SIA 3682228
09/05/2013 11:56 AM Pages: 1 of 13 Fees: 5.00
Jeff Martin Clerk & Recorder, Yellowstone MT

rec 13

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

SUBDIVISION IMPROVEMENTS AGREEMENT
FALCON RIDGE ESTATES SUBDIVISION, SECOND FILING
CITY OF BILLINGS
Table of Contents

SIA 3682228
09/05/2013 11:56 AM Pages: 2 of 13 Fees: 5.00
Jeff Martin Clerk & Recorder, Yellowstone MT

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

SUBDIVISION IMPROVEMENTS AGREEMENT
FALCON RIDGE ESTATES SUBDIVISION, SECOND FILING

THIS AGREEMENT is made and entered into this 26th day of August, 2013, by and between **FALCON RIDGE II, 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, Second 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 23rd day of April, 2013, by the Yellowstone County Board of Planning, the Board recommended for approval, subject to certain conditions, an area known as Falcon Ridge Estates Subdivision, Second Filing, and

WHEREAS, at a regular meeting held on the 13th day of May, 2013, the City Council approved, subject to certain conditions, a preliminary plat of Falcon Ridge Estates Subdivision, Second 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, Second 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. Property owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. The sidewalk shall be 5-foot wide boulevard style.

B. Lot owners should be aware that there is a fully operational Petroleum Products pipeline located within the Subdivision, primarily within the park that traverses through the Subdivision. At times it may be necessary for the pipeline company to inspect, test and maintain this pipeline. These activities could include the excavation, repair, and replacement of the pipeline.

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 each phase of Second Filing.

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. 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.

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 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.

H. Lot owners should be aware that this Subdivision is being built in close proximity to a large natural park and contains wildlife migratory routes. Consequently, owners are advised that wildlife indigenous to the prairie and to the rimrock environments, including but not limited to deer, antelope and wild turkeys, is 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, unless they take steps to deter the animals. Any impacts associated with wildlife and damage arising therefrom is the responsibility of the lot owners. Lot owners shall be advised that Montana Fish, Wildlife, and Parks does not provide assistance unless there is damage to commercial agricultural crops, or a threat to public health and safety.

I. No water rights have been transferred to the lot owners. Irrigation ditches that may exist near to or 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.

J. 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 Santa 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 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 Railway property and to keep children, guests, and invitees off of the property.

K. 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.

III. TRANSPORTATION

A. Streets

1. All streets within the Subdivision shall be 34 feet back of curb to back of curb within 56-foot rights-of-way. These internal access 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, and City subdivision regulations.

2. The Subdivider has coordinated with ConocoPhillips Pine Line Company (CPPL), for the utilities, streets and walking paths that will cross their easement, which specifies requirements, liabilities and responsibilities of costs. The Subdivider has worked with CPPL to excavate the pipeline in the presence of CPPL representatives to survey, measure and insure that their pipeline has adequate cover in the final design to prevent potential damage to this pipeline from future traffic and construction.

3. Dead ends in excess of 150' created permanently or temporarily as part of the phasing plan shall have a turnaround constructed to City standards at their terminus.

B. Sidewalks

City and Subdivider agree that the developer will install handicap accessibility ramps at time of private contract construction. 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. The sidewalks located within park areas and right-of-ways that connect to the bike trail along the Cove Ditch shall be 5-feet-wide, as indicated on the plat. Sidewalks located in these areas will be constructed by the developer as per the phasing plan identified on the plat.

C. Street Lighting

Construction or installation of street lights shall not be required at this time. If street lights are installed in the future, a street light maintenance

district will be formed for the entire subdivision to accommodate maintenance of the street lights.

D. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices within and 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.

A cash contribution of $12,260 will be made prior to final plat approval for future signalization at 62nd Street West and Rimrock Road.

E. Billings Area Bikeway and Trail Master Plan

The Billings Bikeway and Trail Plan identifies the Cove Ditch as a connection link between 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.

