

**RES**

**3824995**

08/24/2017 04:41 PM Pages: 1 of 13 Fees: 101.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



Return to:  
High Sierra II, Inc.  
175 N. 27<sup>th</sup> St., Suite 900  
Billings, MT 59101

**FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS  
AND PROTECTIVE COVENANTS  
HIGH SIERRA SUBDIVISION**

WHEREAS, THE UNDERSIGNED is the owner of the following described real property located in the City of Billings, Yellowstone County, Montana:

**All of High Sierra Subdivision, 11th Filing, City of Billings, Yellowstone County, Montana, according to the plat on record in the office of the County Clerk and Recorder of Yellowstone County, Montana.**

WHEREAS, High Sierra II, Inc. owns 100% of the lots in the High Sierra Subdivision 11th Filing, as of July 27, 2017;

WHEREAS, the Declaration of Restrictions and Protective Covenants, dated August 24, 2015, was recorded August 27, 2015, under Document No. 3752585, records of Yellowstone County, Montana, (Declaration), and the By-laws of High Sierra Homeowners Association, dated August 24, 2015, were recorded August 27, 2015, under Document No. 3752584, records of Yellowstone County, Montana, (Bylaws);

WHEREAS, 100% of the lots of the past, current, and future filings of the High Sierra Subdivision, have not yet been sold;

WHEREAS, THE UNDERSIGNED, High Sierra II, Inc. desires to amend the Declaration to (1) clarify the time and scope of the initiation and operation of the Homeowners Association, and make minor clerical amendments; (2) add the lots described below, located in the 11<sup>th</sup> Filing, High Sierra Subdivision, to the property covered by the Declaration and the Bylaws; and (3) incorporate provisions of the Subdivision Improvement Agreement with the City of Billings for High Sierra Subdivision, 11<sup>th</sup> Filing, in the terms of the Declaration, all as allowed by Section 21 of the Declaration; and



WHEREAS, the undersigned desires to place building restrictions and protective covenants on the lots in High Sierra Subdivision, 11<sup>th</sup> Filing described below, and to provide for their participation in membership in the Homeowners Association for the maintenance of the portion of a future permanent storm drain system located outside the public right of way:

NOW, THEREFORE, in consideration of the premises, the undersigned hereby amends the following sections of the Declaration as provided below:

Section 1. is deleted and replaced with the following:

1. LOTS AFFECTED AND PERSONS BOUND

- 1.1 All of the lots in High Sierra Subdivision, 8th Filing, namely Lots 18-21, Block 1, inclusive; Lots 2-11, inclusive, Block 2; Lots 2-7, inclusive, Lots 27-30, inclusive; and Lots 47-52, inclusive, Block 3; Lots 8-24, inclusive, Lot 25A, Lot 25B, and Lots 85-92, inclusive, Block 5; Lot 1, Block 6; Lots 1-4, inclusive, Block 28; Lots 31-47, inclusive, Block 29; and Lots 1-15, inclusive, Block 32; according to the plat thereof filed in the office of the County Clerk of Yellowstone County, Montana; and

The following lots in High Sierra Subdivision, 11<sup>th</sup> Filing: Lots 22-37, Block 1, inclusive, Lots 8-24, inclusive, Lot 25A, Lot 25B, Lot 26A, Lot 26B, Lots 31-44, inclusive, Lots 45A, Lot 45B, Lot 46A, and Lot 46B, Block 3, and Lots 2-16 inclusive, Block 6;

shall be subject to these covenants and restrictions, and the Bylaws, and said covenants and restrictions and Bylaws shall be for the benefit of the present owners of said lots, their heirs, executors, administrators, successors and assigns.

- 1.2 All present and subsequent owners shall be held to agree and covenant each with the other and with their heirs, executors, administrators, successors and assigns, to conform to and observe the herein set forth covenants restrictions and stipulations affective the use of said lots and the construction of dwellings and improvements thereon.

Section 2.26 and 2.27 are amended and added to read as follows:

- 2.26 Subdivider: Declarant.
- 2.27 Subdivision: High Sierra Subdivision, 8<sup>th</sup> Filing and High Sierra Subdivision, 11<sup>th</sup> Filing, as shown on the plats recorded in the Office of the Clerk and Recorder, Yellowstone County, Montana.

