

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS
Yellowstone Club Estates, 8th Filing
Table of Contents**

I.	VARIANCES	3
II.	PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS	3
III.	TRANSPORTATION.....	4
	A. Streets.....	4
	B. Sidewalks	4
	C. Street Lighting	4
	D. Traffic Control Devices	4
	E. Access	5
	F. Billings Area Bikeway and Trail Master Plan	5
	G. Public Transit.....	5
IV.	EMERGENCY SERVICE	5
V.	STORM DRAINAGE.....	6
VI.	UTILITIES.....	6
	A. Water.....	7
	B. Sanitary Sewer	7
	C. Power, Telephone, Gas, and Cable Television	7
VII.	PARKS/OPEN SPACE.....	8
VIII.	IRRIGATION	8
IX.	SOILS/GEOTECHNICAL STUDY	8
X.	PHASING OF IMPROVEMENTS.....	8
XI.	FINANCIAL GUARANTEES	8
XII.	LEGAL PROVISIONS APPLYING TO SUBDIVIDER	8

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS**

Yellowstone Club Estates, 8th Filing

This agreement is made and entered into this ____ day of _____, 200__, by and between *22500 NOL, LLC*, whose address for the purpose of this agreement is **3200 Paul Allen Way, Billings, MT 59106**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City”, and **YELLOWSTONE COUNTY**, Montana, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, the plat of *Yellowstone Club Estates, 8th Filing* located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of *Yellowstone Club Estates, 8th Filing* and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *Yellowstone Club Estates, 8th 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 *Yellowstone Club Estates, 8th Filing*; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to *Yellowstone Club Estates, 8th 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 City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, 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 has been requested and approved from Section 23-406.C.1 of the City of Billings Subdivision regulations requiring provision of a multi-use trail connection as depicted on the Active Transportation Plan of the City. Such trail connection is impractical as shown on the Active Transportation Plan due to existing topography in the depicted location consisting of roughly 50% grades and elevation differences of roughly 18 to 22 feet. A condition of the approved variance is provision of a trail connection upon Agricultural Tract 1 in the future when development of said tract is applied for.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- 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. Irrigation ditches that may 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 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. The subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by

MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

- F. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

III. TRANSPORTATION

A. Streets

- All public roadways adjacent to Lots 2-8 in the Subdivision, inclusive, have been completed as part of previous projects including Ben Hogan Lane/Tommy Armour Circle and Ouimet Circle.
- 30'-wide access easements have been provided upon Lot 1 and Lot 9 along 62nd Street West/Bushwood Drive and 54th Street West, respectively. As Lot 1 and Lot 9 are larger than 20 acres and are being left as agricultural tracts, further right-of-way dedication would be provided at the time of future development on those parcels.
- Lot owners will be required to construct their driveways and obtain an approach permit from the City prior to construction.

B. Sidewalks

- Sidewalks do not currently exist within Yellowstone Club Estates, 4th and 6th Filing, along Sam Snead Trail, Ben Hogan Lane, and Billy Casper Drive. Construction of sidewalks by individual lot owners will not be required at the time of development.
- No sidewalks within the public right-of-way are proposed for the development; however, sidewalks are included in the waiver of right to protest.

C. Street Lighting

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

D. Traffic Control Devices

- No additional traffic control devices are proposed for the development; however, traffic control devices are included in the waiver of right to protest.
- A TIS is not required for the development as it falls below the threshold set forth by the City.

- Traffic control devices within and adjacent to the Yellowstone Club Estates Subdivision, including along Sam Snead Trail, Ben Hogan Lane, and Billy Casper Drive, have been previously installed in accordance with applicable City of Billings standards. No new traffic control devices, including street name signs, regulatory signs, or warning signs, are required or proposed.
- The existing traffic control devices are considered adequate to serve the proposed development. Any repair or replacement of existing signs or devices necessitated by construction activities shall be the responsibility of the developer and shall be completed in accordance with City of Billings specifications.

E. Access

- The development will be accessed via the existing public right-of-way.
- Lot owners will be required to construct their driveways and obtain an approach permit from the City prior to construction.
- Access to all lots will be provided by existing public streets, including Sam Snead Trail, Ben Hogan Lane, Ouimet Circle, and Chick Evans Lane. These right-of-ways are currently constructed and in service, and no new access points, street connections, or extensions are proposed as part of this development. The existing street network provides adequate access to each lot, and no additional access improvements are required. All access will continue to comply with applicable City of Billings standards.