F. 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 Golden Acres Drive and Western Bluffs Boulevard. 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 Subdivision may be required to participate in the costs of future area-wide storm drainage improvements, which requirement is hereby acknowledged and included in the Waiver attached hereto. It is anticipated that storm water detention will be located in the public park and will be designed to work in conjunction with the stormwater detention to be designed as part of Falcon Ridge Estates Subdivision, Third Filing.

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 water main stub in Golden Acres Drive and also from an existing stub located in Western Bluffs Boulevard. Connecting these 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. 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 provided by connecting to the existing sanitary sewer main on Golden Acres Drive and also from an existing stub located in Western Bluffs Boulevard. Appropriately sized mains and services in the internal streets will provide service to individual lots within the subdivision. It is anticipated that each lot shall be provided with its own separate sanitary sewer service. 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, Distribution, and Collection Division.

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 Code Annotated covers the park dedication requirement. Additionally, Section 23-1002.B.1 of the City of Billings municipal code covers parkland dedication of major subdivisions. There are platted public parks throughout the Subdivision. Within some of these parks, active and passive recreational facilities shall be installed by private contract as approved by the City of Billings Public Works Department and Department of Parks, Recreation, and Public Lands. The existing park maintenance district for Falcon Ridge Subdivision and Falcon Ridge Estates Subdivision, First Filing, will be amended to include all the lots within the Subdivision for the care and maintenance of the parks. The linear park located adjacent to Lots 1-6, Block 4 will be completed by the developer. Improvements include completion of 300 linear feet of 5-foot-wide sidewalk, irrigation for said limits, and seeded lawn. The developer will complete the bike path within the subdivision, adjacent to the Cove Ditch to include the continuation of the 10-foot bike path through this subdivision. There are no improvements identified for the park area located to the north of Block 7, north and uphill of Western Bluffs Boulevard.

VIII. SOILS/GEOTECHNICAL STUDY

The Subdivider has performed a geotechnical analysis for this property. This geotechnical analysis includes items as shown in Appendix F (6) in the City of Billings subdivision regulations. Lot specific geotechnical reports 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.

IX. 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.

X. 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.

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

"SUBDIVIDER" **FALCON RIDGE II, LLC.**

By: Daniel M. Fleury

Its: V. Pres

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 25th day of July, 2013, before me, a Notary Public in and for the State of Montana, personally appeared Daniel M. Fleury, known to me to be the person who signed the foregoing instrument as the Vice President of **FALCON RIDGE II, 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.

PETER B. KNAPP NOTARIAL SEAL STATE OF MONTANA
PETER B. KNAPP
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
November 08, 2014

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

This Agreement is hereby approved and accepted by City of Billings, this 26th day of August, 2013.

"CITY"

CITY OF BILLINGS, MONTANA

By: Thomas W. Hanel
Mayor

Attest: Cari Martin
City Clerk

STATE OF MONTANA)
:ss
County of Yellowstone)

On this 26th day of August, 2013, before me, a Notary Public for the State of Montana, personally appeared Thomas W. Hanel, and Cari Martin, 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.

WYNNETTE J MADDOX
NOTARY PUBLIC for the
State of Montana
Residing at Shepherd, Montana
My Commission Expires
September 16, 2014

Wynnette J Maddox
Notary Public in and for the State of Montana
Printed name: Wynnette J Maddox
Residing at: Shepherd MT
My commission expires: 9.16.2014

Approved as to Form:

City Attorney

SIA 3682228
09/05/2013 11:56 AM Pages: 13 of 13 Fees: 5.00
Jeff Martin Clerk & Recorder, Yellowstone MT

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 for a period of 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, Second Filing

SUBDIVIDER **FALCON RIDGE II, LLC.**

By: Daniel M Fleury

Its: V. Pres

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 25th day of July, 2013, before me, a Notary Public in and for the State of Montana, personally appeared Daniel M. Fleury, known to me to be the person who signed the foregoing instrument as the Vice President of **FALCON RIDGE II, 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.

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

PETER B. KNAPP
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
November 08, 2014

NOTARIAL SEAL — PETER B. KNAPP — STATE OF MONTANA

P:96013-147 Falcon Ridge 2nd Filing