Section 4.1 is deleted and replaced with the following:



- 4.1 During construction of future filings, Declarant will install and maintain temporary storm water ponds. Upon completion of all future filings of High Sierra Subdivision, Declarant will install a permanent storm drain system in accordance with the recommendations of an approved storm drain study to be submitted to the City of Billings Engineering Department by the Declarant. Because the City of Billings storm drain system is not available in the area of the High Sierra Subdivision, storm water will be handled on site through surface flow on the streets, inlets, and piping. Temporary detention facilities will be used until completion of all filings of High Sierra Subdivision. The permanent storm water system design for High Sierra Subdivision will be approved by the City of Billings Public Works Department. Maintenance for the storm water facilities located within the public right of way will be the responsibility of the City of Billings. Maintenance of the permanent storm drain facilities outside of the public right of way, including storm water detention facilities, storm drain piping, inlets, and manholes, (HOA Storm Water System) will be the responsibility of the single purpose High Sierra Homeowners Association. The Association shall comply with the requirements of the "HOA Storm Water Facility Maintenance Agreement," between the HOA and the City of Billings, and the "Homeowners' Associations Requirements," copies of which are attached. The High Sierra Homeowners Association shall have no other purpose.

A new Section 4A is added as follows:

4A. SUBDIVISION IMPROVEMENT AGREEMENT PROVISIONS.

- 4A.1 Lots 16 through 21, Block 3 of High Sierra Subdivision, Eleventh Filing contain a 10-foot-wide stormwater drainage easement with a drainage swale along the rear property lines. Lot 21 and 22, Block 3 of High Sierra Subdivision, Eleventh Filing contains a 10-foot-wide (5-foot-wide on each side of the common property line) stormwater easement with a drainage swale along the common property line. 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 (Lots 16 through 22, Block 3 High Sierra Subdivision, Eleventh Filing) 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 (by the City of Billings) to remove any items and restore the drainage swale immediately.
- 4A.2 The rear lot lines of Lots 24 through 37, Block 1 in High Sierra Subdivision,



Eleventh 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 24 through 37, Block 1 of High Sierra Subdivision, Eleventh 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 (by the City of Billings) 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 (by the City of Billings) at the lot owners' expense.

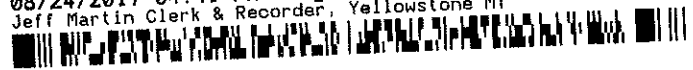
- 4A.3 The stormwater runoff from individual lots shall be directed toward the public right-of-way wherever possible. However, due to the existing terrain of the subdivision this is not possible for every lot. Where runoff from lots cannot be directed to public right-of-way because existing terrain is 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.

Section 7 is amended to read as follows:

## 7. ASSESSMENTS.

- 7.1 Assessments shall be made by the High Sierra Homeowners Association only for the repair, replacement and general maintenance, management and administration of the HOA Storm Water System, and for no other purpose. No assessments will be made until the HOA Storm Water System is complete.

Section 11.2 is amended to read as follows:



11.2 No structure shall be erected, altered, placed, or permitted upon any such residential lot, other than one detached single family dwelling not to exceed two stories in height and, except as provided below, a private, attached garage for a minimum of two cars, but not more than three cars; provided, however, that a room may be built over an attached garage, but in any case the roof pitch of the main part of the house and garage shall not be less than five (5) inches rise to the foot nor exceed twelve (12) inches rise to the foot; provided, further, however, that the following Lots shall have a private, attached garage for a minimum of one car:

High Sierra Subdivision, 8<sup>th</sup> Filing:  
Lots 2-4, inclusive, Block 28;  
Lots 31-47, inclusive, Block 29;  
Lots 8-24, inclusive, Lot 25A, and Lot 25B, Block 5.

High Sierra Subdivision, 11<sup>th</sup> Filing:  
Lots 31-44, inclusive, Lot 45A, Lot 45B, Lot 46A, and Lot 46B,  
Block 3.

