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Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT
HIGH SIERRA SUBDIVISION, SIXTH FILING
CITY OF BILLINGS
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SUBDIVISION IMPROVEMENTS AGREEMENT HIGH SIERRA SUBDIVISION, SIXTH FILING

THIS AGREEMENT is made and entered into this ____ day of _____, 2010, by and between **HIGH SIERRA II, INC.**, whose address for the purpose of this agreement is 174 North 27th Street, Suite 900; Billings, Montana 59101, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**; Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the preliminary plat of High Sierra Subdivision, Sixth Filing, being Lot 1, Block 2 of Marisela Subdivision, 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 by the Yellowstone County Board of Planning on the 13th day of January, 2009, the Board recommended for approval, subject to certain conditions, an area known as the High Sierra Subdivision, Sixth Filing; and

WHEREAS, at a regular meeting held on the 9th day of February, 2009, the City Council approved, subject to certain conditions, a preliminary plat of High Sierra Subdivision, Sixth 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 High Sierra Subdivision, Sixth 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

- A. Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City of Billings Subdivision Regulations (Section 23-1101):

No variances are being requested with this subdivision.

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners will be required to construct that segment of the required 5-foot wide boulevard style sidewalk that fronts their property at the time of lot development.
- B. Lot owners should be aware that this subdivision could contain wildlife migratory routes. Consequently, owners are advised that wildlife indigenous to this area could be 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. Any impacts associated with wildlife and any damage arising therefrom is the responsibility of the lot owners.
- C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the geotechnical investigation report for this property, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical investigation prior to construction. Assessment and mitigation, if any, of these conditions shall be the responsibility of the lot owner.
- 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 agricultural activities could be present on surrounding properties. Any impacts associated with agricultural activities and any issue arising therefrom is the responsibility of the lot owners.
- F.** 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 design.
- G.** Future development of the Master Planned area shall be in general conformance with the Master Plan exhibit, unless an amendment is reviewed and approved by the governing body.
- H.** Each owner of a completed lot shall be a member of the High Sierra Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of a lot. The Home Owners Association will be set up to maintain the permanent stormwater detention facilities. The HOA Board of Directors shall have the power, in its discretion, to exclude costs of major repairs or approved capital improvements to the HOA Storm Water System from the regular monthly assessments and, instead, impose special assessments for these expenses, and for emergencies, as they are incurred.
- I.** Certain lots as shown on the final plat of High Sierra Subdivision, Sixth Filing contain storm water drainage easements with a stormwater drainage facilities. This stormwater drainage easement and drainage facilities (including swales, walls, etc.) is for conveying storm water and shall not be altered in any way to inhibit the conveyance of storm water. It shall be the lot owners' responsibility to maintain and perpetuate these stormwater facilities.
- J.** The lowest finished floor elevation (which includes the garage) shall be a minimum of 18-inches higher than the top of curb measured from the highest location along the lot frontage. Higher finished floor elevations shall be required on a lot by lot basis, as noted on the final plat.
- K.** The stormwater runoff from individual lots shall be directed toward the public right-of-way wherever possible. However, due to the existing terrain of the subdivision this is not possible for every lot. Where runoff

from lots cannot be directed to public right-of-way because existing terrain is falling away from the public right of way, the stormwater runoff shall be directed to flow to the same location as it has historically. Home builder and lot owners shall consider the effect of potential off-lot run-on waters from lots uphill of the subject lot, and grade around the home to provide positive drainage away from the home. Home builder and lot owners must take necessary measures to protect the house from surface stormwater flows. Lots shall allow, through on-site building design and on-lot grading, for stormwater to pass through each lot without negatively impacting adjacent lots. The lowest openings on each home (window well, walk-out basement doors, etc.) are to be located outside the designated drainage paths. If this is not possible, the builder and lot owners must take necessary measures to protect these openings from inundating from surface water flows. In any case, the homebuilder shall allow enough space between window wells and property lines to provide sufficient swales and proper storm water drainage away from window wells.

