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Eric Semerad - Gallatin County, MT MISC

SHARED ROAD MAINTENANCE AGREEMENT

This shared road maintenance agreement ("Agreement") is entered into effective this 31 day of October, 2019 ("Effective Date") by and between FASTDOG, LLC, developer of Falcon Heights Minor Subdivision, with an address of 126 Bow Perch Lane, Bozeman, Montana 59718 ("Fastdog") and FALCON HOLLOW PROPERTY OWNERS ASSOCIATION, INC. with an address of P.O. Box 1862, Bozeman, Montana 59715 ("Falcon Hollow"). Fastdog and Falcon Hollow are collectively referred to in this Agreement as the "Parties."

WHEREAS, Fastdog is the owner of real property also known as Falcon Heights Minor Subdivision ("Falcon Heights") described in the final plat filed for record in the office of the Clerk and Recorder of Gallatin County, Montana as Plat No. 507; Upon recording of the Final Plat for Falcon Heights, the Falcon Heights Homeowners Association shall accept all responsibilities as part of this agreement.

WHEREAS, Falcon Hollow, consists of the following subdivision phases:

Falcon Hollow Subdivision First Filing (Plat J-473) -- 26 multi-family lots containing 81 residential units + one vacant multi-family lot = 82 units;
Falcon Hollow Subdivision Phase 2A (Plat J-510) -- 23 single family lots
Falcon Hollow Subdivision Phase 2B (Plat J-520) -- 20 single family lots
Falcon Hollow Subdivision Phase 3 (Plat J-556) -- 53 townhome/single family lots
Falcon Hollow Subdivision Phase 4 (Plat J-576) -- 56 single family lots

WHEREAS, Falcon Hollow is made up of the owners of certain real property that utilize the interior subdivision roads known as Talon Way, Bow Perch Lane, Falconers Way, Teita Drive, Snowy Owl Trail, Rowland Road, Lanner Drive, East Granite Peak Drive, and Saker's Way, located in Section 17, Township 2 South, Range 5 East in Gallatin County, Montana;

WHEREAS, the Parties to this Agreement agree to proportionately share maintenance costs for Talon Way, Bow Perch Lane, Falconers Way, Teita Drive, Snowy Owl Trail, Rowland Road, Lanner Drive, East Granite Peak Drive, and Saker's Way ("the Subdivision Roads") (See attached Exhibit A);

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Parties covenant and agree as follows:

1. **Maintenance.** The cost for all maintenance and repair ("Maintenance") over and across the Subdivision Roads shall be the proportionately shared responsibility of the Parties, and their heirs, successors, and assigns. There are currently a total of 239 single-family lots and individual housing units that utilize the Subdivision Roads between Falcon Hollow and Falcon Heights. Falcon Heights contains 5 single-family lots and Falcon Hollow contains 234 single-family lots and/or residential units. As such, Falcon Heights shall be responsible for 2.09 %, or 5/239, of the costs associated with Maintenance for the Subdivision Roads. Falcon Hollow shall be responsible for 97.91%, or 234/239, of the costs associated with Maintenance for the

Subdivision Roads. If any lots or residential units are added to either Falcon Heights or Falcon Hollow, the proportions for Maintenance of the Subdivision Roads, as described herein, shall be modified accordingly.

As used herein, Maintenance is defined as the work normally and routinely necessary to preserve, repair, and keep the road in its current and functional condition, and to keep the roads open year-round for two-wheel drive and emergency vehicular traffic during the winter. Maintenance shall include the cul-de-sac on Saker's Way and the emergency T-turnaround on Bow Perch Lane (See Exhibit B). Maintenance includes weed control, snow removal, and removal of fallen trees, vegetation, and debris.

Further, Maintenance includes keeping the Saker's Way cul-de-sac clear of snow, debris, and other items to allow for the required 50-foot radius for emergency vehicles to turn around and to ensure that all driveways on Bow Perch Lane are accessible at all times.

