

SUBDIVISION IMPROVEMENTS AGREEMENT
Platinum Commercial Park Subdivision
Table of Contents
(Yellowstone County)

I.	VARIANCES.....	2
II.	CONDITIONS THAT RUN WITH THE LAND.....	3
III.	TRANSPORTATION.....	4
	A. Access	4
IV.	EMERGENCY SERVICE.....	5
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.	SOILS/GEOTECHNICAL STUDY	7
X.	PHASING OF IMPROVEMENTS.....	7
XI.	FINANCIAL GUARANTEES	7
XII.	LEGAL PROVISIONS.....	7

SUBDIVISION IMPROVEMENTS AGREEMENT

Platinum Commercial Park Subdivision

This agreement is made and entered this ____ day of _____, 20__, by and between *Cougar Investments, LLC, a Montana limited liability company*, whose address for the purpose of this agreement **PO Box 81153, Billings, MT 59108**, hereinafter referred to as “Subdivider,” and YELLOWSTONE COUNTY, Montana, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, the plat of *Platinum Commercial Park Subdivision*, 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 *Platinum Commercial Park 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 *Platinum Commercial Park 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 *Platinum Commercial Park 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. Variance from the Yellowstone County Subdivision Regulations, Section 4.6 Streets and Roads, B, 1 is requested to allow for a single connection to the adjacent undeveloped property north of Platinum Commercial Park Subdivision, rather than multiple connections spaced no more than 600 feet apart.
 - a. This variance is sought as Platinum Commercial Park Subdivision is proposed as a commercial and industrial use development with large lots, whose traffic

characteristics may vary significantly from future development plans to the north which would intermingle residential and commercial/industrial traffic and vehicles compromising the potential safety of motorists and residents. In addition, the proposed single connection to the adjacent property to the north provides interconnectedness between Platinum Commercial Park Subdivision and the adjacent property to limit the need to enter Danford Road or South 72nd Street West to access the future undeveloped parcel as is intended by this Subdivision Regulation. Based on the desired lot sizes and configuration of Platinum Commercial Park Subdivision, meeting the connection per 600' would also necessitate unduly splitting lots further (minimum lot width along the northern line is ~350' with a maximum lot width of 518') to comply with this requirement when large lots are desired and proposed.

2. Variance from the Yellowstone County Subdivision Regulations, Section 4.6 Streets and Roads, B, 2 is requested to allow for no connection to be made to the existing 68th Street West.
 - a. This variance is sought as the existing land use of properties on the east side of 68th Street West include single family residences whose "land use in incompatible with the proposed subdivision" being a commercial/industrial development. This is a condition of waiving this requirement per the referenced section of the Subdivision Regulations.
 - b. Additionally, the portion of 68th Street West that would be able to tied into is a roadway tract created with Certificate of Survey No. 1133 (Document Number 845884). This roadway tract does not appear to have been formally accepted as right-of-way by Yellowstone County.

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.** 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.

- D.** Culverts and associated drainage swales shall not be filled in or altered by the Subdivider or subsequent lot owners.
- E.** 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.
- F.** 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.
- G.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are detailed within the MDEQ Montana Post-Construction Storm Water BMP Design Guidance Manual and the MDEQ Storm Water Management During Construction Field Guide for Best Management Practices.
- H.** 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 without permission of said adjacent properties.

III. TRANSPORTATION

A. Access

Access to the Subdivision shall be from proposed approaches on Danford Road and South 72nd Street West as approved by the Yellowstone County Public Works Department. Danford Road and South 72nd Street West are both Yellowstone County roadways within 60-foot wide and 120-foot wide road easements, respectively, that will be perpetuated with this Subdivision. An RSID will be formed for ongoing maintenance, repair, and replacement of internal roadways of the subdivision, including Resource Way (74' right-of-way and 34' wide asphalt road) and Palladium Way (60' right-of-way and 24' asphalt road). Public right-of-way for each roadway will be dedicated with the platting of the subdivision.

B. Traffic Control

Traffic control for the proposed roadway approaches to the Subdivision will be implemented as recommended within the Traffic Impact Study (TIS) for the Subdivision. Said TIS shall be prepared and paid for by the Subdivider.

IV. EMERGENCY SERVICE

The Subdivision is located within the Billings Urban Fire Service Area, and as such the City of Billings Fire Department currently provides fire protection services for the subdivision.

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.
- Being a major subdivision and planned commercial use, a 30,000-gallon dry hydrant fire tank is required for the subdivision and will be constructed as part of the Subdivision public improvements. An RSID will be formed for ongoing maintenance, repair, and replacement of said dry hydrant fire tank.

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 of the Yellowstone County Subdivision Regulations, all proposed water systems must obtain Approval by Montana Department of Environmental Quality, or its designee.

Municipal public water service is not available in the subdivision at this time. The subdivision will be served by individual wells or alternative water source as approved by the Montana Department of Environmental Quality, or its designee.

Individual lot water supply is the responsibility of the lot owner at the time of development.

B. Septic System

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

Municipal public sanitary sewer service is not available in the subdivision at this time. The subdivision will be served by wastewater disposal systems as submitted to and approved by Montana Department of Environmental Quality. These systems shall be

located and installed as shown on the site layout approved by Montana Department of Environmental Quality, or its designee.

The Subdivision is proposed to be served by a community wastewater treatment system located on Utility Lot 7, Block 3, which will be dedicated to the public in accordance with Yellowstone County Subdivision Regulations Section 4.8, E. An RSID will be formed to provide maintenance, repair, and replacement of said community wastewater treatment system.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable services will be extended into the subdivision through utility easements along each lot's frontage along Resource Way and Palladium Way at the time of construction of subdivision roadways.

VII. PARKS/OPEN SPACE

Section 76-3-621 (3) (a-e) of the Montana Code Annotated (MCA) provides for when park land dedication may not be required. As the Subdivision is proposed as a Commercial/Industrial use subdivision (all non-residential), the Yellowstone County Subdivision Regulations Section 10.8 and said MCA does not require parkland dedication. While the Utility Lot 7, Block 3 is not considered parkland per the Yellowstone County Subdivision regulations, this ~3.612 acre piece of land will provide for open space within the Subdivision.

VIII. IRRIGATION

Subdivider agrees there will be no irrigation water, outside that reviewed and appropriated by DNRC in approval of the Subdivision, available to this Subdivision. No irrigation water shares shall be transferred to individual lot owners.

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 are no intended phasing 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”

Cougar Investments, LLC, a Montana limited liability company

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 _____, authorized signatory of *Cougar Investments, LLC, a Montana limited liability company*, known to me to be the person 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: _____