III. TRANSPORTATION

A. Streets

1. Bonito Loop and Cielo Circle within the subdivision shall be public and shall be located within a 56-foot right-of-way and have a street width of 34-foot back of curb to back of curb. These internal access roads shall be built to grade with a satisfactory subbase, base course, drive over curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings site development ordinance, city zoning ordinance, and Uniform Building Code.
2. Greenbriar Road within the subdivision shall be public and shall match the existing Greenbriar Road right-of-way of 60 feet. The internal road for Greenbriar Road will also match the existing width and shall be 37-foot back of curb to back of curb to the intersection of Bonito Loop. This internal access road shall be built to grade with a satisfactory subbase, base course, drive over curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings site development ordinance, city zoning ordinance, and Uniform Building Code.
3. Annandale Boulevard shall be a minor arterial and shall be located within an existing 80-foot right-of-way and have a street width of 49-foot back of curb to back of curb. Annandale Road shall be

built to grade with a satisfactory subbase, base course, drive over curb and gutter, and asphalt surface. Annandale Boulevard shall be built by the Subdivider and/or by a combination of Subdivider, City of Billings Capital Improvement Project, and adjacent lot owner participation. This street shall be built in accordance with the City of Billings site development ordinance, city zoning ordinance, and Uniform Building Code.

B. Sidewalks

Individual lot owners will be responsible for the construction of the 5-foot wide boulevard sidewalks adjacent to their lot at the time of lot construction. Sidewalks shall be boulevard sidewalks. The Subdivider shall construct sidewalks at each intersection, including intersection accessibility ramps.

C. Street Lighting

Construction or installation of street lights within the public rights-of-way shall not be required at this time, but street lights are included in the waiver referenced herein for construction of the same in the future. A maintenance district will be formed for future maintenance of the street lights.

D. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices 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 master plan traffic accessibility study has been completed for High Sierra Subdivision, Fifth through Twelfth Filings. In addition, a memorandum has been completed to address the traffic related impacts of High Sierra Subdivision, Sixth Filing. The installation of a signal at the intersection of Wicks Lane and St. Andrews Drive should be considered within the next one to two years. Based on the proportionate share calculations, the High Sierra Subdivision, Sixth Filing, would be required to contribute 0.5%, or \$1,250.00.

E. Access

One access to the subdivision will be provided from Annandale Road. Another access will be provided for the subdivision from Greenbriar Road. In addition, accesses will be provided for connectivity to future development. These accesses include extensions of Annandale Road and Bonito Loop.

F. Billings Area Bikeway and Trail Master Plan

The Billings Area Bikeway and Trail Master Plan identifies Annandale Road as a primary bikeway. As such, an on-street bikeway will be provided on Annandale Road; therefore, City and Subdivider agree that trail requirements are being met for the subdivision.

G. Public Transit

No improvements with regard to public transit are anticipated at this time. The nearest access to the public transit system occurs near Skyview High School on Siesta Avenue between High Sierra Boulevard and Fantan Street.

IV. EMERGENCY SERVICES

Access is provided to this subdivision from Annandale Road and Greenbriar Road. The City will provide emergency service. Fire hydrants shall be provided at each street intersection and at intermediate locations where distances exceed 500 feet. Approved turn arounds will be located on any dead-end street in excess of 150 feet.

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 (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 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.

V. STORM DRAINAGE

All storm drainage improvements shall comply with the provisions of Section 23-407, 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 stormwater will be handled through surface flow on the streets, inlets, and piping. The stormwater will be directed to the north to a temporary stormwater detention facility. In the future, when the permanent stormwater detention facilities are constructed the stormwater from High Sierra Subdivision, Sixth Filing will be directed to that facility. The stormwater design for High Sierra Subdivision, Sixth Filing, will conform to the "Lake Hills Stormwater Management Study" and the "High Sierra Subdivision, Fifth through Twelfth Filings, Stormwater Management Master Plan Report" dated June 2008 and submitted to the City of Billings on June 6, 2008. The majority of stormwater from High Sierra Subdivision, Sixth Filing will be directed to the north and not to the Lake Hills Storm Drain. The stormwater flow to the Lake Hills Storm Drain will be reduced after the construction of High Sierra Subdivision, Sixth Filing. Therefore, no contribution to the Lake Hills Storm Drain will be required.

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 and the County Water District of Billings Heights.

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, and the County Water District of Billings Heights. 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 appropriate water and wastewater fees and franchise fee in effect shall be submitted with the applications.

