

**SUBDIVISION IMPROVEMENTS AGREEMENT
SOUTHERN SKY ESTATES SUBDIVISION
Table of Contents
(Yellowstone County)**

I.	VARIANCES.....	2
II.	CONDITIONS THAT RUN WITH THE LAND.....	2
III.	TRANSPORTATION.....	3
	A. Streets.....	3
	B. Sidewalks	4
	C. Traffic Control Devices	4
	D. Access	4
	E. Billings Area Bikeways and Trail Master Plan (BABTMP)	4
IV.	EMERGENCY SERVICE.....	4
V.	STORM DRAINAGE.....	5
VI.	UTILITIES.....	5
	A. Water.....	5
	B. Septic System.....	5
	C. Power, Telephone, Gas, and Cable Television	6
VII.	PARKS/OPEN SPACE.....	6
VIII.	IRRIGATION	6
IX.	WEED MANAGEMENT	7
X.	SOILS/GEOTECHNICAL STUDY	7
XI.	PHASING OF IMPROVEMENTS.....	7
XII.	CONDOMINIUM.....	7
XIII.	FINANCIAL GUARANTEES	7
XIV.	LEGAL PROVISIONS.....	8

SUBDIVISION IMPROVEMENTS AGREEMENT

Southern Sky Estates Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between *MAE Investments LLC*, whose address for the purpose of this agreement is **P.O. Box 81565, Billings, MT 59108**, 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 *Southern Sky Estates 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 *Southern Sky Estates 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 *Southern Sky Estates 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. No variances 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.** Individual well water rights will be transferred to the lot 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 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 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 owner's expense.

III. TRANSPORTATION

A. Streets

Right-of-Way Widths: All internal streets within Southern Sky Estates Subdivision are public roadways and have a minimum right-of-way width of 60 feet. Pureview Lane is classified as a collector road, for which 80 feet of right-of-way is dedicated. Additionally, Southern Sky Lane south of its intersection with Pureview Lane is also dedicated as a collector road with an 80-foot right-of-way width. An additional 30 feet of right-of-way has been dedicated adjacent to the property on the north side (Danford Road) as part of Southern Sky Estates Subdivision providing a total right-of-way width of 90 feet.

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 engineer designed cross-sections of said streets shall be submitted to the Yellowstone County Public Works Department.

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 convey stormwater. Culverts shall be provided to convey stormwater across roadways and driveways *as called for in the construction drawings and Certificate of Subdivision Approval from Montana Department of Environmental Quality.*

B. Sidewalks

There are no sidewalks within the Subdivision.

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.

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 Southern Sky Estates Subdivision shall be provided by two primary access points off Danford Road. A 60-foot minimum right-of-way shall be dedicated to the public by Subdivider for all internal streets unless otherwise called for (Southern Sky Lane and Pureview Lane).

No Access strips shall be provided along the frontages of Danford Road with exception to the primary access points depicted on the Plat.

E. Billings Area Bikeways and Trail Master Plan (BABTMP)

There is a proposed long-range bike lane on Danford Road in the BABTMP; however there is no trail or bike lane proposed within the Subdivision.

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 Laurel Volunteer Fire Department Service Area (LVFDSA).

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 shall install a 30,000-gallon water storage tank with dry hydrant according to the specification of the LVFDSA. No structure is to be constructed within 100 feet of the Fire Department Connection (FDC) point at the dry hydrant. The system design shall be reviewed and approved by the LVFDSA prior to construction of the system. Tank and dry hydrant are to be inspected, acceptance tested, and approved by the LVFDSA prior to any building construction occurring on the lots served by the system. The tank and dry hydrant require the formation of a new RSID for maintenance thereof. The new RSID will consist of all proposed lots within the Subdivision.
- Said 30,000-gallon water storage tank with dry hydrant shall be constructed by the Developer on Park 1 as shown on the final plat.

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.

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 individual wells and/or cisterns on the respective lots.
- A MDEQ and DNRC approval letters will be submitted with the final plat.

B. Septic System

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

The subdivision will use individual on-lot wastewater disposal systems as approved by MDEQ. These systems shall be located and installed as shown on the site layout approved by MDEQ submitted with the final plat. Lot owners will be responsible for the construction of individual septic tanks, dosing tanks, and drainfields.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will be located within the public right-of-way and utility easements shown on the plat.

All power, natural gas, telephone, and cable (where said utilities are 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: $0.00 \text{ acres} \times 11\% = 0.00 \text{ acres}$
- 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: $45.74 \text{ acres} \times 5\% = 2.28 \text{ acres}$
- Lots greater than 3.0 acres, 2.5% dedication: $23.22 \text{ acres} \times 2.5\% = 0.58 \text{ acres}$

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Based on proposed lot sizes, required parkland dedication is 2.86 acres, Subdivider is proposing to dedicate Park 1 and Park 2, which total 4.31 acres, as private parkland open space to be retained by the Subdivision HOA. Maintenance of the open space parkland will be provided by the Subdivision HOA.

VIII. IRRIGATION

Subdivider agrees there will be no irrigation water available to landowners in this Subdivision. No water shares will be transferred to the individual lot owners. Irrigation of individual lots can be conducted by lot owners utilizing the water service (individual well or cistern) constructed each lot. 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. WEED MANAGEMENT

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

- 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 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.

XI. PHASING OF IMPROVEMENTS

There will be no phasing of the required improvements.

XII. CONDOMINIUM

Lots 13 through 29 of the Subdivision, inclusive, are being contemplated as being developed with condominiums. Only these lots shall be able to be developed as individual buildings with separate units to be leased or sold. Should Lots 1 through 12 within the Subdivision be developed with condominiums, they shall be done so in accordance with the Yellowstone County Subdivision Regulation's procedures for platting.

XIII. 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 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.

XIV. 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”

MAE Investments, LLC

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 *MAE Investments, 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), 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:

Southern Sky Estates Subdivision

Signed and dated this ____ day of _____, 20__

MAE Investments, LLC

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 *MAE Investments, 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: _____