

Return to:  
Sanderson Stewart  
1300 North Transtech Way  
Billings, MT 59102

## **SUBDIVISION IMPROVEMENTS AGREEMENT FALCON RIDGE ESTATES SUBDIVISION, THIRD FILING**

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## **SUBDIVISION IMPROVEMENTS AGREEMENT FALCON RIDGE ESTATES SUBDIVISION, THIRD FILING**

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between **FALCON RIDGE I, LLC**, whose address for the purpose of this agreement is 3671 Spalding Avenue, Billings, Montana 59106, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City."

### **WITNESSETH:**

**WHEREAS**, the preliminary plat of Falcon Ridge Estates Subdivision, Third Filing, located in the City of Billings, Yellowstone County, Montana, was submitted to the Planning and Community Services Department which recommended its approval to the Yellowstone County Board of Planning; and

**WHEREAS**, at a meeting held on the 28<sup>th</sup> day of November, 2017, by the Yellowstone County Board of Planning, the Board recommended for approval, subject to certain conditions, an area known as Falcon Ridge Estates Subdivision, Third Filing, and

**WHEREAS**, at a regular meeting held on the 18<sup>th</sup> day of December, 2017, the City Council approved, subject to certain conditions, a preliminary plat of Falcon Ridge Estates Subdivision, Third Filing; and

**WHEREAS**, a Subdivision Improvements Agreement is required by the City prior to approval of the final plat; and

**WHEREAS**, the provisions of this agreement shall be effective and applicable to the plat of Falcon Ridge Estates Subdivision, Third Filing, upon 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 City of Billings subdivision regulations; the rules, regulations, policies, and resolutions of the City of Billings; 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 requests no variances.

**II. CONDITIONS THAT RUN WITH THE LAND**

- A.** Lot owners should be aware that this subdivision could contain wildlife migratory routes. Consequently, owners are advised that wildlife indigenous to this area could be found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also experience problems with damage to landscaped shrubs, flowers, and gardens. Any impacts associated with wildlife and any damage arising therefrom is the responsibility of the lot owners.
- B.** Lot owners should be aware that there is a Declaration of Restrictions and Protective Covenants recorded in conjunction with this subdivision, which outlines additional requirements specific to this subdivision design.
- C.** Lot owners should be aware that the United States Postal Service mail delivery will be made only to centralized delivery locations. Such locations shall consist of 8 to 16 mailboxes per location. The location of each centralized mailbox setting is shown on the overall development plan and the private contract construction plans. Subdivider shall install the mailboxes within the private contract for the Third Filing.
- D.** Lot owners shall be advised that land is in proximity to right-of-way owned by the Burlington Northern Santa Fe Railroad, upon which they actively operate a transportation business. The noise from moving trains is clearly audible in the subdivision. This activity is protected by state law and can be expected to continue indefinitely. Subdivider, for itself and all successor owners of property within the subdivision, hereby waives any right to object and/or protest the noise created by normal operation of trains running along the railway, acknowledges that the railroad right-of-way is private property, and further acknowledges that the subdivision and successor owners of lots within the subdivision have an affirmative duty to stay off the Burlington Northern Santa Fe Railroad property and to keep children, guests, and invitees off the property.

- E.** 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.
- F.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- G.** The lowest finished floor elevation (which includes the garage) shall be a minimum of 18-inches higher than the top of curb measured from the highest location along the lot frontage.
- H.** The lowest openings on each home (window well, walk-out basement doors, and equivalent openings) shall be located outside drainage paths. If this is not possible, the homebuilder and lot owners must take necessary measures to protect these openings from being inundated from surface water flows; allow enough space between window wells and property lines to provide sufficient swales and drainage away from window wells; and meet applicable building codes for drainage requirements.
- I.** The developer and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- J.** Lots within Falcon Ridge Estates Subdivision, Third Filing are subject to the \$25.00 per lot per year fee for the existing stormwater connection to the Cove Ditch.

### **III. TRANSPORTATION**

#### **A. Streets**

*Right-of-way widths.* Southern Bluffs Lane and Falcon Circle shall be 56-foot rights-of-way. These internal access roads shall be 34 feet back of curb to back of curb. These roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings site development ordinance, city subdivision regulations, and Uniform Building Code.

#### **B. Sidewalks**

City and Subdivider agree that developer will install handicap accessibility ramps at time of private contract construction. The developer will install 5-foot boulevard sidewalk along Masters Boulevard with the private contract construction. The developer will also install 5-foot boulevard sidewalk in the right of way along the parkland frontage with the private contract. The developer will also install 5-foot boulevard sidewalk in the right of way along Lot 17, Block 1 with the private contract. No additional boulevard sidewalks will be installed by the developer as part of construction improvements.

Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction. Sidewalks shall be 5-foot-wide boulevard sidewalks.

#### **C. Street Lighting**

Construction or installation of streetlights in subdivision shall not be required at this time, but streetlights are included in the Waiver, which also includes a maintenance district for street light energy and maintenance.