F. Billings Area Bikeway and Trail Master Plan

- The Billings Area Bikeway and Trail Master Plan identifies a future bicycle boulevard along Ben Hogan Lane, adjacent to the subdivision. As denoted within the variance application associated with this subdivision, at time of future development of Agricultural Tract 1 and/or Tract 11-A-1 of the Amended Plat of Certificate of Survey No. 836, a trail connection from Sam Snead Trail shall be made to the Block 12 Park of Ironwood Estates Subdivision 2nd Filing (Tax Code A316560).

G. Public Transit

- No improvements to public transit service are proposed for this subdivision.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for 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 International Fire Code as adopted by the City of Billings.

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.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of lot development for Lots 2-8, inclusive. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

No new stormwater drainage facilities are proposed as part of this filing. Any drainage associated with individual lot development shall comply with City of Billings requirements and shall not adversely impact adjacent properties or existing infrastructure.

Any development outside Lots 2-8 (i.e., Lot 1 and Lot 9) shall comply with stormwater management requirements of the Montana Department of Environmental Quality and the Yellowstone County Road Construction Manual.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division, if required to serve the subject properties. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Water

- Water service for Lots 2-6, inclusive, will be provided by connection to the existing 8-inch public water main located within Ben Hogan Lane. Water service for Lots 7 and 8 will be provided by connection to the existing 6-inch public water main located within Ouimet Circle. No extensions of the public water system are required as part of this development, and individual lots will be served by service connections to the existing water main in accordance with City of Billings standards and specifications. Water service connections shall be of the size and material as approved by the City of Billings at the time of construction.
- Lots 1 and 9 are not annexed into the City of Billings, and no facilities with water supply are allowed without separate application for annexation into the City of Billings.

B. Sanitary Sewer

- Sewer service for Lots 2-6, inclusive, will be provided by connection to the existing 8-inch public sewer main located within Ben Hogan Lane. A sewer service easement shall be provided to allow for provision of sewer service to Lot 4 through Lot 5 from the existing 8-inch public sewer main in Ben Hogan Lane. Sewer service for Lots 7 and 8 will be provided by connection to the existing 8-inch public sewer main located within Ouimet Circle. No extensions of the public sewer system are required as part of this development, and individual lots will be served by service connections to the existing sewer main in accordance with City of Billings standards and specifications.
- Lots 1 and 9 are not annexed into the City of Billings, and no facilities with sewer service are allowed without separate application for annexation into the City of Billings.

C. Power, Telephone, Gas, and Cable Television

- Electric, telephone, natural gas, and cable television service will be provided by connections to existing utility infrastructure within Sam Snead Trail, Ben Hogan Lane, and Ouimet Circle. No new utility mains or lines are proposed as part of this development. Individual lot owners will

connect to the existing services in accordance with the standards and requirements of the respective utility providers.

VII. PARKS/OPEN SPACE

- Section 23-1002 of the City of Billings Subdivision Regulations covers the parkland requirements for subdivisions. The required parkland for this filing is 0.55 acres. In accordance with prior filings in the subdivision, the required parkland will be provided as a cash-in-lieu payment rather than as dedicated land.

VIII. IRRIGATION

No water rights have been transferred to the lot owners. Irrigation ditches that may 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 authorization from current and downstream users is provided.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical study has not been completed as part of this subdivision. It will be required for the developers of the lots to conduct their own, site specific, geotechnical study prior to development of the lots. Lot owners should be aware that soil characteristics within the subdivision, as described in the 1972 Yellowstone County Soil Survey, may present limitations for proposed construction.

X. PHASING OF IMPROVEMENTS

There is no phasing of improvements.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required public improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. 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 installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- A. Subdivider agrees to guarantee all public improvements for a period of two years from the date of final acceptance by the City of Billings.

- 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 run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees 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.

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

“SUBDIVIDER”

22500 NOL, LLC

By: _____

Title: _____

STATE OF MONTANA)

: ss

County of)

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 *22500 NOL, LLC*, 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 the City of Billings, this ____ day of _____, 20__.

“CITY”
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

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 Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

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

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENT DISTRICTS

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 special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings 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.

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

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

Yellowstone Club Estates, 8th Filing

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

Subdivider/Owner

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 *22500 NOL, LLC*, the person who executed the forgoing 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: _____