

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

**Silver Creek Estates, 2nd Filing
(City of Billings, Montana)**

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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS
Silver Creek Estates, 2nd Filing**

This agreement is made and entered into this this _____ day of _____, 20____, by and between *Boyer Land, LLC* whose address for the purpose of this agreement is **2810 Central Ave, 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, 2nd Filing; and

WHEREAS, at a regular meeting conducted on _____ day of _____, 20____, the City Council conditionally approved a preliminary plat of Silver Creek Estates, 2nd Filing; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to Silver Creek Estates, Amended upon filing of the final plat thereof in the office of 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 shall construct portions of required sidewalk fronting their properties 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 of Right to Protest creation of the special improvement district or districts. Said Waiver 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 recorded with the final plat, shall run with the land, and shall constitute the guarantee by the Subdivider and lot owner(s) of property within the subdivision. Said Waiver is effective upon filing and is not conditioned on completion of conditions set forth in this Agreement. The Subdivider and owner(s) specifically agree that they are waiving valuable rights and do so voluntarily.
- F. The Subdivider and lot owners acknowledge that there is a Stormwater Pollution 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, Section 28-201, BMCC and the Billings Stormwater Management Manual.
- G. 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.
- H. 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.
- I. It is possible for stormwater detention ponds within the subdivision to overtop their banks in large storm events. To protect homes adjacent to the ponds, lots shall be

graded during home construction to direct water away from buildings. Adjacent to the ponds, top of foundations, top of basement window well elevations and any other building components vulnerable to flood water shall be held high enough to prevent flooding of home due to overflow of the ponds.

- J. Drainage swales located within the drainage easements as shown on the plat shall be maintained by lot owners as described in Section 5.

III. TRANSPORTATION

A. Streets

1. **Silver Creek Trail, Blue Mountain Trail, Gold Creek Trail, Buffalo Ridge Trail and Aspen Creek Trail** will be constructed within a 56-foot right-of-way using standard curb and gutter and full-width pavement (34 feet back of curb to back of curb) and will be dedicated to the City.
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 Gold Creek Trail to the north boundary line of Silver Creek Estates. 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. The east half of 50th Street West from the intersection of Gold Creek Trail to the south boundary of the Silver Creek Estates is not to be constructed at this time, but is included in the Waiver of Right to Protest.
3. **Cove Avenue:** Cove Avenue is a possible future local street, and may include a standard width of 34-feet back of curb to back of curb, standard curb and gutters and standard boulevard sidewalks. The south half of Cove Avenue along the frontage with Silver Creek Estate is not to be constructed at this time, but is included in the Waiver of Right to Protest.

A. Sidewalks

All sidewalks on internal streets 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. The Subdivider shall construct sidewalk at each street intersection that require pedestrian ramps at the time of street construction. The Subdivider shall also construct sidewalk adjacent to the proposed stormwater detention pond on Lot 27 at the time of street construction.

B. 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.

C. 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.

D. Access

Elk Ridge Trail and Silver Creek Trail will provide access to the subdivision from 46th Street West. All lots will be accessed by the internal local streets.

Access between lots and public rights-of-way is prohibited along the 1-foot wide No Access Strip shown on the plat, along 50th Street West and a portion of Gold Creek Trail near its intersection with 50th Street West.

E. Billings Area Bikeway and Trail Master Plan

The Billings Area Bike and Trail Master Plan identifies the High Ditch as a designated bike route. River Rock Estates previously granted a 20-foot wide linear park for trail construction along the south side of the ditch. For continuity, it is expected the trail will continue along the south side of the ditch, which is outside of the boundaries of the subdivision. Therefore, no additional right-of-way is granted with the subdivision for this trail. A 20-foot wide right-of-way will be granted adjacent to the north side of Lot 27. This right-of-way will be used for future construction of a shared use path connecting Silver Creek Trail to 50th Street West. The shared use path is not to be constructed at this time, but is included in the Waiver of Right to Protest. The right-of-way will also be used for utilities. The right-of-way shall be landscaped by the Subdivider in conjunction with the stormwater detention pond landscaping on Lot 27 and maintained by the Home Owner's Association.

F. Public Transit

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

G. Offsite Traffic Impacts

From a traffic study originally prepared for Silver Creek Estates, motor vehicle traffic generated by Silver Creek Estates was estimated to have an aggregate impact of \$35,500 on nearby major intersections, including Rimrock Road & 46th Street West (\$11,500), Rimrock Road and Shiloh Road (\$12,000), and Shiloh Road and Poly Drive (\$12,000). This amended subdivision, will result in a minor decrease in traffic in comparison to the original subdivision, due to a decrease in housing

density. Therefore, the original aggregate impact assessed for Silver Creek Estates will be used for Silver Creek Estates, 2nd Filing, without further traffic analysis.

A portion of the impact fee was paid with development of Silver Creek Estates, Phase 1, in the amounts of \$5,080 for improvements to the intersection of Rimrock Road and 46th Street West and \$5,270 for improvements to the intersection Shiloh Road and Poly Drive. The remaining balance of \$25,150 shall be made prior to approval of a Private Contract for public improvements (water, sewer, streets) serving Silver Creek Estates, 2nd Filing.

