

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS
Silver Creek Estates, Amended
(City of Billings, Montana)**

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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS
Silver Creek Estates, Amended**

This agreement is made and entered into this _____ day of _____, 20____, by and between **BOYER LAND, LLC**, whose address for the purpose of this agreement is 2810 Central Avenue, Unit C, Billings, MT 59102, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on _____ day of _____, 20____, the Board of Planning recommended conditional approval of a preliminary plat of Silver Creek Estates, Amended; and

WHEREAS, at a regular meeting conducted on _____ day of _____, 20____, the City Council conditionally approved a preliminary plat of Silver Creek Estates, Amended; 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 Silver Creek Estates, Amended 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

A. No variances from the City Subdivision Regulations are requested or contemplated for 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.

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. A geotechnical report was prepared by Rimrock Engineering in February 2014 that studied and made recommendations for the construction of Silver Creek Estates. Additional evaluation and clarification was provided in a letter from Rimrock Engineering on April 27, 2015 related to foundation construction adjacent to storm water detention ponds. Copies of the geotechnical report may be obtained from the City Building Division.
- D. No water rights are transferred to the lot owners within this subdivision. Irrigation ditches existing on the perimeter of the subdivision are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall only be altered by Subdivider or subsequent owners to construct the following improvements: Storm water discharge pipe(s) into the High Ditch based on an existing agreement with the ditch company; trail/sidewalk crossing with ditch culverts; minor grading to re-shape, clean or maintain ditch if needed and related erosion control measures.
- 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. Lot owners should be aware that Best Management Practices for stormwater control are required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- G. Ditch easements as shown on the plat for the High Ditch shall be kept free of structures, including fences. The easement shall also be kept free of yard waste, grass clippings, and other debris.
- H. Lot owners should be aware that the High Ditch and the Cove Ditch are natural drainage ways and may overtop in large storm events. Precaution should be taken to protect properties abutting these ditches.

III. TRANSPORTATION

- A. Silver Creek Estates, Amended is being platted in order to consolidate all lots and vacate all right-of-ways within the subdivision area. This subdivision is to provide one resulting lot that can be subdivided in the future with a new lot layout and roads.
- B. **Streets**
 - 1. **Silver Creek Trail and Gold Creek Trail:** Portions of Silver Creek Trail within the subdivision will be vacated. However, the portion of Silver Creek Trail that fronts the subdivision but is located outside of the subdivision, as well as the portion of Gold Creek Trail that fronts the subdivision, will remain. Portions of both streets that front the subdivision that are not yet constructed, will be

constructed within existing 56-foot wide right-of-ways using standard curb and gutter and full-width pavement (34 feet back of curb to back of curb).

2. **50th Street West** is currently undeveloped and planned to be a local street. It is to be located within a 56-foot right-of-way centered on the west line of the southeast quarter of Section 32, Township 1 North, Range 25 East. A 28-foot half width was dedicated for this right-of-way with prior filing of Silver Creek Estates. The east half of 50th Street West and a portion of the pavement on the west half, for a total pavement width of 30 feet, shall be constructed from the intersection of 50th Street West and Gold Creek Trail to the north boundary line of the subdivision. The Subdivider shall construct this portion of road to grade with a satisfactory sub-base, base course, standard curb and gutter, asphalt surface and tapers as needed. Subdivider shall enter an agreement with the City to waive the right to protest creation of a Special Improvement District to construct the east half of 50th Street West from the intersection of 50th Street West and the Gold Creek Trail to the south boundary of the subdivision.
3. **Cove Avenue:** Cove Avenue is located outside of the subdivision and fronts the north side of Silver Creek Estates. Cove Avenue only exists as a right-of-way at this time, with no improvements and is not planned for construction at this time. It may be constructed in the future with a standard width of 34-feet back of curb to back of curb, standard curb and gutters and standard boulevard sidewalks. Construction of the south half of Cove Avenue is included in a Waiver of Right to Protest creation of a Special Improvement District that was created with Silver Creek Estates, and is also included in the Waiver of Right to Protest creation of a Special Improvement District created for Silver Creek Estates, Amended. This is to promulgate the same requirements to the amended plat.

C. Sidewalks

Sidewalks along the lot frontage with Gold Creek Trail and Silver Creek Trail shall be installed at the time of home construction. Sidewalk shall be 5-foot wide with a 5-foot wide boulevard between the walk and curb.

