

**SUBDIVISION PUBLIC IMPROVEMENTS AGREEMENT
FOR**

(“Subdivision name”)

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between _____ (“Subdivider”) and Gallatin County, Montana (“County”).

WHEREAS, it is the intent and purpose of the Subdivider to meet the conditions of approval for the preliminary plat allowing the creation of _____ (the “Subdivision”), as approved by the County Commission on _____; and

WHEREAS, it is the intent and purpose of the Subdivider to obtain final plat approval for the Subdivision;

WHEREAS, pursuant to §76-3-509, MCA and Section 8 of the Gallatin County Subdivision Regulations it is the intent and purpose of the Subdivider and the County to enter into this Agreement, which will guarantee the full and satisfactory completion of improvements on the property described in this Agreement; and

WHEREAS, the County Commission deems 150% of the engineers estimated value of public improvements satisfactory to provide for and secure public improvements.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. Subdivision Description. This Agreement pertains to and includes the property designated and identified as _____, with the legal description of _____, in Gallatin County, Montana.

2. Improvements. Subdivider shall, at its sole cost and expense, complete the improvements described on Exhibit “A” attached hereto and incorporated herein (the “Improvements”). The Improvements fulfill portions of Conditions of Approval Nos. _____ of the Preliminary Plat. The engineered estimated cost of the Improvements is _____ as shown on Exhibit “A”.

3. Completion of the Improvements. The Improvements must be completed by the Subdivider on or before _____. The Subdivider shall be allowed extensions of time beyond the completion date only for unavoidable delay caused by strikes, lockouts, acts of God, or other factors beyond the control and ability to remedy of the Subdivider or any agent or contractor hired by, or on behalf of, the Subdivider; provided, however, that no extension of time shall be allowed for any delay caused by weather conditions. The Subdivider shall, within two days after any unavoidable delay commences, give notice to the County for its review and approval of the delay, the cause for the delay, the period or anticipated period of the delay, and the steps taken by the Subdivider to mitigate the effects of the delay. Any failure of the Subdivider to properly give notice shall be deemed a waiver of any right to an extension of time for the delay.

4. Applicability of Gallatin County Subdivision Regulations. This Agreement shall be subject to all requirements and provisions of the Gallatin County Subdivision Regulations, including

any provisions regarding improvements or subdivision improvements agreements; provided, however, that the provisions of this Agreement shall take precedence over any conflicting provisions in the Gallatin County Subdivision Regulations.

5. Inspection. Representatives of the County shall have the right to enter upon the property at any reasonable time to inspect and to determine if the Subdivider is in compliance with this Agreement. The Subdivider hereby agrees to permit the County and its representatives to enter upon and inspect the property at any reasonable time.

6. Financial Security Guaranty. As security to the County for performance by the Subdivider of the Subdivider's obligations to complete the Improvements pursuant to and in accordance with this Agreement, the Subdivider shall, prior to the recordation of the final plat, deposit with the County security in the amount of _____, which is 150% of the cost of the Improvements based on an engineers estimated costs as stated in Exhibit "A," in the following form: _____. The Gallatin County Treasurer shall hold the security in an interest bearing holding account.

7. Reduction and Release of Security. Upon notice by the Subdivider of Improvements completed pursuant to this Agreement and upon approval of the Gallatin County Commission, the Gallatin County Treasurer shall reduce the security and release amounts, with interest, that are commensurate with the percentage of the Improvements completed. Upon completion of all Improvements and release from this Agreement by the Gallatin County Commission, the Gallatin County Treasurer shall release any remaining security with interest as determined by the Treasurer. Upon release of security, County may require that any warranties provided to Subdivider for the construction of any public improvements made pursuant to this agreement be assigned to County.

