

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS**

***Amended Lot 6, Block 2 of
Falcon Ridge Estates Subdivision, 2nd Filing***

**Table of Contents
(City of Billings)**

- I. Variances
- II. Property Conditions and Information for Lot Purchasers
- III. Transportation
 - A. Streets
 - B. Sidewalks
 - C. Street Lighting
 - D. Traffic Control Devices
 - E. Access
 - F. Billings Area Bikeway and Trail Master Plan
 - G. Public Transit
- IV. Emergency Services
- V. Storm Drainage
- VI. Utilities
 - A. Water
 - B. Sanitary Sewer
 - C. Power, Telephone, Gas, and Cable Television
- VII. Parks/Open Space
- VIII. Irrigation
- IX. Soils/Geotechnical Study
- X. Phasing of Improvements
- XI. Financial Guarantees
- XII. Legal Provisions Applying to Subdivider

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS**

***Amended Lot 6, Block 2 of
Falcon Ridge Estates Subdivision, 2nd Filing***

This agreement is made and entered into this ____ day of _____, 200__, by and between Christopher T. Marks, whose address for the purpose of this agreement is **6417 Southern Bluffs Lane**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Amended Lot 6, Block 2 of Falcon Ridge Estates Subdivision, 2nd Filing*, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *Amended Lot 6, Block 2 of Falcon Ridge Estates Subdivision, 2nd Filing*; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to *Amended Lot 6, Block 2 of Falcon Ridge Estates Subdivision, 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 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 has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City’s Subdivision Regulations (Section 23.1101, BMCC):

1. No variances are requested as part of this Subdivision.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A.** Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.
- B.** 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.
- C.** Lot owners should be aware that a lot specific geotechnical report or specific recommendations from a licensed geotechnical engineer will be required to be submitted as part of any City Building Permit request.
- D.** 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.
- 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.** The subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- 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 defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

- H.** Lot owners shall be advised that land in the proximity to the northwestern boundary of the Subdivision is a right-of-way owned by the Burlington Northern Sante Fe Railway, upon which they actively operate a transportation business. This activity is protected by state law and can be expected to continue indefinitely. Subdivider, for itself and all successor owner 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 Sante Fe Railway property and to keep children, guests, and invitees off of the property.

III. TRANSPORTATION

A. Streets

- No public street improvements are necessitated for the Subdivision.

B. Sidewalks

- Sidewalks along the street frontage of each lot will be constructed by the lot owner at the time of development. Sidewalks shall be 5-foot boulevard walks.

C. Street Lighting

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

D. Traffic Control Devices

- Additional traffic control devices outside those installed as part of the original Falcon Ridge Estates Subdivision, 2nd Filing are not necessary.

E. Access

- The subdivision lots will be accessed via the existing Southern Bluffs Lane and Golden Acres Drive roadways.

F. Billings Area Bikeway and Trail Master Plan

- The subdivision is outside the Billings Area Bikeway and Trail Master Plan Area.

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 SERVICE

- The Subdivision can currently be provided emergency services from Golden Acres Drive or Southern Bluffs Lane and an existing fire hydrant is located on the corner of the intersection of these two roadways.

V. STORM DRAINAGE

Drainage improvements have already been constructed as part of the Private Contract Number 664 for Falcon Ridge Estates Subdivision, 2nd Filing. It is not anticipated additional public storm drainage improvements are necessitated for the Subdivision. Any storm drain improvements necessitated for each lot shall be made in accordance with Chapter 28, BOCC, and the City of Billings Stormwater Management Manual in place at the time of development.

Lot owners should be aware that given the natural topography of the subdivision, areas between buildings may be used jointly by each owner to convey stormwater away from each building. Stormwater from within the Subdivision shall not be directed to adjacent private properties.

VI. UTILITIES

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 water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is 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 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, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Water

The Subdivision will be served by an existing 8” water main in Southern Bluffs Lane and two existing water services extending to the south property line of Lot 6B. Should additional services for Lot 6A be necessary, they shall be tapped off the existing 12” water main in Golden Acres Drive.

B. Sanitary Sewer

C. The Subdivision will be served by an existing 8” sewer main in Southern Bluffs Lane and two existing sewer services extending to the south property line of Lot 6A. Should additional services for Lot 6B be necessary, they shall be tapped off the existing 8” sewer main in Golden Acres Drive.

C. Power, Telephone, Gas, and Cable Television

- Existing power, telephone, and gas utilities are present along the common line between Lot 6B and Lot 5, Block 2 of Falcon Ridge Estates Subdivision, 2nd Filing within an existing 8’ wide utility easement. An additional 8’ wide utility easement is provided along the north line of Lot 6B to provide these utilities to Lot 6A.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Amended Lot 6, Block 2 of Flacon Ridge Estates Subdivision, 2nd Filing, as this is a minor subdivision [MCA 76-3-621(3)(a)].

VIII. IRRIGATION

No existing irrigation ditches are immediately adjacent to the Subdivision, and no rights or shares in any ditches are conveyed to lot owners.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical investigation was performed by the original developer of Falcon Ridge Estates Subdivision, 2nd Filing. This geotechnical analysis includes items as shown in Appendix F (6) in the City of Billings Subdivision Regulations. This geotechnical report, in addition to subsequent addendums, are on file with the City of Billings Building Department and shall be followed when preparing a building permit application. Should lot owners wish to vary from the geotechnical report and addendums, a lot specific geotechnical report or specific recommendations from a licensed geotechnical engineer will be required to be submitted as part of any City Building Permit request for all residential structures in the Subdivision.

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 Engineer and Utility Department Manager.

XI. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- A.** Subdivider agrees to guarantee all public improvements for a period of two years 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 provisions of this Agreement.
- C.** The covenants, agreements, and all statements in this Agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

Christopher T. Marks

By: _____

Title: _____

STATE OF MONTANA)
 : ss
County of)

On this _____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared *Christopher T. Marks*, 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 the 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 in and 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: _____

