

SUBDIVISION IMPROVEMENTS AGREEMENT
Whitehorse Estates Subdivision, 2nd Filing
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Yellowstone County

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SUBDIVISION IMPROVEMENTS AGREEMENT

Whitehorse Estates Subdivision, 2nd Filing

This agreement is made and entered into this ____ day of _____, 20__, by and between *NEXCO LLC.*, whose address for the purpose of this agreement is **2680 Overland Ave., Suite F Billings, MT 59102**, hereinafter referred to as “Subdivider,” and YELLOWSTONE COUNTY, Montana, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, the plat of *Whitehorse Estates Subdivision, 2nd 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 *Whitehorse Estates Subdivision, 2nd 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 *Whitehorse Estates Subdivision, 2nd Filing*; 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 *Whitehorse Estates, 2nd 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 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

1. A variance from Section 4.6.B.7 of the Yellowstone County Subdivision Regulations is being requested regarding the right-of-way width along 52nd Street West.
 - a. South 52nd Street is classified as a Future Collector according to Roadway Functional Classification Map. The Yellowstone County Subdivision Regulations do not specifically establish required right-of-way dedications for Future Collector roadways; therefore, the standards for a Minor Arterial

with two (2) lanes are assumed to apply. The standard for this roadway requires 80' right-of-way dedication and 44' road width. This variance is requesting acceptance of South 52nd Street West be dedicated as 40' right-of-way currently, with the remainder being dedicated as the parcel to the west is subdivided.

2. Variance from Section 4.6.C.1 of the Yellowstone County Subdivision Regulations for constructed road width is being requested, regarding the constructed roadway width for South 52nd Street West.
 - a. South 52nd Street is designated as a Future Collector according to the Roadway Functional Classification Map. The Yellowstone County Subdivision Regulations do not specifically establish required roadway widths and right-of-way dedications for Collector Roadways; therefore, the standards for a Minor Arterial with two (2) lanes are assumed to apply. This roadway requires 80' right-of-way dedication and 44' road width. This variance is requesting acceptance of South 52nd Street West be constructed with 24' paved asphalt surfacing with 2' shoulders on each side at the time of development.
3. Variance from Section 4.4G of the Yellowstone County Subdivision Regulations is being requested regarding the creation of through lots within the proposed subdivision.
 - a. Section 4.45G of the Yellowstone County Subdivision Regulations states that double frontage lots are permitted only when necessary due to topographic conditions and when a no-access strip is provided. The proposed subdivision design includes a cul-de-sac located within the interior of the development, resulting in the creation of through lots. This layout is intended to ensure that residential lots within the subdivision obtain primary access from a local internal roadway rather than directly from the future collector roadway. A no-access strip will be provided along the future collector roadway frontage to prevent direct vehicular access and eliminate the potential for dual frontage access.

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners should be aware that this subdivision is 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; OR water rights are being split in the following way. 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 of the public right-of-way at no cost to the County 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 the 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.
- I.** Future lot owners need to be aware they are inside county zoned area and are required to obtain a zoning compliance permit before construction on the lots from City/County Planning Division.

III. TRANSPORTATION

A. Streets

- The proposed subdivision fronts Hesper Road which is twenty-four-foot (24ft) wide asphalt with 2-foot (2ft) gravel shoulders. A sixty-foot (60ft)

half width county road easement exists on Hesper Road from Whitehorse Subdivision. The land within this easement fronting *Whitehorse Estates Subdivision, 2nd Filing* will be dedicated as public right-of-way to Yellowstone County as part of this subdivision.

- Forty feet (40') half right-of-way for South 52nd Street West along the western extents of the subdivision will be dedicated to the public and Yellowstone County as part of the subdivision platting. The additional forty feet (40') of right-of-way will be dedicated as the unplatted parcel directly west of the subdivision is subdivided. At the time of development, South 52nd Street West will be constructed with an asphalt width of 24-ft with 2-ft gravel shoulders to allow for two-way traffic.
- Residential streets (Seabiscuit Way, North Seattle Slew Circle, and South Seattle Slew Circle) will have an asphalt width of 24-ft with 2-ft gravel shoulders. The streets will be built to County Standards as outlined in the Yellowstone County Subdivision Regulations, Figure 4.6.C.3. These streets will be dedicated as public right-of-way to Yellowstone County as part of this subdivision.
- Maintenance of said roads will be funded through the creation of an RSID. The public dedication documents and RSID waiver will be filed with the final plat documents.

B. 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 Traffic Control Devices (MUTCD) and County standards.
- 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 Public Works and Fire department.

C. Access

- The development has two access locations to the subdivision. One access will be from South 52nd Street West at the time of construction. The second access will be from the connection provided by Seabiscuit Way, which was dedicated and constructed as part of Whitehorse Estates Subdivision, 1st Filing. Access to each lot will require an approach permit from the county.

D. Billings Area Bikeway and Trail Master Plan

- Both Hesper Road and South 52nd Street West have long range bike lanes proposed. Subdivider is not required to install bike lanes as part of this development
- Hesper Road has a shared use path proposed. Subdivider is not required to install a shared use path at this time.

IV. EMERGENCY SERVICE

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

A 30,000-gallon dry hydrant and water storage tank is located in the southwestern part of Lot 4 of Whitehorse Subdivision for fire protection as part of the original subdivision. Fire protection will be provided via BUFSA. Plans for the dry hydrant have been submitted to the Billings Fire Department (BFD) and are approved. The dry hydrant has been installed by the developer of Whitehorse Subdivision, and tested and inspected by the BUFSA.

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

The Subdivision Improvements Agreement does not constitute an approval of sanitary improvements. The property owner shall make an application for sanitary improvements to the Yellowstone County Sanitarian and Montana Department of Environmental Quality. 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.

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.

Individual on-site water wells shall be installed as approved by the Department of Environmental Quality and the Department of Natural Resources and Conservation.

B. Septic System

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

Individual on-site wastewater disposal systems shall be installed as approved by Montana Department of Environmental Quality.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will all be located within access and utility easements.

VII. PARKS/OPEN SPACE

There is no dedicated parkland for Whitehorse Estates Subdivision, 2nd Filing. Cash-in-lieu will be paid in place of the 5% of the net land proposed per Section 10.2.A Yellowstone County Subdivision Regulations

VIII. IRRIGATION

The subdivision is located within the Big Ditch Company boundary. Each lot will receive shares for water from the Big Ditch Company, prorated for the size of the lot based on the original allotment associated with the original tract. Lots will have access to Big Ditch Company facilities and each lot within the subdivision will be assessed annually by the Big Ditch Company.

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 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 is no phasing of improvements.

XII. 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 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.

XIII. 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”

NEXCO LLC.

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 _____, (*Subdivider*), 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 for a period of twenty years from the date of this document's recording.

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:

Whitehorse Estates Subdivision, 2nd 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 _____, the person who executed the forgoing 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.

Notary Public in and for the State of Montana

Printed name: _____
Residing in Billings, Montana
My commission expires: _____