

**SUBDIVISION IMPROVEMENTS AGREEMENT**  
**Bar 11 Subdivision**  
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**Yellowstone County**

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# SUBDIVISION IMPROVEMENTS AGREEMENT

## Bar 11 Subdivision

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *Production Consulting, LLC*, whose address for the purpose of this agreement **3201 HESPER ROAD SUITE 5, BILLINGS, MT 59102**, is 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 *Bar 11 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 *Bar 11 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 *Bar 11 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. Subdivider has not requested any variances from the Yellowstone County Subdivision Regulations.

### **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. 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 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.** 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 the public right-of-way at no cost to the County and any relocation outside the public right-of-way shall be subject to securing and recording easements.
- G.** 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.
- H.** Lot owners are responsible for having a Montana Registered Professional Engineer inspect and provide as-built certification that the improvements for the subsurface wastewater treatment systems (drainfields) are constructed as shown on the Drainfield Plans as required by Montana Department of Environmental Quality (MDEQ) at the time of septic permitting.
- I.** Lot owners are prohibited from building structures on the areas identified as primary drainfield and replacement drainfield on the MDEQ Certificate of Subdivision Approval exhibit.
- J.** Lot owners are responsible for obtaining a Zoning Compliance Permit prior to the construction of any structure on lots.

### **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**

1. The subdivision will connect to Bitterroot Drive by way of Plateau Road and Hawthorne Lane. A series of internal streets will allow traffic to travel within the subdivision.
2. All roads within the subdivision shall be built to grade with a satisfactory subbase, base course and asphalt surface. The street design cross-section shall be a 24-foot asphalt width street with 2-foot wide gravel shoulders. The design cross-sections of said streets shall be submitted to, and approved by, Yellowstone County Public Works. An RSID will be created for future maintenance of all public (or common) constructed improvements prior to final plat approval.
3. All internal roads shall have 60-foot wide dedications.

#### **B. Traffic Control Devices**

1. Street name and stop signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the Yellowstone County Public Works Department.
2. No traffic signals are anticipated within this subdivision.
3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the Yellowstone County Public Works Department.

#### **C. Access**

1. Access to Bar 11 Subdivision will be provided from the east via Plateau Road and from the south via Hawthorne Lane for Phase 1. Phase 2 will include an additional access to the southwest portion of the subdivision that branches off to the west from Hawthorn Lane.

#### **D. Billings Area Bikeway and Trails Master Plan (BABTMP)**

1. No bike trail is identified in the area of this subdivision and no trail easement is being provided.

### **IV. EMERGENCY SERVICE**

The Billings Urban Fire Service Area (BUFSA) currently provides fire protection and paramedic services for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to allow for fire suppression requirements. Prior to 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 Billings Urban Fire Service Area.

At a minimum, the following is required:

2. 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 an approved route.
3. The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of 20-feet-wide.
4. 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.
5. The above requirements do not alter or effect the current minimum subdivision requirements for apparatus access and water supply.

**A. Urban Wildland Interface Code requirements (required for highly wooded areas)**

The Urban Wildland Interface Code requirements are not applicable to the Bar 11 Subdivision.

**V. STORM DRAINAGE**

- A. All drainage improvements shall comply with the provisions of the Section 4.7 of the Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by MDEQ, or its designee.
- B. Stormwater surface runoff will be handled by on-site absorption. All improvements in the public right-of-way, including driveways and culverts, will be in accordance with plans and specifications as approved by MDEQ Approved Drawings at the time of construction. A preliminary hydrology and hydraulics model was developed for the proposed development per the rules published by MDEQ. The results show that the road-side ditches will have the capacity to convey and store stormwater within the boundaries of the subdivision meeting MDEQ rules and regulations.

**VI. UTILITIES**

**A. Water**

The subdivision will be served by 8-inch and 12-inch mains placed within the roadways. The 12-inch mainline will connect to the existing Heights Water District water tank located south of the property. The District modeled the hydraulic conditions of the existing system with the proposed subdivision. The results of the model showed that the District has adequate capacity to provide water to the subdivision with a developer provided booster station. Valves and hydrants will be

placed to meet Heights Water District and Montana DEQ standards, rules, and regulations.

**B. Sanitary Sewer**

Public sanitary sewer disposal facilities are not available to lots within the Bar 11 Subdivision at this time. Individual on-site sewer systems shall be installed as approved by the County Sanitarian and the Montana Department of Environmental Quality.

