

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **THE CHILDREN'S CLINIC, LLC, A MED-MAP PROPERTY**, hereinafter referred to as "Owner" and **THE CITY OF BILLINGS**, hereinafter referred to as "City".

**WHEREAS**, Owner owns and intends to develop certain real property situated in the City of Billings, Yellowstone County, Montana, more particularly described as follows:

Tract 2A of Certificate of Survey No. 3364 Amended (COS 3364 Am.) situated in the SW ¼ Section 34, T-1N, R-25E, P.P.M., Yellowstone County, Montana (hereinafter the "property"); and

**WHEREAS**, the City Council conditionally approved the Resolution of Annexation of the Property at a meeting held May 10, 2010.

**WHEREAS**, a condition of said annexation approval is that a Development Agreement be executed between Owner and the City requiring specific infrastructure improvements and providing guarantees for said improvements.

**WHEREAS**, Owner desires to develop a children's clinic, and the City and Owner desire to place mutually agreeable requirements on said development.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. *Streets*

Owner will enter into Private Contract No. 619 for the construction of all required improvements for Avenue E which is adjacent to the development. Said improvements shall include 30-foot wide asphalt pavement with standard curb and gutter along the street's north side adjacent to the property.

Except as otherwise provided, Owner shall install and construct said required improvements with cash or private contracts secured by a letter of credit or a letter of commitment to lend funds from a commercial lender.

All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the city engineer and utility department manager.

2. *Storm Drainage*

A new storm drain main shall be installed in Avenue E under Private Contract 619 and connected to the existing storm drain line in Zimmerman Trail. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the city engineer and utility department manager.

All development within Tract 2A of COS 3364 Am. will meet the criteria of the City of Billings Stormwater Management Manual. The sizing, number of laterals, their location, and the total discharge allowed from the site will be subject to review and approval by the engineering department in conformance with the Stormwater Management Manual. Drainage details will be in accordance with the stormwater management report prepared at the time of site plan submittal.

3. *Water and Sanitary Sewer*

A water main and a sanitary sewer main in Avenue E shall be constructed under Private Contract No. 619. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the city engineer and utility department manager.

Owner may apply for reimbursement for a portion of the cost of installing said water and sanitary sewer mains, as outlined within Section 26-500 of the Billings City Code, "Reimbursement and Compensation of Water and Wastewater Extensions and Replacement Costs."

4. *Sidewalks*

A 5-foot wide boulevard style sidewalk shall be installed on north side of Avenue E adjacent to the property at the time of street construction.

5. *Landscaping*

Open areas in the public right-of-way, generally between the back of the curb and gutter and the new sidewalk, adjacent to the property will be landscaped at the time of site development. Maintenance of all site landscaping, including that in the public right-of-way, shall be the responsibility of the lot owner.

6. *Street Lighting*

Construction or installation of street lights shall not be required at this time.

7. *Private Utilities*

All power, telephone, gas, and cable television lines within the public right-of-way shall be installed underground prior to street paving. Appropriate private utility easements will be provided across the property for service to the proposed development.

8. *Assignment and Transfer*

Owner may assign its rights and obligations in this Agreement to a third party. In the event of such assignment or in the event of any transfer or conveyance of the Property by Owner to a third party, Owner shall be released from its obligations under this Agreement, and the City agrees to execute and deliver any and all documents reasonably requested to effectuate such release.

9. *Binding Effect*

Owner, by signature subscribed herein below agrees, consents, and shall be bound by the provisions of this Agreement. The covenants, agreements, and all statements in this Agreement shall run with the land and shall be binding on the personal representatives, successors, and assigns of the respective parties.

10. *Attorney's Fees*

If any arbitration, suit or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue shall be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

11. *Amendments and Modifications*

Any amendments and 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.

12. *Signatures and Counterparts*

The parties agree that the signatures to this Agreement transmitted by facsimile shall have the same force and effect as original signatures. At the request of either Party, the Party delivering this Agreement by facsimile will confirm facsimile transmission by signing and delivering a duplicate original agreement. This Agreement may be executed in counterparts, each of which shall constitute an original, all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“OWNER”

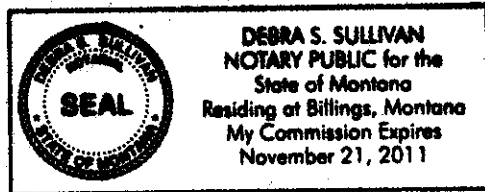
CHILDREN’S CLINIC, LLC  
A MED-MAP PROPERTY

By: *Brian T. Pelczar*

Its: *Co-Manager*

STATE OF MONTANA     )  
  : SS  
County of Yellowstone     )

On this 30th day of August, 2010, before me, a Notary Public for the State of Montana, personally appeared Brian T. Pelczar, known to me to be the Co-Manager of CHILDREN’S CLINIC, LLC – A MED-MAP PROPERTY, who executed the foregoing instrument and acknowledged to me that they executed the same.



*Debra S. Sullivan*  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

This Agreement is hereby approved and accepted by the City of Billings, this \_\_\_\_ day of \_\_\_\_\_, 2010.

“CITY”  
THE CITY OF BILLINGS, MONTANA

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

Approved as to Form \_\_\_\_\_  
City Attorney

STATE OF MONTANA     )  
  : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Mayor and City Attorney, respectively of the City of Billings, Montana, whose names are subscribed to in 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  
Residing at Billings  
My commission expires \_\_\_\_\_