on any lot within the subdivision. The application will include a site plan showing the desired location of the access and show that it meets the requirements outlined by the DEQ storm water requirements for the subdivision. Failure to do so will result in the lot owner or their agent removing what has been installed and locating the access in an approved location at the lot owner's expense.
- J. It is the obligation of the property owners within this subdivision to pay for the maintenance of the community water system whether it is handled by a third party contractor or through the HOA.

III. TRANSPORTATION

A. Streets

- Broadwater Avenue is a public roadway and is classified as a collector road and shall have minimum right-of-way width of 80 feet.
- Sundance Ridge Road, Sunbeam Circle, Light Stream Lane, Laihona Lane, Sunburst Lane, Shining Light Lane, Leading Light Lane, Sun Basin Road are public roadways and shall have minimum right-of-way widths of 60 feet.
- Broadwater Avenue shall have a minimum pavement width of 32 feet with 2-foot gravel shoulders. Street shall include pavement markings for 4-foot bike lanes adjacent to each 12-foot travel lane.
- All other internal roads shall have a minimum pavement width of 24 feet with 2-foot gravel shoulders.
- Drainage ditches shall be constructed adjacent to the roadways in accordance to Yellowstone County Public Works standards and DEQ requirements.
- Sundance Ridge Road, Sunbeam Circle, Light Stream Lane, and portions of Broadwater Avenue will be constructed as part of Phase I to provide a second point of ingress/egress. Roads shall be built to the County Public Works standards for paved roads.

B. Sidewalks

- 5-foot minimum width sidewalks are required along all right-of-way frontages.
- The Subdivider shall be responsible for the installation of sidewalks along the frontages of the parkland areas and corner intersection handicap ramps and aprons.

Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction. Sidewalks shall be 5-foot boulevard walk style and constructed along the property line or as indicated on

the plat. Developer will bond for all sidewalks in each phase at the time of opening. Should sidewalks not be built within 2 years of the opening of each phase, the developer will complete them or the county will complete them using the bond.

D. Traffic Control Devices

- Subdivider shall furnish the necessary traffic control devices within and adjacent to the subdivision as required by the County. Traffic control devices shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) and County standards.
- Subdivider shall furnish and install street name signs for streets within the subdivision, or located immediately adjacent thereto, in accordance with the specifications of the County Publics Works and Fire Departments.

E. Access

- Access to Sundance Ridge Road will be provided off of Central Avenue
- Access to Broadwater Avenue will be provided off of 48th Street West
- Lot 16, Block 1 shall take access off of 48th Street West and Central Avenue via 40-foot accesses at the locations shown on the plat.
- A 1-foot no access strip shall run along the lot frontages for 48th Street West and Central Avenue with openings at the locations shown on the plat.

F. Billings Area Bikeway and Trail Master Plan

The subdivision is located within the planning area of the Billings Area Bikeway and Trail Master Plan. The plan identifies a long range bike lane along Broadwater Avenue, Central Avenue, and a separate bike path along 48th Street West.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply in place to allow for fire suppression requirements. Prior to the 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 Billings Urban Fire Service Area (BUFSA).

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 twenty (20) feet wide.
- The subdivision shall install a 30,000-gallon water storage tank with dry hydrant according to the specification of the BUFSA. No structure is to be constructed within 100 feet of the Fire Department Connection (FDC)

point at the dry hydrant. The system design shall be reviewed and approved by the BUFSA prior to construction of the system. Tank and dry hydrant are to be inspected, acceptance tested, and approved by the BUFSA prior to any building construction occurring on the lots served by the system. The tank and dry hydrant require the formation of a new RSID for maintenance thereof. The new RSID will consist of all proposed lots within the Sundance Subdivision.

V. STORM DRAINAGE

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

VI. UTILITIES

The design/installation of sanitary systems, wells and water distribution systems shall be in accordance with design standards, specifications, rules, regulations of and as approved by the Yellowstone City-County Health Department and the Montana Department of Environmental Quality.

A. Water

In accordance with Section 4.9 Yellowstone County Subdivision Regulations, all proposed water systems must obtain approval by the MDEQ, or its designee.

- The Subdivision shall be supplied by community wells. Water will be conveyed to the individual lots utilizing a water distribution system.
- The community water supply system shall conform to the standards set forth by the Yellowstone City-County Health Department and MDEQ.
- The operation and maintenance of the community water system shall be contracted by the Subdivision Home Owners Association(s) or Subdivider.
- A MDEQ approval letter will be submitted with the final plat.