2. **Contracting for Service.** For effective letting of contracts for service to perform Maintenance, as described above, Falcon Hollow shall be responsible for selecting contractors and obtaining bids for such Maintenance. Falcon Hollow shall, no later than April 10 of each year, present bids to Falcon Heights for summer Maintenance of the Subdivision Roads. Within thirty (30) days of presentation of bids, Falcon Heights shall accept the bids in writing or have noticed and held a meeting with Falcon Hollow to reach an agreement on letting contracts based upon the bids. Falcon Hollow shall sign the contracts for Maintenance.

Falcon Hollow shall, no later than September 10 of each year, present bids to Falcon Heights for winter Maintenance of the Subdivision Roads. Within thirty (30) days of presentation of bids, Falcon Heights shall accept the bids in writing or have noticed and held a meeting with Falcon Hollow to reach an agreement on letting contracts based upon the bids. Falcon Hollow shall sign the contracts for services for the Maintenance.

The Parties agree that it is in their mutual best interest to agree upon service contracts in order to maintain the Subdivision Roads. Therefore, the Parties agree to the following expedited process to resolve disputes arising from service contracts relating to the Maintenance of the Subdivision Roads:

In the event the Parties are unable to reach an agreement to execute contracts, the Parties shall, within three (3) days of the meeting described above, agree to a mediator and conduct a mediation to reach agreement on executing the service contracts within 30 days of the selection of a mediator. The Parties shall share equally in the selection and payment of a mediator.

Should either Party fail to meet the deadlines set forth herein, the Party meeting the deadline shall have the right and authority to enter into the disputed service contract and the right to bill the other party for their proportionate costs as set forth above.

In all events if a Party fails to pay the amount bill, the paying Party shall have the right to lien the lots in the non-paying subdivision.

3. **Payment.** Costs of Maintenance, as apportioned in paragraph 1 above, shall be billed to Falcon Heights Homeowners Association and Falcon Hollow. The Parties are responsible for paying their proportionate costs of Maintenance within 60 days of receipt of an invoice, unless otherwise noted by the provider performing the Maintenance. The Parties are responsible for collecting any necessary dues or fees from individual members or property owners necessary to cover the Parties' proportionate share of the costs of Maintenance for the Subdivision Roads.

4. **Effective Term.** This Agreement shall be perpetual, and shall encumber and run with the land so long as the roads remain subdivision roads.

5. **Mediation.** The Parties agree to first attempt to settle any dispute, claim, or controversy regarding Maintenance, costs related thereto, or otherwise arising out of, or relating to, this Agreement, by mediation, and taking into consideration the recommendation(s) of a licensed registered engineer, prior to initiating legal proceedings. The Parties further agree that there is no requirement to reach a settlement in mediation. The Parties, however, agree that if a settlement is reached during mediation, it shall be reduced to writing and shall be binding upon the Parties, their heirs, executors, administrators, successors, and assigns.

6. **Governing Law.** This Agreement shall be governed by the laws of the State of Montana.

7. **Entire Agreement.** This Agreement constitutes the entirety of the Agreement and understanding of the Parties, and shall supersede any prior agreements and any oral agreements to the contrary.

8. **Modification and Amendment.** This Agreement shall not be modified or amended except by written agreement of the Parties.

9. **Binding Effect.** This Agreement will be binding upon and will inure to the benefit of the heirs, successors, and assigns of the Parties.

10. **Attorney Fees.** If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover all costs and expenses necessarily incurred, whether on trial or appeal, including reasonable attorney's fees, together with reasonable attorney's fees to determine the amount of attorney's fees to be awarded under this section. Attorney's fees shall be determined on an hourly basis, not on a contingency fee basis.

11. **Waiver.** The failure by any party to require performance of or strictly enforce any provision of the Agreement or the delay by a party in exercising any right, power, or privilege under this Agreement shall not be considered a waiver of such provision, nor affect that party's right to require performance at any time thereafter. No waiver of any breach or default of the Agreement shall constitute a waiver of any subsequent breach or default or a waiver of the provision itself, nor shall be deemed sufficient grounds to enable the Parties to disregard the terms of this Agreement.

