

HOA

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Jeff Martin Clerk & Recorder, Yellowstone MT



Please return to:
Hendrickson Law Firm, P.C.
P O Box 2502
Billings, MT 59103

BY-LAWS OF HIGH SIERRA HOMEOWNERS ASSOCIATION

1. **APPLICABILITY OF BY-LAWS**

The provisions of these By-Laws are applicable to the Lots which have been submitted to the provisions of the Declaration of Restrictions and Protective Covenants for High Sierra Subdivision, 8th Filing. The Lots are located upon the following described real property located in Billings, Yellowstone County, Montana:

All of High Sierra Subdivision, 8th 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.

All present or future owners, tenants, or any other person who might use the facilities of the property in any manner, together with all Lot owners of all future filings of High Sierra Subdivision, are and shall be subject to the provisions of these By-Laws. The acquisition, rental or occupancy of any of the Lots will signify that these By-Laws are accepted, ratified and will be complied with.



2. MEMBERSHIP, MEETINGS AND VOTING.

(a) Each Lot owner shall be a member of the High Sierra Homeowners Association, hereinafter called the "Association." However, if the ownership of any Lot is vested in more than one person, and while each such owner shall be a member, the co-owners or joint owners of the Lot shall be deemed to be one Lot owner for the purpose of voting and the determination of any required quorum. Each Lot owner shall be entitled to one vote and the vote for any Lot owned by more than one person shall be exercised as such co-owners may among themselves determine.

(b) Ownership shall be determined according to the records of the Clerk and Recorder of Yellowstone County, Montana; except that a personal representative, conservator or trustee may vote in person or by proxy with respect to any Lot owned or held by him in such capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance. Owner shall also include those purchasing Lots under purchase contracts who have an equitable interest in the Lot as disclosed by the public record in the office of the Yellowstone County Clerk and Recorder and, in such an event, the equitable owner shall be considered as the only owner of such Lot.

(c) Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary before the appointed time of the meeting. Whenever a Lot is owned by two or more persons, the vote therefor may be exercised by any one of such persons present in the absence of protest by the other or others.

(d) The annual meeting of the Association shall be held on the third Saturday of



September of every year at 1:00 o'clock p.m. Additional regular and special meetings of the Association may be held at such times and places as shall be agreed upon by the Lot owners. Notice of all meetings shall be given to each member personally or by mail, telephone, telegraph or telephone facsimile at least ten (10) days prior to the day named for such meeting. The presence, in person or by proxy, of at least sixty-six and two-third percent (66-2/3%) of the total number of Lot owners at such meetings of the Association shall be required for the transaction of any business by the Association.

(e) The Association shall have the responsibility of administering the operation of the HOA Storm Water System, approving any necessary budget, establishing and collecting any necessary monthly assessments and arranging for any necessary management of the HOA Storm Water System, as defined in the Declaration of Restrictions and Protective Covenants (Declaration). Except as otherwise provided herein, or by law, all decisions and resolutions of the Association shall require the approval of sixty-six and two-thirds percent (66-2/3%) of the Lot owners. Enforcement and collection of delinquent assessments may be made without approval of the delinquent owner.

3. **BOARD OF DIRECTORS.**

(a) The affairs of the Association shall be governed by a Board of Directors composed of at least five (5) persons, each of whom shall be elected by the Lot owners; provided, however, that Gary Oakland and Landy Leep shall serve as interim Directors until the first annual meeting of the Association. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things pertaining to the Storm Drain System as are not by law, the Declaration, or these By-Laws

directed to be exercised by the Lot owners.