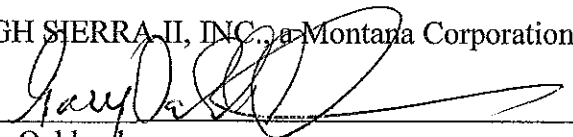
- (A) Satellite Dishes and Television Antennas: All satellite systems, wireless DSL connections, or antennae of any kind, must meet the requirement of all applicable building codes and FCC regulations. Lot owners are encouraged to place satellite dishes and television antennas so as to be least obtrusive to adjoining lots.
- (B) No basement or portion thereof shall be converted or made into an apartment to be used for rental purposes.
- (C) No Lot shall be subdivided for the purpose of constructing more than one dwelling on any Lot as platted, and each dwelling shall be located on a building site having at least an area equal to the area of the Lot, as platted, on which the dwelling is located.

In all other respects, the Declaration shall remain as originally written.

DATED this 27 day of July, 2017.

HIGH SIERRA II, INC., a Montana Corporation,

By:

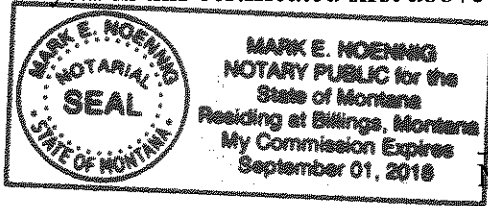
  
\_\_\_\_\_  
Gary Oakland  
Its: President



STATE OF MONTANA )  
 : SS.  
County of Yellowstone )

On this 27<sup>th</sup> day of July, 2017, before me the undersigned Notary Public for the State of Montana, personally appeared Gary Oakland known to me to be the President of High Sierra II, Inc., a Montana Corporation, that executed the foregoing instrument and acknowledged to me that said Company executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affixed my Official Seal the day and year in this certificated first above written.



(NOTARIAL SEAL)

*Mark E. Noening*

Notary Public of the State of Montana

(print name)

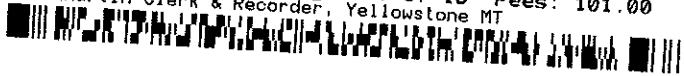
Residing at Billings, Montana

My Commission expires: \_\_\_\_\_

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Jeff Martin Clerk & Recorder, Yellowstone MT



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

## HOA STORMWATER FACILITY MAINTENANCE AGREEMENT

**THIS AGREEMENT** is made by and between the **CITY OF BILLINGS**, a municipal corporation of the State of Montana, hereinafter referred to as the "City" and **HIGH SIERRA II, INC.**, a Developer, as owner (including successors and assignee's of the Developer as may become applicable including the heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor,"

**WHEREAS**, the undersigned is proceeding to build on and develop the property; and has submitted the site plan/subdivision plan known as High Sierra Subdivision, Eleventh Filing, hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for detention of stormwater within the confines of the property; and

**WHEREAS**, the City and the undersigned, its successors and assigns, including any homeowners association, (hereinafter the "Landowner") agree that the health, safety, and welfare of the residents of the City, requires that on-site stormwater management facilities be constructed and maintained on the property; and

**WHEREAS**, the City requires that on-site stormwater management facilities as shown on the Plan (the "Facilities") be constructed and adequately maintained by the Landowner.

**NOW, THEREFORE**, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Facilities shall be constructed by the Landowner, in accordance with the plans and specifications identified in the Plan.
2. The Landowner shall, at all times, adequately maintain the Facilities. Such maintenance obligation shall include the obligation to properly maintain all surface



and subsurface inlets, pipes, channels, structures, rock pits, vegetation, and all other improvements provided to control the quantity and quality of the stormwater within the facility. Adequate maintenance is herein defined as keeping the Facilities and all components thereof in good working condition so that these Facilities continue to perform their design functions.

3. In the event the Landowner fails to maintain the Facilities in good working condition acceptable to the City, the City shall provide written notice to the Landowner of the perceived deficiencies identified in the inspection report and required actions to return the Facilities to good working condition. The Landowner shall be given a reasonable time frame to respond to the City or perform the required work. If the Facilities are not returned to good working condition within a reasonable time frame, the City may enter upon the Property and take such steps as are necessary to correct deficiencies identified in the inspection report and charge costs of such repairs to the Landowner. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Landowner outside of the easement for stormwater management facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City. The Landowner grants to the City, its authorized agents and employees, a non-exclusive, perpetual easement over, across, under and through the Property for such purposes.
4. The Landowner shall perform all work necessary to keep the Facilities in good working order. In the event a maintenance schedule for the stormwater management facilities (including sediment removal) is outlined on the approved plans, the Landowner shall comply with such schedule.
5. In the event the City performs work of any nature on the Facilities in accordance with this Agreement, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder.
6. This Agreement imposes no liability of any kind whatsoever on the City and the Landowner agrees to hold the City harmless from any liability in the event the stormwater management facilities fail to operate properly.
7. This Agreement shall be recorded among the deed records of Yellowstone County, Montana, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowners association.





