

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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
HIGH SIERRA SUBDIVISION, TWELFTH FILING  
CITY OF BILLINGS  
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## **SUBDIVISION IMPROVEMENTS AGREEMENT HIGH SIERRA SUBDIVISION, TWELFTH FILING**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **HIGH SIERRA II, INC.**, whose address for the purpose of this agreement is 175 North 27th Street, Suite 900; Billings, Montana 59101, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City."

### **WITNESSETH:**

**WHEREAS**, the preliminary plat of High Sierra Subdivision, Twelfth Filing, Lot 17, Block 6 of High Sierra Subdivision, 11th Filing Amended of Certificate of Survey No. 3573, 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 \_\_\_\_ day of \_\_\_\_\_, 2018, the Board recommended for approval, subject to certain conditions, an area known as the High Sierra Subdivision, Twelfth Filing; and

**WHEREAS**, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2018, the City Council approved, subject to certain conditions, a preliminary plat of High Sierra Subdivision, Twelfth 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, Twelfth 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**

No variances are requested with this subdivision.

**II. CONDITIONS THAT RUN WITH THE LAND**

- A.** Lot owners will be required to construct that segment of the required five-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.** The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and 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, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- E.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required by each owner for new construction on

lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

- F. 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.
- G. 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.
- H. Certain lots within High Sierra Subdivision, Twelfth Filing contain a 10-foot-wide stormwater drainage easement with a drainage swale along the rear property lines. These stormwater drainage easements and drainage swales are for conveying stormwater and shall not be altered in any way to inhibit the conveyance of stormwater. It shall be the lot owners responsibility to maintain and perpetuate this stormwater drainage swale. Adjacent lot owners shall not store, place or dump any items, vehicles or materials (including yard waste and grass clippings) in this stormwater drainage easement, or negatively affect the function of the swale. If it is determined that adjacent lot owners are using this stormwater drainage easement to store, place or dump materials, or alter the drainage swale in any way, they will be notified to remove any items and restore the drainage swale immediately.
- I. The rear lot lines of Lots 38 through 44, Block 1 in High Sierra Subdivision, Twelfth Filing are adjacent to a City of Billings right of way that contains stormwater drainage facilities and a swale. This stormwater drainage swale is for conveying stormwater and shall not be altered in any way. It shall be the High Sierra Subdivision Home Owners Association's responsibility to maintain and perpetuate the function of this stormwater drainage swale. Adjacent lot owners (Lots 38 through 55, Block 1 of High Sierra Subdivision, Twelfth Filing) shall not store, place or dump any items, vehicles or materials (including yard waste and grass clippings) in this right of way, or negatively affect the function of the swale. If it is determined that

adjacent lot owners are using this right of way to store, place or dump materials, or alter the drainage swale in any way, they will be notified to remove any items and restore the drainage swale immediately. If the drainage swale is not restored immediately, the obstructions will be removed and/or the drainage swale will be restored at the lot owners expense.

- J.** 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.
- K.** The lowest finish 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. Home builder and lot owner may find it necessary to raise the finish floor elevation of house or garage above this minimum during on-site building design and/or during on-lot grading.
- L.** 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**

Street A (temporary name), Acacia Circle, and Rancho Vista Avenue 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, Subdivision Regulations, and Uniform Building Code.

#### **B. Sidewalks**

City and the Subdivider agree that the developer will install accessibility ramps at time of private contract construction. Individual lot owners will be responsible for the construction of the five-foot wide boulevard sidewalks adjacent to their lot at the time of lot construction. The City reserves the right to construct any missing sidewalk and assess the property owners three years after construction of a phase.

#### **C. Street Lighting**

Construction or installation of street lights within the public rights-of-way shall not be required at this time. If street lights are installed, 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 Filing. That study analyzed impacts to eight intersections affected by additional traffic generated with the development of High Sierra. Three of those intersections were noted for improvements: Wicks Lane/Fantan/Street; Wicks Lane/Gleneagles Blvd;

and Wicks Lane/St. Andrews Dr. An update to the study has been completed for this filing. Based on the 66 developable single family residential lots proposed within this subdivision, the percent of traffic contribution to these intersections is as follows:

Wicks/Fantan:	_____ percent	\$XXXX.00
Wicks/Gleneagles:	_____ percent	\$XXXX.00
Wicks/St. Andrews:	_____ percent	<u>\$XXXX.00</u>
		\$XXXXX.00

As requested by the City of Billings Public Works Department, cash contributions to intersection improvements will be made prior to the filing of the final plat.

**E. Access**

Access will be provided for the subdivision by continuation of streets from High Sierra Subdivision, Eleventh Filing, including Rancho Vista Avenue, and Owen Street. In addition, these streets will provide connectivity to future development. Location of these accesses shall be subject to review and approval by the City Engineering office.