12. **Severability.** If any provision or term of this Agreement is found to be unenforceable, void, or invalid, the remaining terms and provisions shall remain in full force and effect and shall be fully severable.

13. **Counterparts.** This Agreement may be executed in one or more counterparts, which taken together shall constitute the Agreement.

31st **IN WITNESS WHEREOF**, the Parties have hereunto executed this Agreement this day of October, 2019.

FASTDOG, LLC

By: Mark Fasting

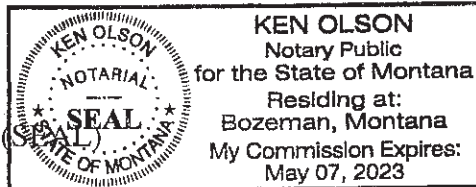
Its: Member

STATE OF Montana)

: ss.

County of Gallatin)

On this 31st day of October, 2019, before me appeared Mark Fasting, the Member of Fastdog, LLC, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of the corporation.



Ken Olson
Notary Public for the State of Montana
Printed Name: Ken Olson

FALCON HOLLOW PROPERTY OWNERS ASSOCIATION, INC.

By: Sammy Saunders

Its: Sammy Saunders

STATE OF Montana)

: ss.

County of Gallatin)

On this 31 day of October, 2019, before me appeared Sammy Saunders, the President of Falcon Hollow Property Owners Association Inc., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of the corporation.

Amanda Kutz

Notary Public for the State of Montana
Printed Name: Amanda Kunz

(SEAL)

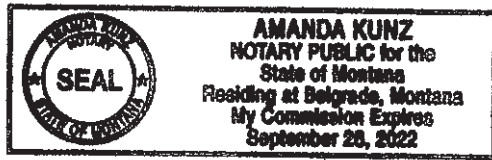
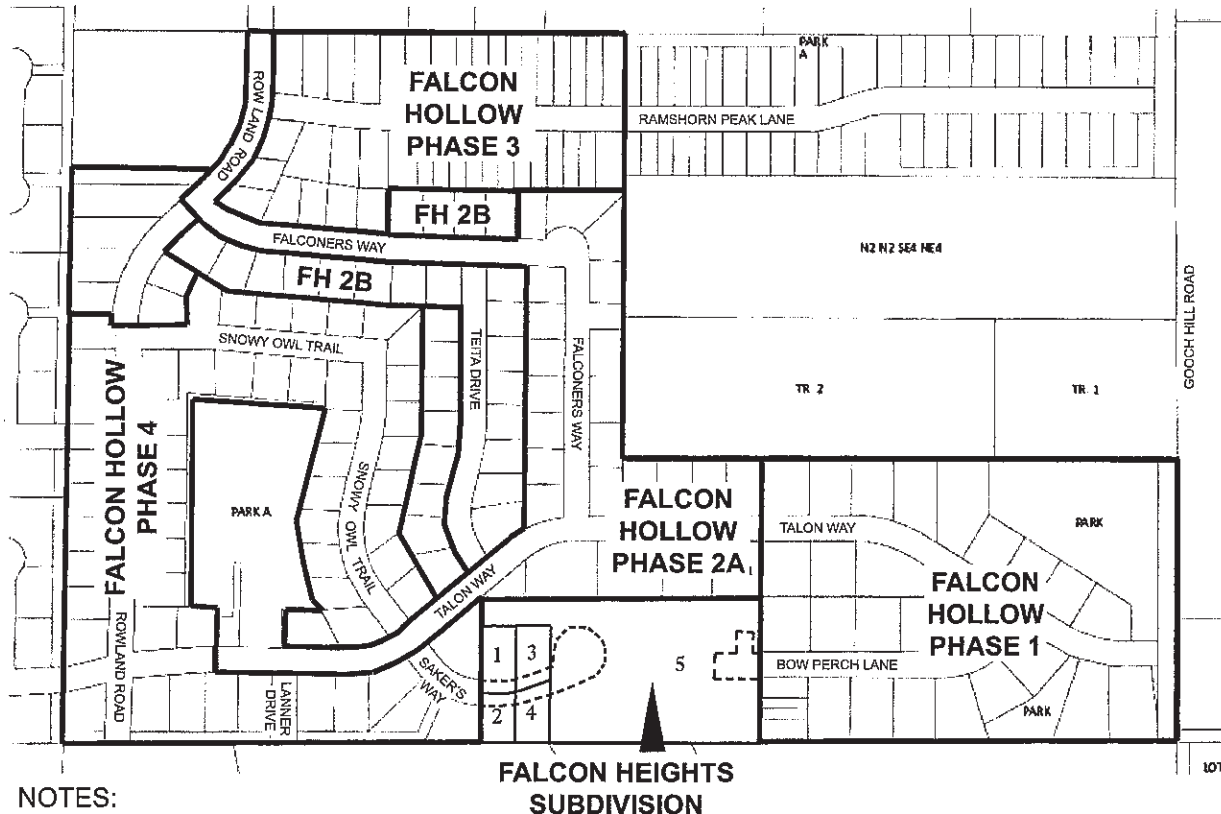