#### **D. Traffic Control Devices**

1. The Subdivider shall furnish and install all necessary traffic control devices adjacent to the subdivision. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction. All traffic control devices shall be subject to review and approval by the City Engineering office.

2. Street name signs shall be installed at all intersections.
3. The City and Subdivider agree that the Subdivider will make cash contributions to improvements at the intersection of Rimrock Road and 62nd Street West. The calculated contribution percentage for this development is 1.33 percent. The developer will be required to make a cash contribution for this intersection improvements in the amount of \$3,325.00 prior to final plat approval.

**E. Access**

Access will be provided in two locations for the subdivision. One will be an extension of Southern Bluffs Lane and the other a connection to Masters Boulevard.

**F. Billings Area Bikeway and Trail Master Plan**

The Billings Bikeway and Trail Plan identifies the Cove Ditch as a connection linking other greenway corridors. Subdivider will install a 10-foot-wide pedestrian and bikeway path in the existing 20-foot-wide bike trail easement, located adjacent to the Cove Ditch easement. The Subdivider shall only be responsible for installing the path within the limits of the subdivision boundary.

**G. Public Transit**

There are no MET Transit routes that service this subdivision at this time. No improvements with regard to MET Transit vehicles are anticipated at this time.

**IV. EMERGENCY SERVICES**

Access is provided to this subdivision from two locations. The Falcon Ridge Estates Subdivision, Third Filing, will complete an extension of Southern Bluffs Lane and make a connection to Masters Boulevard. In addition, fire hydrants will be installed at the required locations as reviewed and approved by the City of Billings Fire Department.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for 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 International Fire Code as adopted by the City of Billings.

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 an 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 20-feet-wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

#### **V. STORM DRAINAGE**

All storm drainage improvements shall comply with the provisions of Chapter 28, BMCC, and shall be in accordance with the recommendations of an approved storm drain study to be submitted to the City of Billings Engineering Department by the Subdivider. The stormwater in the subdivision will be managed on-site through surface flow on the streets, inlets, piping, and an existing stormwater detention facility located in the southwest corner of the subdivision. The stormwater detention facility was constructed with Falcon Ridge Estates Subdivision, Second Filing and is located within Lot 17, Block 1. The detention facility will be located on Home Owner's Association (HOA) owned lot and shall be operated and maintained by the HOA. The detention facility was designed to account for drainage from both Falcon Ridge Estates Subdivision, Second Filing and Falcon Ridge Estates Subdivision, Third Filing. The stormwater detention facility has an existing outlet to Cove Ditch. The Falcon Ridge Estates Subdivision, Third Filing will be required to provide treatment of the water quality volume/flow on-site in accordance with the City of Billings Stormwater Management Manual (SWMM). The stormwater design for Falcon Ridge Estates Subdivision, Third Filing, will conform to the current SWMM and be reviewed by the City of Billings Public Works Department.

## **VI. UTILITIES**

Water and sanitary sewer lines shall be sized and installed in conformance with the City design standards and specifications, and the rules and regulations of the City of Billings.

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of/to water mains and sanitary sewers to the Public Works Department, Engineering Division. The extension/connection of/to water mains and sanitary sewers are subject to the approval of the applications and the conditions of approval. 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.

The developer/owner acknowledges that the subdivision shall be subject to the applicable system development fees and franchise fee in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.) shall be in accordance with design standards, specifications, rules and regulations of, and as approved by, the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

### **A. Water**

Service to the subdivision will be provided from the existing 8-inch water main stub in Southern Bluffs Lane and from an existing 8-inch water main located in Masters Boulevard. Extension of the water mains will provide a looped system for the subdivision. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. It is anticipated that each lot shall be provided with its own separate water service and twin home lots will receive two individual water services. All water construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department.

### **B. Sanitary Sewer**

Service to the subdivision will be from the existing 8-inch sanitary sewer stub located in Southern Bluffs Lane and from an existing 8-inch sanitary

sewer main located in Masters Boulevard. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. Each lot shall be provided with its own service and twin home lots will receive two individual sewer services. All sanitary sewer construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department.

**C. Power, Telephone, Gas, and Cable Television**

All telephone, gas, electrical power, and cable television lines shall be placed in designated easements outside of the right-of-way and shall be installed underground prior to surface improvements. The location of all such facilities shall be subject to approval of the City Engineer.

**VII. PARKS/OPEN SPACE**

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Additionally, Section 23-1002.B.1 of the City of Billings municipal code covers parkland dedication of major subdivisions. The subdivision has 34 residential lots and parkland dedication has been met through parkland dedication from previous filings.