IN WITNESS THEREOF, the parties hereto acting through their duly authorized agents have caused this Agreement to be signed, sealed and delivered:

“GRANTOR”

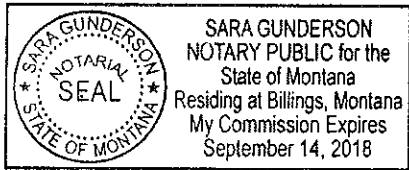
HIGH SIERRA II, INC.

By: [Signature]

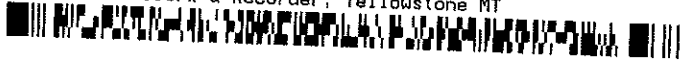
Its: PRESIDENT

STATE OF MONTANA )  
  : ss  
County of Yellowstone )

On this 10<sup>th</sup> day of April, 2017, before me, a Notary Public in and for the State of Montana, personally appeared Gary Oakland, known to me to be the President of HIGH SIERRA II, INC. who executed the foregoing instrument and acknowledged to me that he/she executed the same.



[Signature]  
Notary Public in and for the State of Montana  
Printed Name: Sara Gunderson  
Residing at: Billings, MT  
My commission expires: 9-14-18

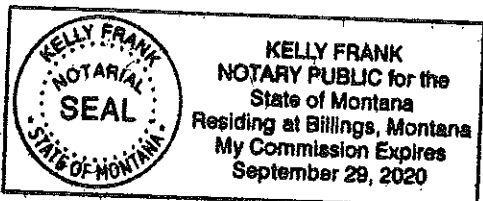


This Agreement is hereby approved and accepted by the City of Billings, this 17 day of August, 2017.

"CITY"  
CITY OF BILLINGS, MONTANA  
By: David Mumford  
Dave Mumford, Public Works Director

STATE OF MONTANA )  
  ) : ss  
County of Yellowstone )

On this 17<sup>th</sup> day of August, 2017, before me, a Notary Public in and for the State of Montana, personally appeared DAVID Mumford 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.