EXHIBIT A - ROAD AGREEMENT
FALCON HEIGHTS 5-LOT MINOR SUBDIVISION
 BEING TRACT 2 OF DEPENDENT SURVEY No. 17A,
 LOCATED IN A PORTION OF THE NORTHEAST ONE-QUARTER
 OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 5 EAST, PRINCIPAL
 MERIDIAN MONTANA, GALLATIN COUNTY, MONTANA

**NOTES:**

- THIS EXHIBIT REPRESENTS THE EXISTING FALCON HOLLOW SUBDIVISION, PHASES 1-4 AND CORRESPONDING EXISTING SUBDIVISION ROADS, IN RELATION TO THE PROPOSED FALCON HEIGHTS SUBDIVISION. PARCEL INFORMATION WAS OBTAINED VIA GALLATIN COUNTY GIS INFORMATION AND MAY NOT REPRESENT ALL TRUE DIMENSIONS, LOTS, EASEMENTS, ETC. FOR ILLUSTRATIVE PURPOSES ONLY.
- FINAL LOT LAYOUT OF FALCON HEIGHTS SUBDIVISION MAY VARY DEPENDING UPON SITE CONDITIONS AND/OR REQUIREMENTS FROM PUBLIC AGENCY REVIEW PROCESS. OVERALL INTENT IS TO MAINTAIN LAYOUT AS GENERALLY SET FORTH BY THIS EXHIBIT.

