

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

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

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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**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on 25th day of February, 2020, the Board of Planning recommended conditional approval of a preliminary plat of High Sierra Subdivision, 15th Filing; and

WHEREAS, at a regular meeting conducted on 23rd day of March, 2020, the City Council conditionally approved a preliminary plat of High Sierra Subdivision, 15th Filing; and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to High Sierra Subdivision, 15th Filing upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

A. Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City's Subdivision Regulations (Section 23.1401, BMCC):

1. No Variances are requested.

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. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.

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 performed within the area of this subdivision and submitted with the preliminary plat. The recommendations are found in the Geotechnical Investigation Report High Sierra Subdivision 129 Lots in 14th, 15th and 16th Filings Billings, Montana by Rawhide Engineering Inc. dated January 22, 2020. Lot owners and homebuilders shall reference the report in its entirety, but a summary is as follows:

1. Approximately 6-inches of surface soils should be stripped and removed from the site or stockpiled for use in non-structural areas.
2. Variations in soils may exist between the explored locations. The nature and extent of soil variations may not be evident until construction occurs.
3. These filings have sandstone caprock scattered throughout much of the site and it will have to be removed during construction of the interior streets and to excavate foundations.

4. 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.
5. Fill should be placed and compacted to a minimum of 97 % relative compaction, in accordance with the ASTM D698 compaction test method. Fills greater than 4-feet should be compacted to 98% of ASTM D698.
6. Street subgrade, utility trenches, parking areas and concrete flatwork subgrade should be placed at a minimum of 97% of ASTM D698.
7. This site varies widely across the total acreage. Some of the foundation will be located on weathered shale bedrock. Portions of the site will have foundations in the medium stiff to soft sandy lean clay soils. Two alternative foundation recommendations are provided within the geotechnical report.
8. Final elevations at the site should be planned so that drainage is directed away from all foundation and concrete slabs. 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. Plants and landscaping should not be allowed within 3 feet of foundations. Landscaping features such as curbing should not be allowed to create ponding adjacent to the foundations.

The assessment and mitigation of these soil conditions shall be the responsibility of the lot owner. Failure to follow all recommendations in the geotechnical report including grading, foundation design and especially drainage and landscaping will render the geotechnical report null and void. The City may require the owner of each lot to include a geotechnical investigation with the building permit submittal.

- D.** No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

- E.** There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider, and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- F.** Lot owners are advised they will be subject to inclusion in a Parks Maintenance District (PMD) for the operation and maintenance of the parkland dedicated with various filings of High Sierra Subdivision, including High Sierra Subdivision, 15th Filing, and future filings of High Sierra Subdivision.
- G.** 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.
- H.** 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 Chapter 28, BMCC and detailed in the Billings Stormwater Management Manual.
1. 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.
 2. 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 wells) 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.

3. Each owner of a completed lot shall be a member of the High Sierra Subdivision Homeowners Association (HOA). 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.

III. TRANSPORTATION

A. Streets

1. Subdivider will enter into a private contract for the construction of all required improvements for those streets within the subdivision, as follows:

Vesca Way for about 150 feet, Modera Avenue for about 110 feet, and Ortega Street from the intersection of Vesca Way east to the intersection of Matador Avenue will be constructed within a 56-foot right-of-way using curb and gutter and full-width pavement (34-feet back of curb to back of curb). Curb and Gutter will be installed per the City of Billings Standards in place at time of construction.

B. Sidewalks

1. Sidewalk on the internal streets shall be installed at the time of individual lot development. The sidewalk shall consist of a 5-foot-wide boulevard type sidewalk with a minimum 5-foot-wide boulevard.
2. Subdivider will install accessible ramps at the intersections, which shall be completed with the subdivision improvements.
3. 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, but street lights are included in the Waiver referenced herein for construction of the same in the future. A maintenance district for street lights may be formed for future maintenance of any street lights installed in the future.

D. Traffic Control Devices

The Subdivider shall furnish and install all necessary traffic control devices within and adjacent to the Subdivision in accordance with the plans and specification submitted to and approved by the City Engineer. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction.

Based on the Traffic Impact Study (TIS), the 15th Filing development's portion of critical volumes for impacted intersections are as follows (based on a \$250,000.00 intersection improvement cost):

	Wicks Lane/Gleneagles Blvd	Wicks Lane/Fantan St.	Wicks Lane/St. Andrews Drive
15th Filing	0.60% (\$1500.00)	0.67% (\$1675.00)	0.53% (\$1325.00)

City and Subdivider agree that the Subdivider will be required to make cash contributions to these intersections.

