

*SUBDIVISION IMPROVEMENTS AGREEMENT*

*Shop World 2*

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(Yellowstone County)

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*Shop World 2*

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between *Cold Smoke Investments, LLC*, whose address for the purpose of this agreement is 5841 Autumnwood Dr. 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 *Shop World 2*, and

WHEREAS, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *Shop World 2* 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 *Shop World 2* 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

No variances have been 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 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, retention ponds, and thru outlet 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 Monad Avenue and the dry hydrant located on Lot 186 shall be done through one (1) or more RSID(s) created as part of the SIA for this subdivision.
- H. Access permits shall be obtained from County Public Works for accesses from Monad Avenue and Eggebrecht Lane. This application will include a site plan showing the desired location of the access and show that it meets 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 owners expense.

### 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

- Internal within the subdivision will be eight private streets. These streets will be maintained by a homeowners association. These eight private streets will be named West Daytona Street, East Daytona Street, Land Rover Avenue, Jeep Wrangler Avenue, Ferrari Avenue, Corvette Avenue, Ricky Bobby Avenue, and Tacoma Avenue. Each of these private streets are proposed to be 24' wide asphalt with 2' gravel shoulders.
- Lots 1-13 and 135 shall have a no access strip along the Monad Road boundary, so that lots cannot be directly accessed from Monad Road.
- The Developer will construct Monad Avenue from the project site west to 72<sup>nd</sup> Street West.
- Road radius at intersections should be at least 20' inside and 40' wide outside to allow for truck turning.

#### B. Traffic Control Devices

- Currently, traffic counts have been completed at intersections indicated by Yellowstone County. The Traffic Improvement Study is being prepared and will be provided upon completion. Traffic control devices will be installed in correlation to recommendations within the Traffic Improvement Study.
- Due to the secondary access from Eggebrecht being gated and a dead end to the public there will be dead end signs placed on both sides of the gate. The gate will have a knox box for fire entry.

#### C. Access

- The subdivision will have three access points. Two of these access points will be from Monad Road. The third access point will be from Eggebrecht Lane.
- The access from Eggebrecht Lane will be a gated secondary access. There will be dead end signs placed on both sides of the secondary access. The gate will have a knox box for fire entry.
- All lots within the subdivision will be directly accessed using the private internal road network.
- Each lot is required to provide enough parking for their use. Streets within the subdivision are not to be used for parking.

#### D. Billings Area Bikeways and Trail Master Plan (BABTMP) Statement of whether subdivision is within the area of the BABTMP

- The subdivision is located within the BABTMP. The nearest trail is at the intersection of S 72<sup>nd</sup> Street West and King Avenue West.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (Fire Suppression Tank) in place to allow for fire suppression requirements. Fire apparatus access roads and water supply requirements shall be provided in accordance with the Fire Protection Requirements as noted in the Yellowstone County Subdivision Regulations.

The dry hydrant system noted below has been bonded for with the attached financial security and will be located on Lot 186.

- An approved, single, minimum thirty thousand (30,000) gallon underground water storage tank with approved dry hydrant type fittings located on Lot 186.
- The dry hydrant shall be accessed off of Monad Road.
- The dry hydrant shall be maintained by a RSID.
- The dry hydrant system shall be designed and constructed to provide a minimum of one thousand (1,000) gallons per minute (gpm) at draft.
- The dry hydrant shall have a minimum clearance of twenty (20) feet on each side and be located a minimum of one hundred (100) feet from any structure.
- Approved pullouts or other design features shall be constructed to ensure that highway or roadway traffic shall not be impaired during use of the dry hydrant.
- 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 water container shall be a clean fiberglass or concrete tank, approved by the Fire Department having jurisdiction.
- 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 of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by MDEQ, or its designee.
- The subdivision proposes to use two stormwater detention ponds and one thru outlet. These stormwater facilities will be approved by DEQ and Yellowstone County prior to final plat.

VI. UTILITIES

A. Water

- Pending groundwater research there may be a percentage of lots that will have a DEQ approved water system available.

B. Septic System

- Pending groundwater research there may be a percentage of lots that will have a DEQ approved sewer system available.

C. Power, Telephone, Gas, and Cable Television

- Electric, gas, telephone, and cable television will be provided within the right of way of the proposed internal road network.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Shop World 2, as this is a commercial subdivision

[MCA 76-3-621(3) (c)].

VIII. IRRIGATION

- Big Ditch runs on the southern side of the proposed subdivision. No mitigation efforts have been proposed as the ditch will not be altered by this subdivision.
- Existing water rights will not be transferred for this subdivision.

IX. WEED MANAGEMENT

All noxious weeds on the latest Yellowstone County Noxious Weed 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 soils/geotechnical study was not required but owners of the lots will be encouraged to perform site-specific geotechnical investigation that is specific to the type of structure contemplated prior to construction.

XI. PHASING OF IMPROVEMENTS

Shop World 2 proposes that all 186 lots will be developed in a single phase.

XII. CONDOMINIUM

Lots 1 through 186 of the Subdivision are being contemplated as being developed with condominiums. Lots are allowed to be developed as individual buildings with separate units to be leased or sold.

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 by 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. If using a security, describe the method in this section)

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”

*Cold Smoke 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 *Cold Smoke 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: \_\_\_\_\_