D. Street Lighting

Construction or installation of street lights within the public right-of-ways is not required now, but street lights are included in the Waiver of Right to Protest to provide for future installation if needed. A maintenance district for street lights will be formed in the future, if required.

E. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices in accordance with the plans and specification submitted to and approved by the City Engineering Division.

F. Access

The lot will be accessed by Silver Creek Trail, Gold Creek Trail and 50th Street West.

G. Heritage Trail Plan

No trails are planned within the subdivision.

H. Public Transit

The subdivision does not require improvements to provide public transit service.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials, 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 the 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 twenty (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.

Any roads extending beyond 150' in length that ends in a dead end shall have an approved turn around at its termination.

V. STORM DRAINAGE

No stormwater infrastructure is proposed with this subdivision. When the single lot created with this subdivision is re-subdivided the Subdivider will be required to construct stormwater infrastructure in accordance with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC.

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 – Distribution and Collection 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 appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the first paragraph above.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

It is acknowledged that all fees stated above are subject to the Franchise Fee in effect at the time of payment.

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 existing water mains stubbed out near the subdivision's east boundary in Gold Creek Trail and Silver Creek Trail. No water main extensions are proposed with this subdivision.

B. Sanitary Sewer

The subdivision will be served by an existing sewer main stub-out near the east subdivision boundary, in Silver Creek Trail and an existing sewer main in the 50th Street West right-of-way, adjacent to the west boundary of the subdivision. No sewer main extensions are proposed with this subdivision.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical, power, and cable television lines shall be the responsibility of Subdivider. Any line located within public right-of-way shall be subject to approval of the City Engineering Division. All easements required for the location of these utilities are as shown on the plat.

VII. PARKS/OPEN SPACE

No park land creation is required with this development.

VIII. IRRIGATION

The Cove Ditch located north of the subdivision and the High Ditch running along the south side of the subdivision are for the irrigation service to other properties. These ditches shall remain in place and shall not be altered by the Subdivider or subsequent owners, except as identified in this agreement or otherwise approved by ditch owners. Existing ditch easements shall be preserved. No structures, including fences shall be erected within the ditch easements shown on the plat, and the easement area should be kept free of yard waste, grass clippings, and other debris

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical report was prepared by Rimrock Engineering in February 2014 that studied and made recommendations for the construction of Silver Creek Estates Subdivision. Additional evaluation and clarification was provided in a letter from Rimrock Engineering on April 27, 2015 related to foundation construction adjacent to storm water detention ponds. Copies of the geotechnical report may be obtained from the City Building Division office.

X. PHASING OF IMPROVEMENTS

No phasing is proposed with Silver Creek Estates, Amended.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts 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 special improvement district or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- 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 provisions of this 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 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”

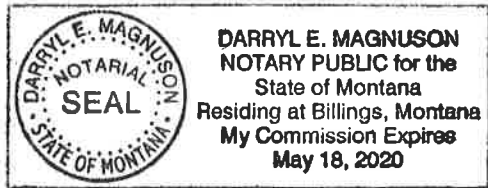
Boyer Land, LLC

By: *Laura Boyer*

Its: Secretary

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 28th day of August, 2019, before me, a Notary Public in and for the State of Montana, personally appeared Laura Boyer, known to me to be the Secretary of Boyer Land, LLC, who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Darryl E. Magnuson
Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

Waiver of Right to Protest

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 incident to the above 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.

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

Lots 19-36, Block 1, Lots 1-12, Block 3 and all of Block 4, Silver Creek Estates, Located in the Northeast Quarter of Section 32, Township 1 North, Range 25 East, P.M.M.

“SUBDIVIDER”

Boyer Land, LLC

By:

Kevin Boyer

It's:

Secretary

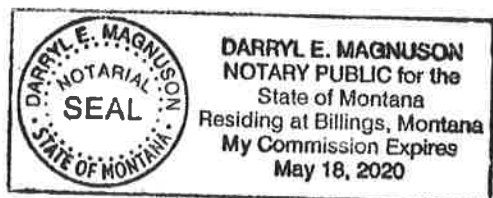
STATE OF MONTANA)

: ss

County of Yellowstone)

On this 28th day of August, 2019, before me, a Notary Public in and for the State of Montana, personally appeared Kevin Boyer, known to me to be the Secretary of **Boyer Land, LLC**, who executed the foregoing instrument and acknowledged to me that he executed the same.

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



Darryl E. Magnuson
Notary Public in and for the State of Montana

Printed Name: _____

Residing at: _____

My commission expires: _____