(b) In addition to the powers and duties provided by law, the Declaration, these By-Laws or by resolution of the Association, the Board of Directors shall have the following powers and duties:

- (1) To enforce the provisions of the Declaration of Lot ownership and these By-Laws by appropriate action.
- (2) To determine the amount of any necessary assessments payable by the Lot owners, for the purposes set forth in Section 8 below, and to allocate and assess said expenses between Lot owners in proportion to their percentage of total Lots. In the Board's discretion, assessments may include reserve funds for major repairs, emergencies or capital improvements. The Board shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Association.
- (3) 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.
- (4) To send written notice of each regular assessment to every owner subject thereto at least twenty (20) days in advance of each assessment year and to send written notice of each special assessment to each owner at least thirty (30) days before its due date.
- (5) To record a lien against any property for which assessments are not paid within thirty (30) days after due date.
- (6) To foreclose the lien against any property for unpaid assessments or to bring an action at law against the owner personally obligated to pay the same.
- (7) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- (8) To procure and maintain adequate liability and hazard insurance as provided in Section 7 below.



- (9) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
- (10) To pay all taxes and assessments, if any, imposed on the Storm Drain System and to pay all contracted for debts of the Association.
- (11) To grant and accept easements and licenses pertaining to the Storm Drain System on behalf of all Lot owners.
- (12) In its discretion, to delegate any of the above-mentioned powers and duties to one or more officers or employees of the Association, to a committee appointed by the Board, or to an independent contractor or agent.
- (13) To supervise all officers, agents and employees of the Association to insure that they properly perform their duties.
- (14) To make repairs, alterations, additions and improvements to the HOA Storm Water System consistent with managing the HOA Storm Water System in the best interest of the Lot owners.
- (15) Upon written request from any person, agency or corporation having an interest or prospective interest in a Lot, to prepare and furnish within a reasonable time an audited financial statement of the High Sierra Homeowners Association for the immediately preceding tax year.
- (16) Upon written request from a holder, insurer or guarantor of a first mortgage on any Lot, to provide said holder, insurer or guarantor with timely written notice of:
 - (a) Any proposed amendment of the Declaration of Lot Ownership for High Sierra Homeowners Association effecting a change in liability for expenses, the number of votes in the owner's association appertaining to any Lot;
 - (b) Any delinquency in the payment of assessments or charges owed by an owner of a Lot subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
 - (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.



(c) The Board of Directors is hereby appointed as agent and attorney-in-fact for the Lot owners of all of the Lots and for each of them to manage, control and deal with the interests of such Lot owners in the HOA Storm Water System as necessary to permit the Board of Directors to fulfill all of its powers, right, functions and duties.

(d) The Board of Directors is hereby appointed as agent and attorney-in-fact for each Lot owner, each mortgagee, other named insured and their beneficiaries and any other holder of a lien or other interest in the Lots property or the property to:

- (1) adjust and settle all claims arising under insurance policies purchased by the Board of Directors;
- (2) execute and deliver releases upon the payment of claims; and
- (3) act on their behalf in any condemnation proceeding or act of eminent domain.

Provided, however, that the consent of the mortgagee shall be required if such mortgagee notifies the Board of Directors within thirty (30) days after receipt of notice of the damage or notice of the taking in condemnation or by eminent domain.

(e) The Directors shall be elected at the first meeting of the Association and the term of office of each Director shall expire annually whereupon the Association shall hold a meeting to elect directors. Any Director may be removed from office by the majority vote of the Lot owners and any vacancies in the Board of Directors shall be filled in the manner provided for the election of Directors with each person so selected serving the balance of the unexpired term.

(f) Except as otherwise provided in Section 3(a) above, Directors shall be nominated by a Nominating Committee composed of one member of the Board of Directors and one or more Lot owners appointed by the outgoing Board of Directors. To the extent possible, the Lot



owners so appointed shall not be members of the outgoing Board of Directors. A list of persons nominated shall be distributed to all Lot owners, attached to written notice of the annual meeting. Additional nominations may be made from the floor at the annual meeting. Each Lot owner shall be entitled to one vote for each vacancy in the Board of Directors; cumulative voting shall be permitted.

(g) No compensation shall be paid to Directors for their services as Directors unless salaries for Directors are approved by vote of a majority of Lot owners. However, Directors shall be reimbursed for actual expenses incurred in the performance of their duties. The Board of Directors may engage the services of a manager or managing agent.