NOT TO SCALE

32 DISCOVERY DRIVE
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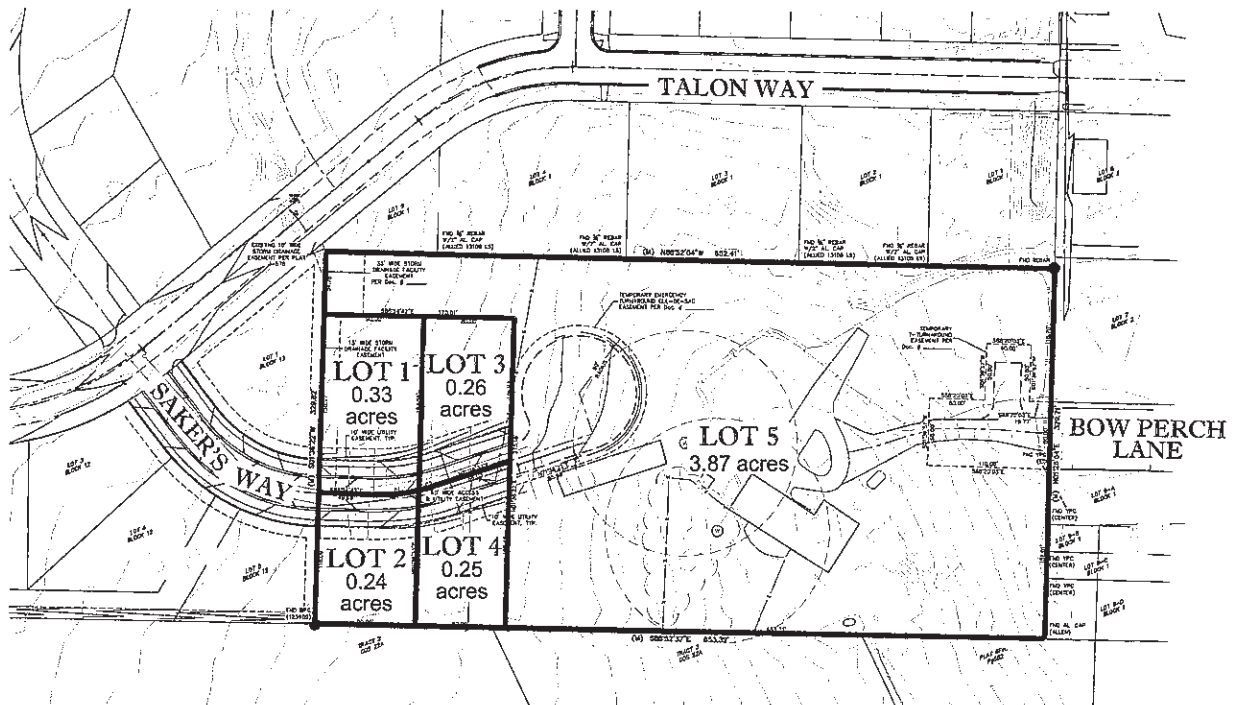
*Civil Engineering
 Geotechnical Engineering
 Land Surveying*



PREPARED BY: JAJ
 REVIEWED BY: MAF
 PROJECT NO.: 18-014
 DATE: 01/18/19

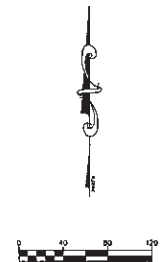
EXHIBIT**A**

EXHIBIT B - ROAD AGREEMENT
FALCON HEIGHTS 5-LOT MINOR SUBDIVISION
 BEING TRACT 2 OF DEPENDENT SURVEY No. 17A,
 LOCATED IN A PORTION OF THE NORTHEAST ONE-QUARTER
 OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 5 EAST, PRINCIPAL
 MERIDIAN MONTANA, GALLATIN COUNTY, MONTANA



NOTES:

- THIS EXHIBIT REPRESENTS THE PROPOSED LAYOUT FOR FALCON HEIGHTS 5-LOT MINOR SUBDIVISION. FOR ILLUSTRATIVE PURPOSES ONLY.
- FINAL LOT LAYOUT OF FALCON HEIGHTS 5-LOT MINOR SUBDIVISION MAY VARY DEPENDING UPON SITE CONDITIONS AND/OR REQUIREMENTS FROM PUBLIC AGENCY REVIEW PROCESS. OVERALL INTENT IS TO MAINTAIN LAYOUT AS GENERALLY SET FORTH BY THIS EXHIBIT.
- SAKER'S WAY WITHIN FALCON HEIGHTS (LOTS 1, 2, 3, AND 4) MAY BE PUBLIC EASEMENT OR PUBLIC RIGHT-OF-WAY, RESULTING IN CORRESPONDING LOT ACREAGE VARIATION.



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*Civil Engineering
 Geotechnical Engineering
 Land Surveying*



PREPARED BY: JAJ
 REVIEWED BY: MAF
 PROJECT NO.: 18-009
 DATE: 03/15/19

EXHIBIT

B