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**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
HIGH SIERRA SUBDIVISION, TENTH FILING**

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Return to:
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& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
HIGH SIERRA SUBDIVISION, TENTH 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, MT 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, Tenth Filing, being a Portion of Lot 2A, Block 2 of Amended Plat of Lot 2, Block 1 and Lots 2 and 3, 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 ____ day of _____, 20____ the Board recommended for approval, subject to certain conditions, an area known as the High Sierra Subdivision, Tenth Filing; and

WHEREAS, at a regular meeting held on the ____ day of _____, 20____ the City Council approved, subject to certain conditions, a preliminary plat of High Sierra Subdivision, Tenth 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, Tenth 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 being requested with this subdivision.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- 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 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.** 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 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.

III. TRANSPORTATION

A. Streets

Bonito Loop, West Bonito Loop and Chino 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, 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.

Annandale Road 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 satisfactory subbase, base course, 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. The Annandale Road improvements adjacent to Lot 39, Block 17

High Sierra Subdivision, Tenth Filing will not be required at this time, but will be required at the time of development of a future filing of High Sierra Subdivision immediately west of the west property line of lot 39, Block 17 of High Sierra Subdivision, 10th Filing.

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.

The sidewalk along the Annandale Road frontage of Lot 39, Block 17 is not required at this time. The sidewalk adjacent to Lot 39, Block 17 will be constructed with a future private contract that constructs Annandale Road to the west. The construction of Annandale Road and sidewalk adjacent to Lot 39, Block 17 will be required with a future filing of High Sierra Subdivision immediately west of the west property line of Lot 39, Block 17 of High Sierra Subdivision, 10th Filing.

A 10-foot-wide sidewalk shall be constructed in the 20-foot wide right-of-way corridors and shall be installed at the time of private contract construction.

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 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 37 lots proposed within this subdivision, the percent of traffic contribution to these intersections is as follows:

Wicks/Fantan:	0.91%	\$2,275.00
Wicks/Gleneagles:	0.82%	\$2,050.00
Wicks/St. Andrews:	0.72%	\$1,800.00

As requested by the City of Billings Public Works Department, cash contributions to intersection improvements will be determined at the time of final plat.

E. Access

Two accesses will be provided for the subdivision from Bonito Loop and Annandale Road and West Bonito Loop and Annandale Road. Location of these accesses shall be subject to review and approval by the City Engineering Office.

F. Billings Area Bikeway and Trail Master Plan

No bikeway or trail requirements for this specific area.

G. Public Transit

There are no MET Transit routes that service this subdivision at this time. No improvements with regard to MET Transit vehicles are anticipated at this time.

IV. EMERGENCY SERVICES

Access is provided to this subdivision from Bonito Loop and Annandale Road and West Bonito Loop and Annandale 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. 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 drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division. 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, Tenth Filing, will conform to the current City of Billings Stormwater Management Manual.

A cut-off ditch has been constructed west of the residential lots in this subdivision and direct stormwater runoff to the north. The Subdivider will construct temporary stormwater detention pond north of the subdivision that will remain in place until the permanent stormwater facilities are constructed with a future filing of High Sierra Subdivision. The stormwater ditch and stormwater detention pond will be located in an easement and will allow for access and maintenance.

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 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 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 connections to an existing water main stub located in Bonito Loop and Annandale Road. The existing water main in these streets is an 8-inch in diameter main and is a part of the County Water District of Billings Heights 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 County Water District of Billings Heights 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 one connection to an existing 8-inch sanitary sewer main located in Bonito Loop. A connection will also be made to the sanitary sewer main located in Annandale Road. The sanitary sewer that is connected to Annandale Road will be 10-inch diameter and will be extended north in West Bonito Loop and Chino Circle. The remaining 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

The park land required for this subdivision is 0.907 acres. The Subdivider dedicated land for a public park that included a dedication to cover this subdivision with the filing of High Sierra Subdivision, 14th Filing. Therefore, no additional parkland is required with High Sierra Subdivision, 10th Filing.

Lot owners are advised they will be subject to inclusion in a Special Improvement District (SID) for the development and a Parks Maintenance District (PMD) for the operation and maintenance of this and future parks within High Sierra Subdivision.

VIII. SOILS/GEOTECHNICAL STUDY

The Subdivider has performed a preliminary geotechnical analysis for this property dated June 16, 2014.

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. In areas where significant cuts will be made for streets and utility installation the auger was able to drill to depths of 25-feet. Typically, if the shale can be drilled with an auger it can also be excavated with a large track hoe.
3. Fill should be placed and compacted to a minimum of 97 percent relative compaction, in accordance with the ASTM D698 compaction test method.
4. Provide positive drainage away from residences.
5. Street subgrade, utility trenches, parking areas and concrete flatwork should be placed at a minimum of 97 percent of ASTM D698.
6. A large track hoe or specialized equipment may be required during foundation excavations, depending on the location and depth of the excavation. Auger refusal was encountered in several of the borings at depths of 9 to 12 feet. The boring logs should be reviewed for conditions across the site.
7. For home construction, the majority of the foundation will be located on weathered sandstone bedrock or weathered shale bedrock. Two alternative foundation recommendations are provided within the geotechnical report.

IX. 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.

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.** 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 _____, 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: _____

This Agreement is hereby approved and accepted by City of Billings, this _____ day of _____, 20__.

“CITY”

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this _____ day of _____, 20 __, 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
FUTURE SPECIAL IMPROVEMENT DISTRICTS**

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, Tenth Filing

Signed and dated this ____ day of _____, 20__.

“SUBDIVIDER”

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 **HIGH SIERRA II INC.**, the person who executed the forgoing instrument and acknowledged to me that he/she 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: _____