(h) Regular and special meetings of the Board of Directors may be held at such times and places as shall be determined by the Directors. Notice of such meetings shall be given to each Director and to the Secretary and Chairman of the Association, personally or by mail, telephone, telegraph or telephone facsimile at least three (3) days prior to the day named for such meeting. A majority of Directors shall be needed for a quorum. All such meetings shall be open to all members of the Association. Information concerning major actions by the Board shall be promptly disseminated to all members of the Association in a manner to be determined by the Board.

(i) The officers and Directors of the Association shall not be liable to the Association or any Lot owner for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct or bad faith. The Lot owners and the Association shall indemnify and hold harmless each of the officers and Directors from and against all contractual liability to others arising out of contracts made by the officers or the Board of Directors on behalf of the



Association unless such contract shall have been in bad faith or contrary to the provisions of the law or the Declaration for High Sierra Homeowners Association or these By-Laws, except to the extent that such liability is satisfied by Director's and officer's liability insurance. Officers and Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any Lot owner arising out of any contract made by the officers or Board of Directors or out of the indemnification of the officers or Directors or for damages as a result of injuries arising in connection with the common elements solely by virtue of his own ownership of an interest in the HOA Storm Water System or an interest therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by his percentage of total Lots. Every agreement made by the officers or Board of Directors on behalf of the Association shall, if obtainable, provide that the officers or the Directors, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder, except as Lot owners, and that each Lot owner's liability thereunder shall be limited to the total liability thereunder multiplied by his percentage of common element interest. The Association shall indemnify any person who was or is a part or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he is or was an officer or Director of the Association against expenses, including attorney fees, judgments, fines and amounts paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association.

4. **OFFICERS.**

- (a) The Board of Directors shall annually elect a Chairman, Secretary and Treasurer.



The Board, in its discretion, may also elect a Vice-Chairman. No two offices may be held by the same person except the offices of Secretary and Treasurer. The officers of the Association shall hold office at the pleasure of the Board and, in the event of a vacancy, the Board shall elect a successor at any regular meeting or at any special meeting called for such purpose.

(b) Gary Oakland and Landy Leep shall serve as interim Chairman and Secretary, respectively, until the first annual meeting of the Association.

(c) The Chairman shall preside at all meetings of the Association and of the Board of Directors. He shall have general supervision over the affairs of the Association and its officers and all of the powers and duties usually vested in the office of President or Chairman and shall also perform such other duties as from time to time may be imposed upon him by the Board of Directors. The Vice-Chairman, if any, shall act in the place of the Chairman and shall have such other duties as may be assigned to him by the Board of Directors. The Secretary shall keep all books and records of the Association and the Board of Directors and record all minutes of meetings of both; he shall keep a record of all members of the Association and shall serve all required notices. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate itemized accounts of all receipts and disbursements in books belonging to the Association, in chronological order. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors. All checks shall be signed by two officers.

(d) Any officer may be compensated, in a reasonable amount, as determined by the Board of Directors.



5. INSPECTION OF RECORDS.

The books, records and papers of the Association shall be open for inspection by any Lot owner at any reasonable time.

6. EMERGENCY ACCESS.

Each Lot owner shall have the right to enter any other Lot in case of an emergency originating in or threatening such Lot, whether or not the owner or occupant is present at the time.

7. INSURANCE.

(a) The Board of Directors may cause the HOA Storm Water System to be insured against loss or damage by fire and related casualty in the amount representing the full insurable value thereof as determined by the Board. The cost for such insurance shall be a part of the Lot owners' expense. The carrying of such insurance shall not preclude any Lot owner from carrying insurance at his own cost for his own benefit, subject to the conditions set forth in subsection (g) of this section.

(b) All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including all mortgagees and contract sellers of Lots. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof and payment of premiums, shall be delivered to all mortgagees and contract sellers of Lots at least ten (10) days prior to expiration of the then current policies. Annually, the Board of Directors shall obtain an appraisal from an insurance



company or other knowledgeable person or business, of the full replacement value of the HOA Storm Water System, without deduction of depreciation, for the purpose of determining the amount of physical damage to be effective pursuant to this section.