8. Default. If the Subdivider defaults in or fails to fully perform any of its obligations in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Improvements required by this Agreement and such default or failure continues without being completely remedied, satisfied, and discharged for a period of thirty (30) days after written notice specifying the default has been deposited in the United States mail addressed to the Subdivider, the County shall have, and the Subdivider hereby grants to the County, in addition to all other rights afforded to the County in this Agreement and by law, the right, at the County's option, to complete the construction of the Improvements or to correct such defect or deficiency, using either its own forces or contractors hired for that purpose. The County shall have the right to draw from the financial security guarantee made pursuant to this Agreement, as well as the right to demand payment directly from the Subdivider, based either on costs actually incurred or on the County's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire cost of the work, including legal fees and administrative expenses. The County may enforce any other remedy provided by law. These remedies are cumulative in nature.

9. Liability and Indemnity of County.

9.1 *No Liability for County Approval.* The Subdivider acknowledges and agrees (1) that the County is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any approvals or acceptances of the Improvements or use of any portion of the Improvements, and (2) that the County's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Subdivider, or any of its heirs, successors, assigns, tenants, or licenses, or any third party, against damage or injury of any kind at any time.

9.2 *Indemnification.* The Subdivider agrees to, and does hereby, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims, costs and liability of every kind and nature (“Claims”) that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of any plans for the Improvements, (2) the issuance of any approval or acceptance for the Improvements, (3) the development, construction, maintenance or use of any portion of the Improvements, and (4) the performance by the Subdivider of its obligations under this Agreement and all related agreements; provided, however, that the Subdivider shall have no obligation to indemnify the County for Claims arising out of the County's negligence. The Subdivider further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the Improvements provided by this Agreement except where such suit is brought by the Subdivider. The Subdivider is not an agent or employee of the County.

10. No Waiver of County Rights. No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuing waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Subdivider or the acceptance of any improvement.

11. Governing Law. This Agreement shall be construed according to the laws of the State of Montana.

12. Changes of Law. Any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they have been, or they may hereafter, be amended.

13. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

14. Assignment. It is expressly agreed that the Subdivider shall not assign this Agreement in whole or in part, without prior written consent of the County.

15. Successors. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, successors, and assigns.

16. Notices. All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third day after being deposited in the United States mail, for delivery by being properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices to the County shall be addressed to, and delivered at, the following address:

Gallatin County Commissioners
Gallatin County Courthouse, Room 108
311 West Main
Bozeman, MT 59715

Notices to the Subdivider shall be addressed to, and delivered at, the following address:

By providing notice that complies with the requirements of this Section, each party shall have the right to change its address for all future notices and communications, but no notice of a change of address shall be effective until actually received.

17. Enforcement. The parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including by specific performance, enforce or compel the performance of this Agreement; provided, however, that the Subdivider agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the County or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

18. Amendments. All amendments to this Agreement shall be in writing and shall be approved by the Subdivider and the County.

19. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

20. Authority to Execute. The County and the Subdivider hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the County with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The County hereby warrants and represents to the Subdivider that the persons executing this Agreement on its behalf have been properly authorized to do so by the County Commissioners. The Subdivider hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the Subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Subdivider hereunder will (i) result in a breach or default under any agreement to which the Subdivider is a party or to which it or the Subdivision is bound or (ii) violate any statute, law, restriction, court order, or agreement to which the Subdivider or the Subdivision is subject.

21. Filing. The Subdivider shall file this Agreement in the office of the Gallatin County Clerk and Recorder at the same time the final plat is recorded.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

SUBDIVIDER

_____ Title:

State of Montana
County of _____

This instrument was (signed and sworn to) (acknowledge) before me on _____ (date) by _____ (name of person coming before Notary) as _____ (type of authority: officer, trustee, attorney-in-fact, etc.) of _____ (name of party or entity on behalf of whom document was executed).

(NOTARY SEAL) _____
(Signature of Notary)

(IF FOLLOWING DOES NOT APPEAR ON SEAL-STAMP)

_____ (Printed name of Notary)

Notary Public for the State of Montana (Title)

Residing at _____ (City/town
Where Notary lives)

My Commission Expires _____ (Month/
Day/4-digit year)

COUNTY

Board of Gallatin County Commissioners

_____ Chair

ATTEST:

_____ Gallatin County Clerk and Recorder

EXHIBIT A