

## EXCHANGE AGREEMENT

**THIS EXCHANGE AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between **BILLINGS CLINIC**, formerly known as Deaconess Billings Clinic, a Montana nonprofit corporation, with mailing address at P.O. Box 37000, Billings, Montana (“Billings Clinic”), and **THE CITY OF BILLINGS, MONTANA**, a municipal corporation, 210 North 27<sup>th</sup> Street, Billings, Montana 59101 (“City”). Billings Clinic and City shall each individually be referred to herein as a “Party” and shall collectively be referred to as the “Parties.”

### RECITALS:

A. Billings Clinic is the owner of fee simple title to real property located in Yellowstone County, Montana described on **Exhibit A** (the “Billings Clinic Exchange Property”).

B. City is the holder of rights-of-way over street segments located in Yellowstone County, Montana depicted as Street Segments 1 through 4 (“Street Segments”) on **Exhibit B** (the “City Exchange Property Interest”).

C. The Billings Clinic Exchange Property and the City Exchange Property Interest shall each individually be referred to herein as a “Property” and shall collectively be referred to as the “Properties.”

D. The Parties desire to effectuate a simultaneous exchange transaction (“Exchange”) whereby the Billings Clinic will transfer the Billings Clinic Exchange Property to City in exchange for all of the City Exchange Property Interest and ultimately a vesting of fee simple title to the Street Segments.

E. In order to effectuate a transfer of the Street Segments to Billings Clinic, in addition to other requirements addressed in this Agreement, City must take action to cause the vacation (“Vacation”) of the City Exchange Property Interest in accordance with all applicable laws, regulations, ordinances and codes including Montana law and the Billings Municipal Code (the “Vacation Process”).

F. After Public Hearing, at its May 9, 2011 City Council Meeting, City approved an Exchange on terms that conform to Montana law.

### FOR VALUABLE CONSIDERATION, IT IS AGREED:

1. **Effect of Recitals.** The foregoing Recitals are true and correct and by this reference are incorporated into the terms and conditions of this Exchange Agreement.

2. **Exchange of Property.** Billings Clinic and City agree to effectuate the Exchange in accordance with the terms and provisions of this Exchange Agreement.

3. **Terms and Conditions Applicable to the Billings Clinic Exchange Property Transaction.**

a. **Agreed Upon Value.** The Parties agree that the value of the Billings Clinic Exchange Property, consisting of 31,080 square feet of real property and a 29,060 building (“Building”), is \$1,353,600.00 (the “Billings Clinic Exchange Property Value”).

b. **Conveyance Documents.** On or before the Closing Date (herein defined), Billings Clinic shall execute and deliver to the Closing Agent:

(i) a warranty deed conveying to City merchantable fee simple title to the Billings Clinic Exchange Property free and clear of all liens and encumbrances except reservations and exceptions in patents from the United States and the State of Montana; existing easements and rights-of-way of record; all building, use, zoning, sanitary and environmental restrictions, mineral and royalty reservations or conveyances of record; and real estate taxes and assessments, including special improvement district assessments, for 2011 and subsequent years.

(ii) any and all other documents reasonably necessary to convey the Billings Clinic Exchange Property to City.

c. **Title Evidence.** Within a reasonable time after the execution of this Exchange Agreement, Billings Clinic shall furnish to City title evidence to the Billings Clinic Exchange Property in the form of a commitment for a standard coverage ALTA owner’s policy of title insurance in the amount of the Billings Clinic Exchange Property Value (the “Billings Clinic Title Commitment”), showing that Billings Clinic’s title is free and clear of liens, encumbrances, and title defects, excepting the usual printed exceptions contained in the commitment, and the items specifically excepted in Paragraph 3.b.(i) above. If City’s examination (at City’s expense) of the Billings Clinic Title Commitment discloses title irregularities beyond the permitted exceptions described above that render the title unmerchantable, then Billings Clinic shall proceed with reasonable diligence (at Billings Clinic’s expense) to correct the same if such irregularities are specified in a written notice delivered to Billings Clinic on or before ten (10) days after the Billings Clinic Title Commitment has been made available to City. If, on the Closing Date, Billings Clinic has been unable to cure or remove any such title irregularities specified in the written notice, then this Exchange Agreement may be rescinded at the option of either Party hereto by written notice to the other Party. Within a reasonable time after the Closing Date, Billings Clinic shall cause a standard coverage ALTA owner’s policy of title insurance to be issued to City in accordance with the terms of this paragraph. The premium for the standard coverage ALTA owner’s policy of title insurance shall be paid by Billings Clinic.