(c) The Board of Directors shall cause public liability and property damage insurance to be carried, insuring the Association and the Lot owners, for liability for personal injuries to, or the death of, any person, or damage to property resulting from the ownership use of the HOA Storm Water System, with policy limits to be determined by the Board, but no less than \$1,000,000.00. The cost of such insurance shall be a common expense.

(d) In the event of a loss exceeding One Thousand Dollars (\$1,000.00), all Association insurance proceeds shall be paid to the designee of the Board of Directors as Trustee for disbursement.

(e) The Board of Directors shall review the adequacy of limits of coverage of insurance policies and report annually its opinion regarding same to the membership of the Association at its annual meeting.

(f) Payments for an insured casualty loss shall be applied by the Trustee for repair or replacement of the damaged property. If insurance proceeds exceed the replacement cost of the Lots, excess proceeds shall be credited to the accounts of all Lot owners.

8. ASSESSMENTS FOR COMMON EXPENSES.

(a) Assessments shall be made for all common expenses, including utilities costs of repair, replacement and general maintenance, management and administration of the HOA Storm Water System, management and administrative costs of the Association, costs of insurance on the HOA Storm Water System. Assessments shall be based upon and computed by using the



percentile interest that each Lot owner has to the total Lots in the High Sierra Subdivision.

(b) All sums collected by the Association from assessments may be commingled in a single fund but they shall be held for the Lot owners in their respective share in which they are paid and shall be credited to the account of the payee Lot from which shall be paid the expenses for which the respective assessments are made.

(c) Each Lot owner shall be obligated to pay monthly and special assessments for common expenses imposed by the Association. The Board of Directors shall, prior to the end of each calendar year, prepare an Association budget for the coming year. A copy of that budget, together with a statement of the amount of each monthly assessment for the next calendar year, shall be delivered to each Lot owner on or before the second Monday in December of each year preceding the budgeted for year. Each monthly assessment shall be equal to the total estimated common expenses for the year, including a reasonable reserve allowance for contingencies, divided by twelve. Assessments shall be due and payable on the first day of each month. If an annual budget is not prepared as required, the monthly assessment due shall be equal to the amount of the monthly assessment for the previous year until changed by the Board of Directors after preparation of a new budget. Notice of any new assessment shall be given, by mail or otherwise, to each Lot owner at least twenty (20) days in advance of the first payment due date for the assessment.

(d) Assessments paid more than ten (10) days after the date when due shall bear interest at the rate of ten percent (10%) per annum from the date when due until paid. All payments upon assessments shall be applied first to interest and then to the earliest assessment due.



(e) No owner of a Lot may exempt himself from liability for his or her contribution toward any common expense by waiver of the use or enjoyment of those items paid for or by abandonment of the Lot.

(f) The initial regular monthly assessments shall be \$ 10.00 per month per Lot. This assessment shall commence after completion of the HOA Storm Water System, and the rate shall continue in effect until changed by the Board of Directors. No change in monthly assessments shall be made before the first annual meeting of the Association. Until all Lots are sold, regular assessments shall not be increased more than 10% per year without prior approval of all Lot owners. Thereafter, increases exceeding 10% per year shall require prior approval of the majority of Lot owners. These limitations shall not apply to any special assessments.

(g) Assessments may be made by the Board of Directors for capital improvements to the HOA Storm Water System only upon an affirmative vote of sixty-six and two-third percent (66-2/3%) of the Lot owners entitled to vote; provided, however, that no assessments for capital improvements shall be made until all of the Lots have been constructed and sold by the Developer, without the express written consent of Developer.

(h) No Lot owner shall be entitled to receive the balance in that owner's assessment account upon sale of the owner's Lot. The account balance shall pass with sale of the Lot to the credit of the new Lot owner.

(i) Assessments, together with interest, costs of collection, costs of suit and reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs of collection, costs of suit and reasonable attorney fees, shall also be the personal



obligation of the person who was the owner of the Lot at the time the assessment became due.

