

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

***Amended Lot 6, Block 2, of  
Falcon Ridge Estates Subdivision, 2<sup>nd</sup> Filing***

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(City of Billings)**

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

***Amended Lot 6, Block 2, of  
Falcon Ridge Estates Subdivision, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 Falcon Ridge Estates Subdivision, 2<sup>nd</sup> Filing, as this is a minor subdivision [MCA 76-621(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, 2<sup>nd</sup> 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: *President*

STATE OF MONTANA )

: ss

County of )

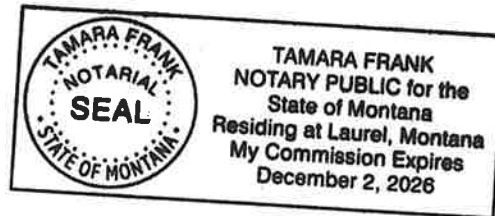
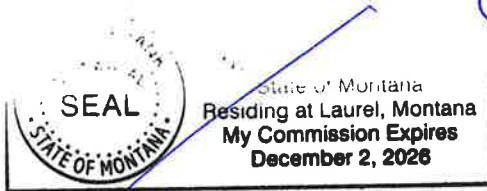
On this 21 day of August, 2023, before me, a Notary Public in and for the State of Montana, personally appeared *Christopher T. Marks*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

*Tamara Frank*  
Notary Public in and for the State of Montana

Printed Name: \_\_\_\_\_

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_





# Waiver of Right to Protest

## FUTURE SPECIAL IMPROVEMENT DISTRICTS

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 special improvement district(s) for a period of no more than twenty years from the recording of this waiver, 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 which the City of Billings may require.

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.

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

The real property hereinabove mentioned is more particularly described as follows:

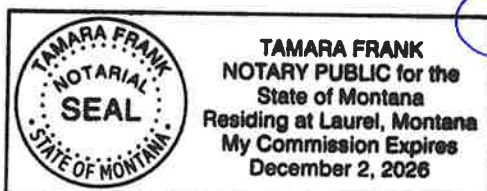
*Amended Lot 6, Block 2, of Falcon Ridge Estates Subdivision, 2<sup>nd</sup> Filing*

Signed and dated this 21 day of August, 2023

Christopher T. Marks

STATE OF MONTANA )  
: ss  
County of Yellowstone )

On this 21 day of August, 2023 before me, a Notary Public in and for the State of Montana, personally appeared Christopher T. Marks, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.



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