It is acknowledged that the properties subject to the Subdivision Improvements Agreement shall be subject to the appropriate buy-in fee for the County Water District of Billings Heights in effect at the time of payment. Fees shall be paid 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 and franchise fee in effect at the time new 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, County Water District of Billings Heights, Fire Department, and the Montana Department of Environmental Quality.

A. Water

The subdivision will be served by making one connection located in Annandale Road and one located in Greenbriar Road. There is an existing 12-inch water main located in Annandale Road and an existing 8-inch water main located in Greenbriar Road. Both water mains are a part of the County Water District of Billings Heights. A new 8-inch water main will be installed in the local interior streets (Bonito Loop and Cielo Circle). The water main within the subdivision will make looped connections whenever possible. Fire hydrants will be provided at all appropriate locations and will be subject to approval by the City of Billings Fire Department. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. 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 County Water District of Billings Heights.

B. Sanitary Sewer

The subdivision will be served by connecting to an existing 8-inch sanitary sewer main located in Greenbriar Road. The sanitary sewer located within the subdivision will consist of 8-inch sanitary sewer main.

There is an existing 10-inch sanitary sewer main in Annandale Road. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. 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 where possible 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 Subdivision and Platting Act covers the park dedication requirement. Additionally, Section 23-1002.B.1 of the City of Billings municipal code covers parkland dedication of major subdivisions. Based on the density of the proposed subdivision, 0.613 acres of parkland is required. The Subdivider and City agree that 0.613 acres of the parkland dedication will be met through a cash-in-lieu payment for this subdivision.

VIII. SOILS/GEOTECHNICAL STUDY

The Subdivider has performed a preliminary geotechnical analysis for this property. This geotechnical analysis will include all items as shown in Appendix F(6) in the City of Billings Subdivision Regulations.

Recommendations from the report include:

1. Approximately 6 inches of surface soils should be stripped and removed from the site or stockpiled for use in non-structural areas.
2. Site and lot grading can be accomplished using conventional earthmoving equipment.
3. Fill should be placed and compacted to a minimum of 95 percent relative compaction in accordance with the ASTM D698 compaction test method.

4. Provide positive drainage away from residences
5. Street subgrade outside of utility trenches should be placed at a minimum of 95 percent of ASTM D698 and utility trench backfill should be placed at 97 percent of ASTM D698.
6. The street section for the local streets shall include 3 inches of asphaltic concrete over a 9-inch base course. The street section for the minor arterial (Annandale Boulevard) will be based on the determined traffic loads.
7. The potential for sulfate attack from existing soils appears to be negligible and Type I cement may be used.
8. There is the potential for the presence of moderate to highly expansive claystone bedrock. Expansive bedrock has a history of distress-related damage to residential homes.
9. For home construction, it is recommended that a more comprehensive investigation be completed prior to installing foundations so lot-specific site conditions can be determined.

IX. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by 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 private contract, and the improvements shall be installed as approved by the City Engineering Department and Public Works Department, Collection and Distribution Division.

X. PHASING OF IMPROVEMENTS

The Subdivider will commence development of all lots within High Sierra Subdivision, Sixth Filing. No phasing is proposed.

XI. LEGAL PROVISIONS

- A. The 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.

This Agreement is hereby approved and accepted by City of Billings, this _____ day of _____, 200__.

“CITY”

CITY OF BILLINGS,
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this _____ day of _____, 200__, before me, a Notary Public for the State of Montana, personally appeared _____, 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 for the State of Montana
Printed name: _____
Residing in Billings, Montana
My commission expires: _____

Approved as to Form:

City Attorney

WAIVER OF RIGHTS 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:

High Sierra Subdivision, Sixth Filing

SUBDIVIDER

HIGH SIERRA II, INC.

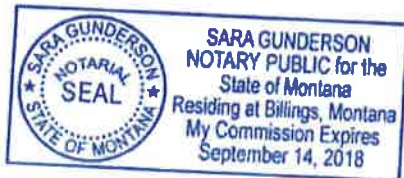
By: *[Signature]*

Its: PRESIDENT

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 31st day of August, 2008, before me, a Notary Public in and for the State of Montana, personally appeared Gary Dabkowski, known to me to be the person who signed the foregoing instrument as the President of HIGH SIERRA II, INC., 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.



[Signature]
Notary Public for the State of Montana

