

**SUBDIVISION IMPROVEMENTS AGREEMENT
THE WATERS SUBDIVISION
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(Yellowstone County)**

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SUBDIVISION IMPROVEMENTS AGREEMENT

The Waters Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between *MJ Shanks, LLC*, whose address for the purpose of this agreement is **5110 Central Avenue, Billings, MT 59106**, 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 *The Waters Subdivision*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *The Waters 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 Waters 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

Subdivider has requested, and the County hereby grants, the following variances by the Board of County Commissioners from the strict interpretation of the County’s Subdivision Regulations (Chapter 11, Yellowstone County Subdivision Regulations):

1. A variance from Yellowstone County Subdivision Regulations Section 4.6, (A), 6, requiring two means of access to major subdivisions is being requested.
2. A variance from Yellowstone County Subdivision Regulations Section 4.6, (B), 1, requiring connections to adjacent undeveloped areas is requested.

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 shares from surrounding ditches 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.
- 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 by the completion of the conditions set forth in the 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.** 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.
- G.** Future maintenance of all private common improvements (roads, community water supply system, sidewalks, parkland) shall be paid for and provided by the Subdivision HOA.
- H.** It is the obligation of the property owners within this subdivision to pay for the maintenance of the community water system, private roadway and sidewalks, and park whether it is handled by a third-party contractor or through the HOA.
- I.** Prior to construction, a zoning compliance permit is required to be obtained.

III. TRANSPORTATION

A. Streets

Pavements Widths and Surface Types: All streets shall be built to grade with a satisfactory engineered subbase, base course, and asphalt surface. All internal roads

shall have a minimum pavement width of 24 feet with 2-foot gravel shoulders. The engineered designed cross-sections of said streets shall be submitted to the Yellowstone County Public Works Department prior to the start of construction. Proposed road improvements will be private roadways within a 60' private road easement.

Other Required Street Improvements: Drainage ditches shall be constructed adjacent to the roadways in accordance with Yellowstone County Public Works standards and DEQ requirements to manage stormwater. Culverts shall be provided to convey stormwater across roadways and driveways only in those locations as called for in the approved DEQ site layout for the subdivision. The Developer will install an automated gate at the entrance to the private roadway from Central Avenue.

B. Sidewalks

Individual lot owners, and the Subdivider in instances of open spaces/parks, are responsible for the installation of sidewalks within the designated private road and sidewalk easements as shown on the plat. Sidewalks fronting lots within the subdivision shall be 5' wide and installed at the time of lot development. Sidewalks in front of parkland and connecting to properties adjacent to the subdivision shall be 5' wide and constructed at the time of road construction. The subdivision HOA will be responsible for the maintenance and repair of sidewalks following initial installation.

C. Traffic Control Devices

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. It is anticipated the traffic control devices necessary for the subdivision include a stop sign leaving the subdivision onto Central Avenue.

Street Name Signs: 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.

D. Access

Access to The Waters Subdivision shall be provided by a 60' wide private road easement running south from Central Avenue.

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 and the anticipated furthest building within it is within ½ road mile of the 30,000 water tank and dry fire hydrant located in Black Rock Subdivision. Black Rock Subdivision was approved in October of 2015, and is therefore past the 5-year timeline laid out for proportionate reimbursement. The Waters Subdivision will be included in the RSID for said dry hydrant and tank to contribute for ongoing maintenance and operation of the existing dry hydrant and tank. The Waters Subdivision is in the BUFSA and is provided firefighting services by the Billings Fire Department.
- The above requirements do not alter or effect the current minimum subdivision requirements for apparatus access and water supply.

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.

Stormwater management is planned to be provided within roadside ditches adjacent to the private roadway.

VI. UTILITIES

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 and public water supply system. 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.
- Lot irrigation will be provided by individual/shared irrigation wells on lots. Lot irrigation will be separate from the aforementioned public water supply.

B. Septic System

In accordance with Section 4.8 of the Yellowstone County Subdivision Regulations, all sanitary sewer systems must obtain approval by the Montana Department of Environmental Quality, or its designee.

The subdivision will be served with 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 submitted with the final plat.

Lot owners will be responsible for the construction of individual septic tanks, dosing tanks (as necessary and approved by MDEQ), and drainfields at the time of lot development.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will be located within the 60' wide private access easement or approved utility easement.

All power, natural gas, telephone, and cable (where said utilities are actually available and existing to the subdivision) shall be installed prior to street paving. 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 various utility companies.

VII. PARKS/OPEN SPACE

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

- Lots 0.50 acres or less, 11% dedication: $6.997 \text{ acres} \times 11\% = 0.769 \text{ acres}$
- Lots 0.50 – 1.0 acres, 7.5% dedication: $0.00 \text{ acres} \times 7.5\% = 0.00 \text{ acres}$
- Lots 1.0 acres – 3.0 acres, 5% dedication: $0.00 \text{ acres} \times 5\% = 0.00 \text{ acres}$
- Lots greater than 3.0 acres, 2.5% dedication: $0.00 \text{ acres} \times 2.5\% = 0.00 \text{ acres}$

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Required parkland dedication is 0.763 acres, Subdivider is proposing to reserve 0.956 acres of private open space parkland area, meeting the requirement of Section 76-3-621. Maintenance of the open space parkland will be paid for by the Subdivision HOA and provided by the same HOA or designated third party.

VIII. IRRIGATION

No water shares from surrounding ditches will be transferred to the individual lot owners. Irrigation of individual lots can be conducted by individual or shared irrigation wells constructed by lot owners. Access to the existing ditches and drains on the perimeter of the property for maintenance and operation shall remain. Any modification to the ditches or drains shall be agreed upon by the respective ditch and drain owners.

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

There are no intended phasing improvements.

XI. FINANCIAL GUARANTEES

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

XII. 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.

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

“SUBDIVIDER”

Mason Shanks

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 _____ of *Mason Shanks* who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public in and for the State of Montana

Printed Name: _____

Residing at: _____

My commission expires: _____

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 the 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 describe as follows:

The Waters Subdivision

Signed and dated this ____ day of _____, 20__

Mason Shanks

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 _____ of *Mason Shanks* who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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