The Southern Bluffs Lane public road improvements will be extended from Falcon Ridge Estates Subdivision, Second Filing, through existing parkland and to this development. As contemplated by the City with previous filings, the extension of a public road and utilities through existing parkland will be achieved by exchanging a new portion of dedicated parkland for the use of the Southern Bluffs Lane portion of existing parkland for public road. With this development, a new 4,846 square feet of parkland will be dedicated and is located adjacent to the existing parkland near Golden Acres Drive as shown in Exhibit A. The 4,846 square feet of new parkland is currently landscaped, irrigated and maintained by the City Parks Department. The 4,846 square feet of new park will be exchanged for the use of the existing 3,794 square feet of parkland, where Southern Bluffs Lane will be located, as a public road with utilities. The exchange will result in a net gain of 1,052 square feet of useable City Park.

**VIII. HOMEOWNER'S ASSOCIATION**

A homeowner's association (HOA) will be established for this subdivision to maintain the water quality features constructed of Falcon Ridge Estates Subdivision, Third Filing. The HOA will have the following responsibilities:

**A. Contact Information**

HOA shall provide contact information of the senior board official to the City Engineering Department upon the establishment of the HOA and/or changing of board members.

**B. Stormwater Drainage Facilities**

The HOA shall be responsible for the operation and maintenance of the water quality features that will be constructed for Falcon Ridge Estates Subdivision, Third Filing. The HOA shall also be responsible for the maintenance of the on-site drainage facility located on Lot 17, Block 1. The HOA documents and operations and maintenance manual will be created with the private contract plans.

**IX. SOILS/GEOTECHNICAL STUDY**

The Subdivider has retained an engineering firm to prepare a geotechnical analysis for this property. A copy of the entire geotechnical report prepared by Rimrock Engineering, Inc., dated October 25, 2017, is available for review at the City Building and/or Planning Division offices. There are variable soil conditions throughout the subdivision, and the potential exists for collapsible soils within the subdivision.

A lot specific geotechnical report shall be the responsibility of the lot owner. The Subdivider has contracted with Rimrock Engineering, Inc. to perform a preliminary geotechnical analysis for this property dated October 25, 2017.

Recommendations from the report include:

1. Approximately 6-inches of surface soils should be stripped and removed from the site, or stockpiled for use in non-structural areas.
2. Fill should be placed and compacted to a minimum of 97 percent relative compaction, in accordance with the ASTM D698 compaction test method.
3. Provide positive drainage away from residences.
4. Street subgrade, utility trenches, parking areas and concrete flatwork subgrade should be placed at a minimum of 97 percent of ASTM D698.

5. A large track hoe or specialized equipment may be required during foundation excavations, depending on the location and depth of the excavation. The boring logs should be reviewed for conditions across the site.
6. Due to the hydro-collapse and settlement potential of native soils on this site, plants should not be placed within three feet of foundations. Care should be taken with the landscaping not to create drainage obstructions, such as concrete curbing, which will collect and retain water near the foundations.
7. As noted in the Rimrock Engineering, Inc. October 25, 2017 report, and in accordance with the International Residential Code, downspouts shall be extended beyond the backfill zone. Positive drainage away from all foundations should have minimum grade of approximately 10 percent for at least 10 feet from perimeter wall (in areas where sidewalk or paving do not immediately adjoin the structure). Sprinkler systems should not be installed within 10 feet of foundation walls. Landscaped irrigation adjacent to the foundation system should be minimized, eliminated, or strictly regulated.

**X. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. 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 installed as approved by the City Engineering Department and Public Works Department, Distribution and Collection Division.

**XI. LEGAL PROVISIONS**

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B. The owners of the properties involved in this proposed subdivision, by signature subscribed herein below, agree, consent, and shall be bound by the provision of the 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 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.



This Agreement is hereby approved and accepted by City of Billings, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

“CITY”

**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA     )  
  :SS  
County of Yellowstone     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**WAIVER OF RIGHTS TO PROTEST**

**FOR VALUABLE CONSIDERATION**, the undersigned, being the Subdivider and sole owner of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement districts(s) for a period of no more than 20 years after the date that the final subdivision plat is filed, the right to protest the formation of one or more special improvement district(s) for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and are supported by sufficient independent consideration to which the undersigned is a party, and shall run with the land and shall be binding upon the undersigned, its 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:

Falcon Ridge Estates Subdivision, Third Filing

“SUBDIVIDER”

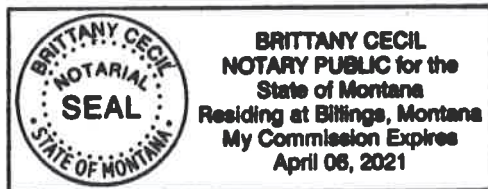
**FALCON RIDGE I, LLC**

By: *Dennis J Buscher*  
Its: *President*

STATE OF MONTANA        )  
  : SS  
County of Yellowstone    )

On this 8<sup>th</sup> day of June, 2018, before me, a Notary Public in and for the State of Montana, personally appeared Dennis J Buscher, known to me to be the person who signed the foregoing instrument as the President of **FALCON RIDGE I, LLC**, and who acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.



*Brittany Cecil*  
Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

