

SUBDIVISION IMPROVEMENTS AGREEMENT

Creekside Estates , Second Filing

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Creekside Estates, Second Filing

This agreement is made and entered into this ____ day of _____, 20____, by and between *John Poukish.*, whose address for the purpose of this agreement is PO Box 2697 Avon, CO 81620, 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 *Creekside Estates, Second Filing*, and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20____, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *Creekside Estates, Second Filing*, 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 *Creekside Estates, 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 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. The subdivider is requesting a variance in order to pay the fire department \$30,000 for use of an existing pressurized fire hydrant approximately .58 miles away for fire suppression. This fire hydrant is located at the corner of 60th Street and Grand Avenue.

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 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.
- 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 rights have been transferred to the lot owners. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

- D. 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.
- E. Culverts and associated drainage swales shall not be filled in or altered by the subdivider or subsequent lot owners.
- F. Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted in the West End Flood Study. Lot owners may consider building to floodplain standards.
- 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 owners expense.

III. TRANSPORTATION

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

A. Streets

The subdivision will use existing streets, Creek Crossing Road and Grand Avenue. The subdivision will construct one new public road. The proposed new road will be accessed off of Grand Avenue. The proposed road will be 24' of paved asphalt, 2' gravel shoulders, within a 60' right of way and have a cul-de-sac. The proposed road will be approximately 220' long with the cul-de-sac approximately 83' wide.

B. Traffic Control Devices

- The subdivision will have a stop sign where the proposed road meets Grand Avenue.

C. Access

- Access to Lots 1 and 2 will have individual driveways off of Creek Crossing Road.
- Access to Lots 3 and 4 will be through a shared driveway connected to Creek Crossing Road.
- Access to Lots 5 and 6 through a shared driveway connecting to proposed road which will connect to Grand Avenue.
- Access to Lots 7 and 8 will be from individual driveways off of proposed road .

D. Billings Area Bikeways and Trails Master Plan (BABTMP)

- The proposed subdivision is located within the BABTMP. The subdivision will offer no trail services. BABTMP does have a trail at the corner of Grand Avenue and 58th Street West.

IV. EMERGENCY SERVICE

This section should include, but not be limited to the following:

- All driveways are required to be built to emergency access standards. Driveways must be a minimum of 16 feet wide and an additional 2 feet wide cleared drivable vegetation on each side. Driveways exceeding 150 feet in length must provide a turnaround point or hammerhead for emergency vehicles.
- The subdivision will have access to a pressurized fire hydrant located at the corner of 60th Street and Grand Avenue.

V. STORM DRAINAGE

All drainage improvements will comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan will be submitted to and approved by MDEQ, or its designee.

- A stormwater retention pond and swales are displayed on the preliminary plat.

VI. UTILITIES

A. Water

In accordance with Section 4.9 Yellowstone County Subdivision Regulations

- Lots 1 through 6 will have individual wells built in accordance with Yellowstone County standards and MDEQ standards.
- Lots 7 and 8 will not have water supply at this time. Restrictions for both lots will be implemented by DEQ. These lots will not be included within the DEQ COSA when issued.

B. Septic System

In accordance with Section 4.8 Yellowstone County Subdivision Regulations

- Lots 1 through 6 will have individual septic systems. These systems will be evapotranspiration septic systems that will be built to Yellowstone County standards and MDEQ standards.
- Lots 7 and 8 will not have sanitary services at this time. Restrictions for both lots will be implemented by DEQ. These lots will not be included within the DEQ COSA when issued.

C. Power, Telephone, Gas, and Cable Television

- Lots 1 through 4 will receive utilities within a 30' utility easement and private access easement. This easement runs south from Creek Crossing Road.
- Lots 5 and 6 have the ability to receive utilities via an extension of the utility

easement for Lots 1 through 4. The utility easement from Lots 1 through 4 is extended via a 10' easement into Lots 5 and 6. Lots 5 and 6 also have a private access and utility easement that is an extension of Road A.

- Lots 7 and 8 are not proposed to be developed at this time.

VII. PARKS/OPEN SPACE

A private park is proposed on the western boundary of the subdivision. The park will be maintained by the homeowners association. The park is approximately 1.60 acres in size, which meets the parkland requirement of .68 acres.

VIII. IRRIGATION

Birely Ditch is located within the proposed private park. Birely Ditch has statutory easement rights to be accessed and maintained 25' on either side of the ditch. These rights will be preserved by this subdivision.

IX. WEED MANAGEMENT

All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties in the subdivision.

The weed plan shall include the following and shall be referenced in this SIA:

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record.
- A revegetation plan shall be submitted as part of the management plan. A seeding recommendation can 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.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study was not required but owners of the lots are encouraged to perform site-specific geotechnical investigation that is specific to the type of structure contemplated prior to construction.

XI. PHASING OF IMPROVEMENTS

Creekside Estates, Second Filing proposes that all 8 lots be developed in a single phase.

XII. 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 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 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.

XIII. 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.

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), 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:

Creskide Estates, Second Filing

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

John Poukish.

By: _____

Its: _____

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of _____, personally appeared John Poukish known to me to be the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and a fixed my Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of _____
Printed name: _____
Residing in _____
My commission expires: _____

IRREVOCABLE STANDBY LETTER OF
CREDIT

DATE: _____

BENEFICIARY:
Yellowstone County
Billings, MT 59101

APPLICANT: John Poukish.
PO Box 2697 Avon, CO 81620

LETTER OF CREDIT NO. _____

EXPIRATION DATE: _____

AT: OUR COUNTERS PRESENTLY LOCATED AT
Lender's address here

AMOUNT: US\$ _____
NOT EXCEEDING: -US- spell out Dollars-

We hereby issue our Irrevocable Standby Letter of Credit available by your draft(s) drawn at sight on us and accompanied by the following documents:

1. Beneficiary's signed statement certifying that John Poukish, has failed to pay for required improvements concerning subdividing Creekside Estates, Second Filing Subdivision in Yellowstone County.
2. Copy of mandatory improvements.
3. The original Letter of Credit

This Letter of Credit shall be deemed extended without amendment for one year from the expiration date, unless thirty (30) days prior to any expiration date we shall notify you by Registered Mail that we elect not to consider this Letter of Credit renewed for any such period.

In any communication with us regarding this Letter of Credit, please make specific reference to our Letter of Credit No. at the top of this letter.

Drafts drawn under this Credit must bear the clause: "Drawn under _____ Bank Irrevocable Standby Letter of Credit No. _____ dated _____." The amount of each drawing must be endorsed on the reverse of this credit by the negotiating bank.

To the extent applicable hereto, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication, No. 500.

We hereby engage with you that draft(s) drawn and/or documents presented and negotiated under and in compliance with the terms of this Irrevocable Standby Letter of Credit will be duly honored upon presentation to us.

_____ BANK

By: _____