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

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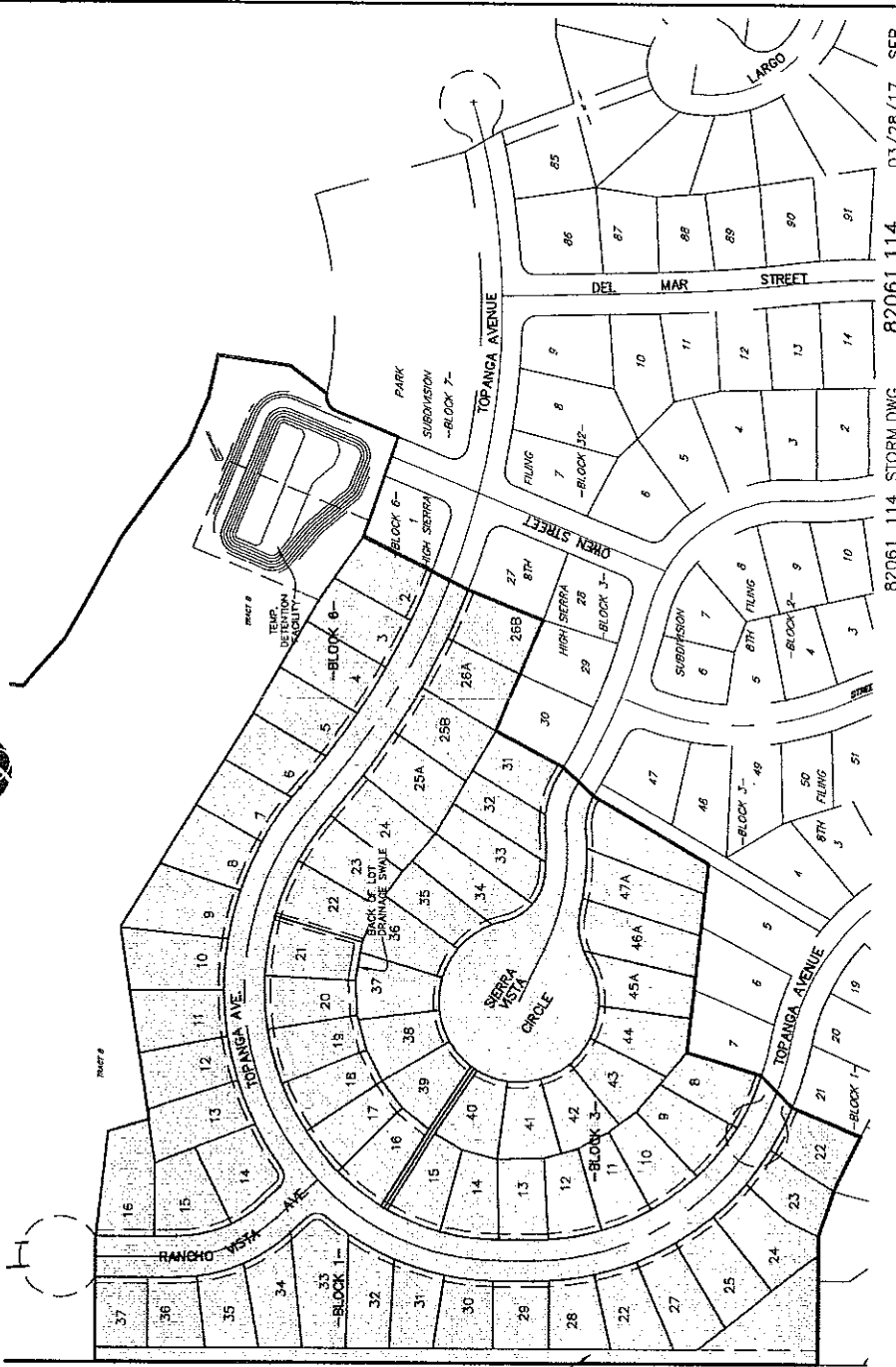
**EXHIBIT A**  
OVERALL DEVELOPMENT AREA  
WITHIN  
HIGH SIERRA SUBDIVISION, ELEVENTH FILING



MARCH 2017  
BILLINGS, MONTANA

PREPARED FOR : HIGH SIERRA II, INC.

PREPARED BY : **SANDERSON STEWART**




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**EXHIBIT B**  
HIGH SIERRA STORMWATER MASTER PLAN FACILITIES EXHIBIT

PREPARED FOR : HIGH SIERRA II, INC.