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

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval prior to final plat approval.

Stormwater detention ponds shall be landscaped in conjunction with the private contract improvements. The Homeowner's Association shall maintain the storm drain ponds in accordance with the Operation and Maintenance plan approved by the City. If

the Homeowner's Association stops maintaining the ponds, the City reserves the right to create a maintenance district throughout the subdivision to maintain the ponds.

Drainage Easements as shown on the plat, along the backs of Lots 28–35 of Block 1, Lots 2-15 of Block 7, Lots 2-13 of Block 6, Lots 2-11 of Block 4, Lots 2-6 of Block 3 and along the west side of Lot 1 of Block 3 are for the benefit of all lots adjacent to the easements. With exception to Lot 1 of Block 3, The back half of Lot's adjacent to these easements may be graded to drain to the easements. The west 60-feet of Lot 1 of Block 3 may be graded to drain to the easement on that lot.

Lot owners shall maintain continuous, unobstructed drainage swales, flowing south along said easements. The drainage swales shall flow over the sidewalks on south end, to drain to Silver Creek Trail or to the stormwater detention pond on Lot 27 of Block 1, as applicable.

On Lots 28 -36 of Block 1, lot owners shall maintain an 18-inch high berm along the rear lot lines adjacent to the 50th Street West right-of-way. The berm shall prevent water from draining onto lots from areas west of the lots and shall direct drainage from the backs of these lots to drain south to the stormwater detention pond.

Each lot owner is responsible for grading and landscaping portion of drainage swale on their lot during home construction and maintaining said portion of drainage swale thereafter, in perpetuity. Buildings constructed on said lots, shall set all window wells, crawl space opening and any other portions of structures susceptible to damage from stormwater runoff, to a minimum elevation of 2.0-feet above the highest adjacent drainage swale flow-line elevation.

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 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 water main extensions from existing water mains located in Silver Creek Trail, east of the subdivision and Gold Creek Trail, near the northeast corner of the subdivision. Water main extensions are to be designed and constructed in accordance with City design standards in place at the time of design and as approved by the City Engineering Division.

B. Sanitary Sewer

The subdivision will be served by sewer main extensions from existing sewer mains located in Silver Creek Trail, east of the subdivision, Gold Creek Trail near the northeast corner of the subdivision and 50th Street West, near the southeast corner of the subdivision. Sewer main extensions are to be designed and constructed in accordance with City design standards in place at the time of design and as approved by the City Engineering Division.

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

Park land requirements were satisfied at the time of filing of Silver Creek Estates, via a combination of park creation and cash in lieu contributions. Silver Creek Estates, 2nd Filing will provide a net decrease in the area of land subdivided into residential lots. Therefore, no additional park creation or cash in-lieu contributions are required.

The Subdivider shall expand the Park Maintenance District (PMD) created for the River Rock Park, to include the lots in Silver Creek Estates, Amended. This shall be done upon final plat recordation if the PMD has been established by that time. Additionally, park improvements on the 3.66 acres of parkland previously dedicated for Silver Creek Estates within River Rock Park shall be funded by the creation of a Special Improvement

District (SID). The SID shall be created when building permits have been issued for a total of 130 dwelling units in Silver Creek Estates and/or Silver Creek Estates, 2nd Filing and shall include all lots therein. Alternately, if significant interest is expressed by lot owners prior to the issuance of 130 building permits, the City Parks Department may proceed with creation of the SID prior to the issuance of 130 permits.

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.

A Storm Water Pollution Prevention Plan will be required for the proposed construction, and such plan shall incorporate provisions for protection of the irrigation ditches from runoff, sediment, and chemical contamination.

In the event that the ditch easement shown on the plat is abandoned or no longer used by the Ditch Company, and the City of Billings begins to exercise rights granted by secondary drainage easement along the High Ditch, all landowner restrictions defined in this section shall remain in force over the area of the Drainage Easement to the City.

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, 2nd Filing.

XI. 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.

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

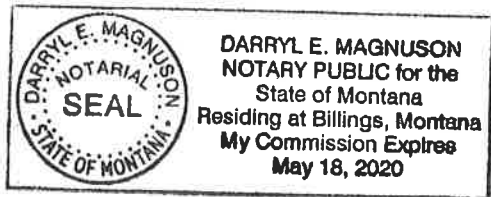
It's: Secretary

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 Laura 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.

Darryl E. Magnuson

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 _____, 2019.

“CITY”

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2019, before me, a Notary Public in and for the State of Montana, personally _____ 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: _____

Approved as to form:

City Attorney

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:

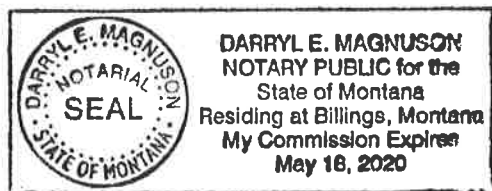
Lot 1, Block 3, Silver Creek Estates, Amended, Located in the Northeast Quarter of Section 32, Township 1 North, Range 25 East, P.M.M.

“SUBDIVIDER” Boyer Land, LLC
By: *Laura 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 Laura 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: _____