The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

9. **RULES AND REGULATIONS.**

Administrative rules and regulations concerning the Permanent Storm Drain System may be promulgated and amended by the Board of Directors with approval of a majority of the Lot owners. A copy of the current rules and regulations shall be provided to each Lot owner by the Secretary of the Association, without cost, upon receipt of a request therefor.

10. **WORKING CAPITAL.**

The Developer, as agent of the Board of Directors, shall collect from the initial purchaser of each Lot, at the time of closing, an initial capital payment of an amount equal to the Buyer's pro rata share of insurance for the year plus an amount equal to two monthly assessments. The Developer will deliver the funds so collected to the Board of Directors to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, including insurance, initial maintenance, equipment, supplies, organizational costs and other start-up costs and for such other purposes pertaining to the HOA Storm Water System, or the Association, as the Board of Directors may determine.

11. **LIABILITY OF THE ASSOCIATION.**

The Association shall not be liable to any Lot owner for any failure of water supply or other services to be paid for as a common expense, or for injury or damage to persons or property caused by the elements, or resulting from electricity, water, snow or ice which may leak or flow over from any portion of the common elements or from any pipe, drain, conduit,



appliance or equipment. The Association shall not be liable to any Lot owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the common elements. This shall not be deemed to be a waiver of any liability between Lot owners. No diminution or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements or the exterior of any Lot, or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any government authority. The Association shall not be liable to any Lot owner for injury or damage to persons or property caused by another Lot owner. Any such liability shall be attributed solely to the responsible Lot owner. The Association shall not be liable to any Lot owner for personal injuries or injuries to property occurring on common elements.

12. **AMENDMENT.**

These By-Laws may be amended by the Association in a duly constituted meeting called for such purpose; provided, however, that no amendment shall take effect without the approval of the Developer until such time as all Lots have been sold by Developer. No amendment shall take effect unless approved by all (100%) of the Lot owners entitled to vote and until a copy of the By-Laws, as amended, certified by the Chairman and Secretary of the Association, is received in the office of the Clerk and Recorder of Yellowstone County, Montana; provided further, however, that the By-Laws may be amended by the Developer to add Lots in future filings of High Sierra Subdivision to the provisions hereof.



(c) The provisions of these By-Laws shall be covenants running with the land and shall be binding on all owners, their tenants and guests, for so long as the real property described herein is subject to the provisions of the Declaration.

13. ENFORCEMENT AND WAIVER.

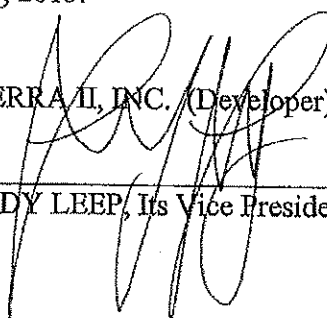
In the event the Board of Directors shall refuse to enforce the provisions of these By-Laws or the Declaration of Lot Ownership or duly adopted Rules and Regulations by appropriate action, any Lot owner shall have the right to do so.

Failure of the Association, its Board of Directors or any of its members to enforce the provisions of these By-Laws or the Declaration of High Sierra Homeowners Association or any Rules and Regulations adopted by the Association shall not be deemed a waiver of the right to do so in the future.

IN WITNESS WHEREOF, the undersigned, being the owner of the property to which these By-Laws apply, has executed this instrument as evidence of the adoption of the aforesaid By-Laws of the Association and hereby certify that the foregoing is a true and correct copy of the By-Laws of the said Association.

DATED this 24th day of August, 2015.

HIGH SIERRA II, INC. (Developer)

By: 
LANDY LEEP, Its Vice President

HOA

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Jeff Martin Clerk & Recorder, Yellowstone MT

STATE OF MONTANA)
: SS.
County of Yellowstone)

On this 24th day of August, 2015, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Landy Leep, known to me to be the Vice President of High Sierra II, Inc., the corporation that executed the foregoing instrument and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Sara Gunderson

Notary Public for the State of Montana

Sara Gunderson (print name)

Residing at Billings, Montana

My Commission expires: 9-14-18