PREPARED BY : **SANDERSON STEWART** 

MARCH 2017  
BILLINGS, MONTANA

STORMWATER  
MASTER PLAN  
FACILITIES

5-MILE CREEK

HIGH SIERRA  
SUBDIVISION  
BOUNDARY

FUTURE HIGH SIERRA FILINGS

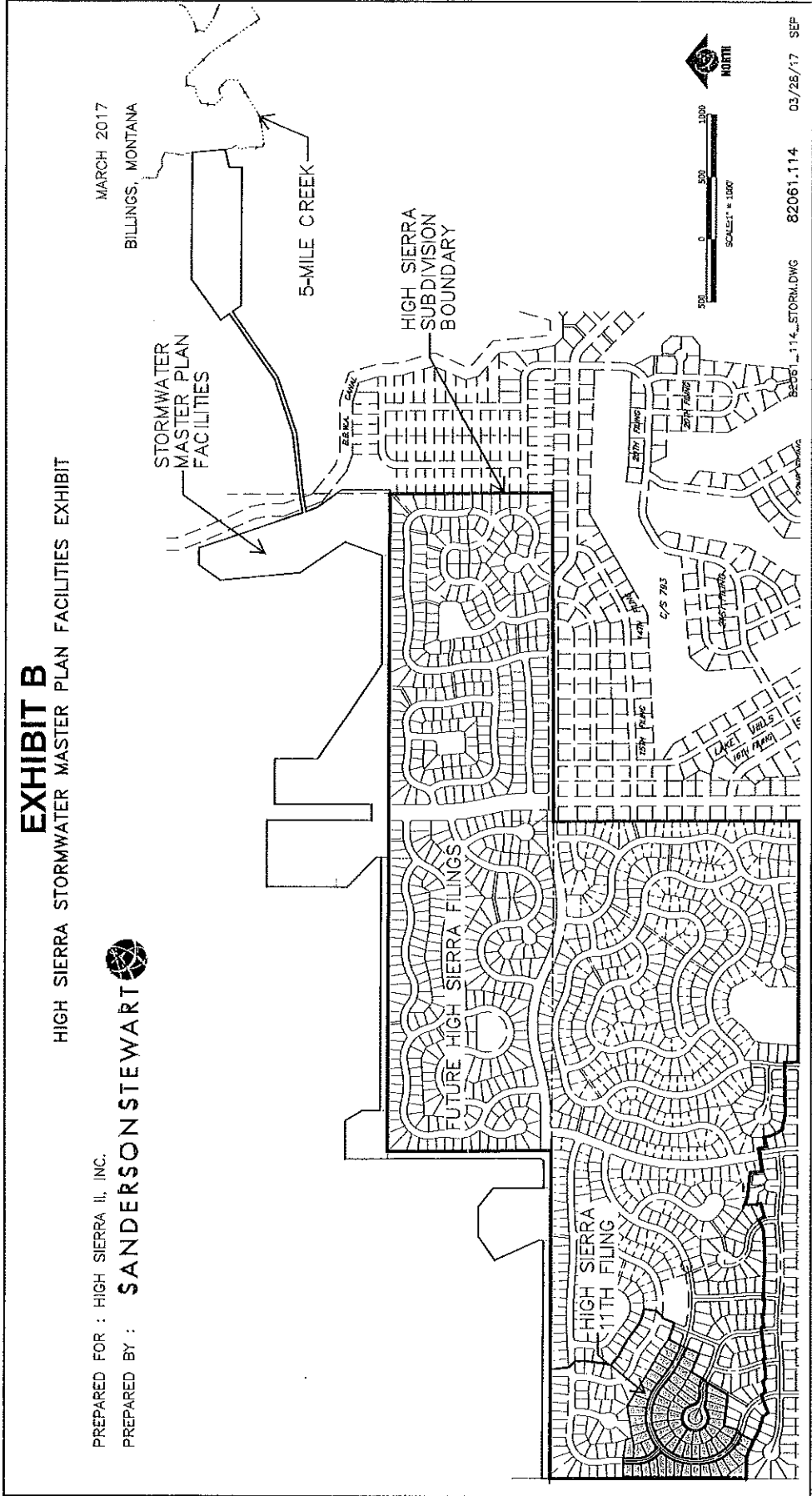
HIGH SIERRA  
11TH FILING



03/28/17 SEP

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## HOMEOWNERS' ASSOCIATIONS REQUIREMENTS

For privately maintained stormwater systems in residential neighborhoods, a homeowner's association shall be formed to maintain and operate the facilities located outside of the public right of way.

A draft copy of the SIA and/or CC&Rs for the HOA in charge of operating and maintaining the facilities associated with the stormwater system shall be submitted at the time of Preliminary Plat submittal. Final copies are required at the time of initial Private Contract Submittal. The SIA/CC&Rs shall summarize the maintenance and fiscal responsibilities of the HOA. The O&M manual shall also be submitted at this time. A financial plan is required in order to provide the entity responsible for maintenance with guidance in regard to financial planning for maintenance and replacement costs. The financial plan shall include the following items:

- A list of all stormwater-related facilities and their expected date of replacement and associated replacement costs.
- Sinking fund calculations that take into consideration probable inflation over the life of the infrastructure and estimates the funds that need to be set aside annually.
- A mechanism for initiating and sustaining the sinking fund account demonstrating that perpetual maintenance of all facilities associated with the stormwater system will be sustained.

Homeowners' associations are to be non-profit organizations. A standard business license is not acceptable for this purpose. The HOA shall remain in good standing with the requirements of the State of Montana. Developer shall sign HOA Agreement stating ownership and responsibilities prior to approval of development. A template agreement is found in Appendix G.

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