**F. Billings Area Bikeway and Trail Master Plan**

The Billings Area Bikeway and Trail Master Plan identifies High Sierra Boulevard as a primary bikeway. As such, an on-street bikeway will be provided on High Sierra Boulevard nearby to this subdivision; therefore, City and the 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 via Acacia Street, Owen Street, Street A (temporary name), and Rancho Vista Avenue which shall terminate in a temporary cul-de-sac. The City will provide emergency service. Fire hydrants shall be

provided at each street intersection, and at intermediate locations where distances exceed 500 feet. Appropriate turn arounds will be located on any 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 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. Because the City of Billings storm drain system is not available in the area of the subdivision, stormwater will be handled on site through surface flow on the streets, inlets, and piping. The stormwater design for High Sierra Subdivision, Twelfth Filing, will conform to the current City of Billings Stormwater Management Manual.

The Subdivider will construct a permanent drainage swale west of Lots 38 through 44, Block 1 and north Lots 45 through 55, Block 1 with the private contract for subdivision improvements. The Subdivider will also construct a portion of the permanent detention facility with the private contract for the subdivision improvements. The stormwater detention facility and swales will be sized in accordance with the current City of Billings Stormwater Management Manual. The



stormwater detention facility will also be sized for runoff from this filing as well as previous filings of High Sierra Subdivision (portions of High Sierra Subdivision Seventh and Eighth Filings, and High Sierra Subdivision Eleventh Filing). The drainage swale west of Lots 38 through 44, Block 1 will be located within public right of way. The drainage swale north of Lots 45 through 55, Block 1 and the stormwater detention facility will be located on a Home Owners Association (HOA) owned lot. The drainage swales and detention facilities shall be operated and maintained by the HOA. The detention facility will be part of a larger detention facility for the entire subdivision with an ultimate stormwater outfall to 5-Mile Creek. However, until the permanent outfall is constructed a temporary discharge from the detention facility limiting the stormwater discharge to pre-developed runoff rate will be allowed.

## **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 submit applications 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 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 in effect shall be submitted with the applications.

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.

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**

The subdivision will be served by making connections to existing water main stubs located in Owen Street and Rancho Vista Avenue. The existing water main in these streets is an 8-inch in diameter main and is a part of the City of Billings water distribution system. A new 8-inch water main will be installed in the local interior streets. 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 Public Works Department, Distribution, and Collection Division.

**B. Sanitary Sewer**

The subdivision will be served by one connection to two existing 8-inch sanitary sewer mains located at each end of Owen Street and one connection to an existing 8-inch sanitary sewer main located in Rancho Vista Avenue. The sanitary sewer located within the subdivision will consist of an 8-inch sanitary sewer main. 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. The Twelfth Filing has a total of 66 lots, requiring a parkland dedication of 1.401 acres. The Subdivider will make a cash in-lieu contribution for the 1.401 acres in lieu of parkland dedication.

## **VIII. SOILS/GEOTECHNICAL STUDY**

The Subdivider has contracted with Rawhide Engineering to perform a preliminary geotechnical analysis for this property dated July 2018.

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. Fill should be placed and compacted to a minimum of 97 percent relative compaction, in accordance with the ASTM D698 compaction test method.
3. Provide positive drainage away from residences.
4. Street subgrade, utility trenches, parking areas and concrete flatwork subgrade should be placed at a minimum of 97 percent of ASTM D698.
5. A large track hoe or specialized equipment may be required during foundation excavations, depending on the location and depth of the excavation. The boring logs should be reviewed for conditions across the site.
6. For home construction, the majority of the foundation will be located on weathered sandstone bedrock or weathered shale bedrock. Three alternative foundation recommendations are provided within the geotechnical report.
7. As noted in the Rawhide Engineering February 2018 report, and in accordance with the International Residential Code, downspouts with 6-foot extensions should be used. Positive drainage away from all foundations should have 6 inches of fall in the first 10 feet away from the foundations.

If sufficient room is not available to construct the 10-foot slope, drainage swales should be constructed as far from the foundations as possible.

**IX. FINANCIAL GUARANTEES**

Except as otherwise provided, the 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. 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. The Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. The 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”

HIGH SIERRA II, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who signed the foregoing instrument as the \_\_\_\_\_ 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.

\_\_\_\_\_  
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 \_\_\_\_\_ day of \_\_\_\_\_, 2018.

“CITY”

**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA     )  
  :SS  
County of Yellowstone     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, 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 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:

High Sierra Subdivision, Twelfth Filing

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

HIGH SIERRA II, INC.

\_\_\_\_\_

STATE OF MONTANA    )  
                                      : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who signed the foregoing instrument as the \_\_\_\_\_ 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.

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