E. Access

Vesca Way, Matador Avenue, and Ortega Street provide access to the subdivision. The interior streets will be located within a 56-foot right-of-way and will have a width of 34-feet back of curb to back of curb.

F. Billings Area Bikeway and Trail Master Plan

The Billings Area Bikeway Plan (2017) shows no trail connections within the proposed area of High Sierra Subdivision, 15th Filing, and as such, no trail improvements are required as part of this subdivision.

G. Public Transit

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

IV. EMERGENCY SERVICE

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 dead-end street in excess of 150-feet.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to allow for fire suppression requirements. Prior to 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 an 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 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

Storm drainage for the public streets shall be provided by a combination of surface drainage and curbs and gutters, drained to underground storm drains, and with discharge to a new detention facility that is located within an off-site area on Lot 17, Block 6, High Sierra Subdivision, 11th Filing generally north of the future projection of Gleneagles Boulevard designated for storm water detention. This detention facility has been sized to accept runoff generated from the High Sierra Subdivision, 15th Filing. Stormwater management facilities for the subdivision must be able to pass flows generated outside the subdivision area without inundating existing and proposed home sites. 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 prior to filing of the final plat.

The drainage system improvements will be in accordance with the recommendations of the stormwater analysis and report prepared and submitted with the improvement plans and specifications. Maintenance of the stormwater retention area and associated drainage facilities shall be by the High Sierra Subdivision HOA.

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 – Engineering 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 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, 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 two connections to public water mains, one on Ortega Street just west of the Matador Avenue/Ortega Street intersection and one on Vesca Way just north of the intersection of Vesca Way/Vera Cruz Circle. A new 12-inch water main will be installed in Ortega Street from Matador Road to Modera Avenue, and in Modera Avenue. A new 8-inch water main will be installed in the remaining local interior streets of the subdivision which is subject to approval from the City of Billings. The water main within the subdivision will make looped connections whenever possible. Fire hydrants will be provided at all appropriate locations and are also subject to approval by the City of Billings.

B. Sanitary Sewer

The subdivision will be served by making a connection to an existing 8-inch diameter sewer main located at the intersection of Matador Avenue and Ortega Street and extending the 8-inch sewer main within Ortega Street.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines shall be the responsibility of the Subdivider. Any line located within public right-of-way shall be subject to approval of the City Engineer.

VII. PARKS/OPEN SPACE

The park land required for this subdivision is 0.587 acres. The Subdivider previously 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, 15th 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. IRRIGATION

No permanent irrigation ditches, field laterals, or irrigation easements exist on the subdivision.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical report was performed within the area of this subdivision and submitted with the preliminary plat. The recommendations are found in the Geotechnical Investigation Report High Sierra Subdivision 129 Lots in 14th, 15th and 16th Filings Billings, Montana by Rawhide Engineering Inc. dated January 22, 2020. Lot owners and homebuilders shall reference the report in its entirety, but a summary is as follows:

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constructed as far from the foundations as possible. Plants and landscaping should not be allowed within 3 feet of foundations. Landscaping features such as curbing should not be allowed to create ponding adjacent to the foundations.

The assessment and mitigation of these soil conditions shall be the responsibility of the lot owner. Failure to follow all recommendations in the geotechnical report including grading, foundation design and especially drainage and landscaping will render the geotechnical report null and void. The City may require the owner of each lot to include a geotechnical investigation with the building permit submittal.

X. 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.

XI. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- A.** Subdivider agrees to guarantee all public improvements for a period of two years 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 run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees 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”

HIGH SIERRA II, INC.

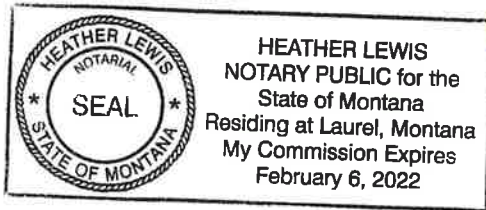
By: _____

Its: _____

[Handwritten signature]
VP

STATE OF MONTANA)
 : SS
County of Yellowstone)

On this 20 day of July, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Landy Kemp known to me to be the person who executed the foregoing instrument as the vice President of **HIGH SIERRA II, INC.**, and acknowledged to me that he/she executed the same.



Heather Lewis
Notary Public in and for the State of Montana
Printed Name: Heather Lewis
Residing at: Laurel, MT
My commission expires: Feb 6, 2022