**C. Power, Telephone, Gas, and Cable Television**

Power, Telephone, gas, and cable utility services will be located within the public-right-of-ways.

**D. Mail Boxes**

A centralized, or multiple centralized (as requested by the United States Postal Service) mail delivery box(es) shall be provided for the subdivision as required by the United States Postal Service.

**E. Maintenance**

Maintenance of the streets shall be the responsibility of the Rural Special Improvement District for Maintenance (RSID-M) as described in Section IX of this agreement.

**VII. PARKS/OPEN SPACE**

The parkland requirement for the Subdivision was met with 18.22 acres of public park area. The calculation of the parkland area was based on 11% of the area of the net land proposed to be subdivided. This results in a parkland requirement of 17.40 acres. A Park Maintenance District will be created prior to approval of the plat. Access to the park on the west side of the subdivision will be via a 20-foot easement from a parking lot. The easement will be wide enough for emergency vehicles to access the park. Access to the park in the northeast portion of the subdivision will be via Plateau Road. Neither park will allow for motorized vehicle use. The large park on the west will remain with native vegetation while the park in the northeast will be landscaped with a pavilion and amenities. The developer will add four feet along the main interior roadway to connect the two parks. Asphalt debris currently located in the northeast park will be removed of and disposed off-site.

**VIII. IRRIGATION**

There are no irrigation ditches within the subdivision and none of the proposed lots will have water rights assigned to them.

**IX. RURAL SPECIAL IMPROVEMENT DISTRICT FOR MAINTENANCE (RSID-M)**

A Rural Special Improvements District for Maintenance (RSID-M) shall be created by the Subdivider concurrent to the filing of the final plat, which shall include, but not be limited to, the maintenance of all street improvements, as indicated on the plat. The RSID-M boundary shall be created in accordance with the phasing of improvements outlined herein and lots shall not be assessed until subdivision improvements are built to service each lot within its respective phase. The RSID-M boundary shall be expanded in conjunction with the development of each phase.

**X. WEED MANAGEMENT**

- A. All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties in the subdivision.
- B. 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.
- C. A revegetation plan shall be resubmitted 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.

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

**XII. PHASING IMPROVEMENTS**

The subdivision will be split into two (2) phases. These the two phases are defined as follows:

- Phase 1: Block 1 – Lots 1-10  
           Block 2 – Lots 1-18  
           Block 3 – Lots 1-11  
           Block 4 – Lots 1-18  
           Block 5 – Lots 1-19  
           Block 6 – Lots 1 & 12  
           Block 7 – Lots 1 & 12  
           Block 9 – Lots 1-4
  
- Phase 2: Block 1 – Lots 11-20  
           Block 6 – Lots 2-11  
           Block 7 – Lots 2-11  
           Block 8 – Lots 1-6  
           Block 9 – Lots 5-17  
           Block 10 – Lots 1-25  
           Block 11 – Lots 1-4

The internal roads of the subdivision that will be constructed during Phase 1 include: Plateau Road from the intersection of Bitterroot Drive to Lot 2 of Block 6, Muckle Trail from the intersection of Poison Park Drive to Lot 11 of Block 6, the entirety of Terror Creek Street, Poison Park Drive from the intersection of Plateau Road to Lot 11 of Block 7, and the entirety of Derby Avenue. The secondary access for emergency services will include the extension of Hawthorne Lane to the intersection of Bull Park, Bull Park to the intersection of Windy Point Way, Windy Point Way to the intersection of Poison Park Drive, entering the Phase 1 portion of the development. This secondary access will be graveled to County Public Works standards.

**XIII. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts 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 County Public Works Division. 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 record drawings.

**XIV. 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.

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

“SUBDIVIDER”

*Production Consulting, LLC*

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 *Production Consulting, 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 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), 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:

*Bar 11 Subdivision*

Signed and dated this 31<sup>st</sup> day of August, 2016.

“SUBDIVIDER”

*Production Consulting, LLC*

By: Jerry Morrell *Jerry Morrell*

Title: owner

STATE OF MONTANA     )  
  : SS  
County of Yellowstone    )

On this 31<sup>st</sup> day of August, 2016, before me, a Notary Public in and for the State of Montana, personally appeared Jerry Morrell, known to me to be the owner of *Production Consulting, LLC*, 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.

Tiffany Nichols  
Notary Public in and for the State of Montana  
Printed Name: Tiffany Nichols  
Residing at: Billings, Montana  
My commission expires: Feb 4, 2020