B. Sanitary Sewer

In accordance with Section 4.8 Yellowstone County Subdivision Regulations, all sanitary sewer systems must obtain approval by the MDEQ, or its designee.

- The Subdivision will utilize individual sanitary systems composed of septic tanks and drainfields for management and disposal of sanitary waste.
- The sanitary systems shall conform to the standards set forth by the Yellowstone City-County Health Department and MDEQ.
- Maintenance of individual septic systems shall be contracted through the Subdivision's Home Owners Association(s) or Subdivider.
- A MDEQ approval letter will be submitted with the final plat.

C. Power, Telephone, Gas, and Cable Television

- Power, natural gas, telephone, and cable will be located within the public right-of-way and utility easements as shown on the plat.

VII. PARKS/OPEN SPACE

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Per 10.2 (A) 1 of the Yellowstone County Subdivision Regulations:

- Lots 0.50 acres or less, 11% dedication > 39.746 acres x 11% = 4.372 acres
- Lots 0.50 – 1.0 acres, 7.5% dedication > 10.992 acres x 7.5% = 0.824 acres
- Lots 3.0 acres or greater, 2.5% dedication > 3.807 acres x 2.5% = 0.095 acres

Required parkland dedication is 5.292 acres, Subdivider is proposing to dedicate 3.258 acres of parkland area to the public. The remainder of the parkland requirement will be fulfilled by way of cash-in-lieu. Parkland improvements will include the construction of underground irrigation systems, irrigation wells, lawn, and installation of the internal trail system. A Park Maintenance District will be created for the maintenance of the parkland area.

VIII. IRRIGATION

- The property is located within the boundary of the Snow Ditch Irrigation District. No water shares will be transferred to the individual lot owners.
- Access to the Snow Ditch for maintenance and operation shall remain. Any modification to the Snow Ditch shall be agreed upon by the irrigation district.

IX. 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 limitation for proposed construction on the lots, which may require a geotechnical survey prior to construction.

X. PHASING OF IMPROVEMENTS

Improvements for the subdivision are to be developed in three (3) phases. The phases are defined as follows:

- A. Phase I
 - Block 1: Lots 1-25 and 26 (Parkland)
 - Block 2: Lots 1-9
 - Block 3: Lots 1-14
 - Block 4: Lots 1-18
 - Block 5: Lots 9 and 10
 - Block 6: Lots 1 and 14
 - Block 7: Lots 1 and 14
 - Completed Roads: Leading Light Lane, Sun Basin Road, Sunbeam Circle, and Light Stream Lane
 - Partial Roads: Sundance Ridge Road from Central Avenue to Sun Basin Road, Laihona Lane from Light Stream Lane to the east boundary of Lot 18, Block 4. Sunburst Lane from Light Stream Lane to the east boundary of Lot 10, Block 5. Shining Light Lane from Light Stream Lane to the east boundary of Lot 14, Block 6. Broadwater Avenue from Light Stream Lane to 48th Street West.

- B. Phase II – Opened by June 1, 2030
 - Block 4: Lots 19-26
 - Block 5: Lot 1-8
 - Construct the remaining portions of Laihona Lane to the intersection with Light Stream Lane.

- C. Phase III – Opened by June 1, 2030
 - Block 5: Lots 11-25
 - Block 6: Lots 2-13
 - Block 7: Lots 2-13
 - Construct the remaining portions of Sundance Ridge Road, Shining Light Lane and Broadwater Avenue.

Utilities for each lot will be constructed at the time of phase development.

XI. 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 special improvement district or private contract, and the improvements shall be designed 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 that 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.

(In the event that all required improvements are not installed and constructed prior to final plat approval, the Subdivider shall provide a monetary security guarantee in the amount of 125% of the estimated total cost by one (1) of the methods listed in Chapter 5 of the Yellowstone County Subdivision Regulations. If using a security, describe the method in this section)

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 County Public Works Department.
- 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.

This agreement is hereby approved and accepted by Yellowstone County, this ____ day of _____, 20__.

“COUNTY”
COUNTY OF YELLOWSTONE
MONTANA

County of Yellowstone
Board of County Commissioners

By: _____
Chairman

Commissioner

Commissioner

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 the Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

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), for a period of no more than twenty years from the recording of this waiver, 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:

Sundance Subdivision

Signed and dated this ____ day of _____, 20__.

“SUBDIVIDER”

Regal Land Development, Inc

By: _____

Title: _____

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 _____ of *Regal Land Development, Inc*, who executed the foregoing instrument 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.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____