d. **Property Taxes and Assessments.** All property taxes and assessments, including special improvement district assessments, with respect to the Billings Clinic Exchange Property for 2010 and prior years have been paid. Responsibility for payment of taxes on the Real Property for 2011 shall be prorated, as applicable, between the Parties as of the Closing Date. City shall be responsible for paying all taxes and assessments with respect to the Billings Clinic Exchange Property thereafter, as applicable.

e. **Billings Clinic Disclosures.**

(i) **Radon Disclosure Statement.** **RADON GAS: RADON GAS IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE HEALTH UNIT.**

Billings Clinic represents to City that the Billings Clinic Exchange Property:

\_\_\_\_\_ HAS been tested for Radon or Radon progeny.

  X   HAS NOT been tested for Radon or Radon progeny.

If the Billings Clinic Exchange Property has been tested for Radon or Radon progeny, City hereby acknowledges that a copy of such test has been received along with evidence of any subsequent mitigation or treatment.

(ii) **Mold.** **MOLD DISCLOSURE:** There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. Billings Clinic cannot and does not represent or warrant the absence of mold. It is City's obligation to determine whether a mold problem is present. To do so, City should hire a qualified inspector and make any contract to purchase contingent upon the results of that inspection. A seller who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase.

With respect to the Building on the Billings Clinic Exchange Property, Billings Clinic represents to City that to Billings Clinic's knowledge the Building:

\_\_\_\_\_ HAS been tested for mold.

  X   HAS NOT been tested for mold.

If the Building has been tested for mold, City hereby acknowledges that a copy of such test has been received along with evidence of any subsequent mitigation or treatment.

With respect to the Building, Billings Clinic represents to City that Billings Clinic:

\_\_\_\_\_ HAS knowledge of the presence of mold in the Building and hereby makes disclosure of such mold to City.

  X   HAS NO knowledge of the presence of mold in the Building.

f. **Billings Clinic Representations and Warranties.** Billings Clinic makes the following representations and warranties to City concerning the Billings Clinic Exchange Property, which representations and warranties shall be accurate, true, and correct as of the Closing Date:

(i) Billings Clinic has good and marketable fee simple title to the Billings Clinic Exchange Property, which shall be free from liens and encumbrances on the Closing Date.

(ii) No suit, action, or legal, administrative, arbitration, or other proceeding or governmental investigation is pending or, to Billings Clinic's knowledge, is threatened against Billings Clinic which would affect the Billings Clinic Exchange Property. There is no outstanding judgment, decree, or order against Billings Clinic that affects the Billings Clinic Exchange Property.

(iii) Billings Clinic has provided City with all information in its possession concerning the environmental condition of the Billings Clinic Exchange Property.

(iv) Billings Clinic does not know, nor has it received written or official notice, of any violation of laws or ordinances governing the Billings Clinic Exchange Property.

(v) To Billings Clinic's knowledge, there are no encroachments onto the Billings Clinic Exchange Property. To Billings Clinic's knowledge, there are no easements, rights-of-way or claims thereof affecting the Billings Clinic Exchange Property that are not of record.

(vi) Billings Clinic shall keep the Billings Clinic Exchange Property in the same condition from the date of this Exchange Agreement to the Closing Date.

The warranties and representations set forth in this Exchange Agreement will survive the Closing Date. Billings Clinic will indemnify and hold City harmless from any damage, loss, claim, or liability arising out of any falsity, omission, or misstatement of any of the representations set forth in this Exchange Agreement.

4. **Terms and Conditions Applicable to the City Exchange Property Interest and Street Segment Transaction.**

a. **Agreed Upon Value.** The Parties agree that the value of the Vacation of the City Exchange Property Interest resulting in Billings Clinic's fee simple ownership of the Street Segments, consisting of 112,800 square feet of real property, is \$1,353,600.00 (the "City Exchange Property Interest Value").

b. **Conditions Relating to Transfer of the Street Segments.**

(i) **Vacation Process.** In order to effectuate the Vacation of the City Exchange Property Interest, City will initiate and complete the Vacation Process. The City agrees to proceed with diligence to complete the Vacation Process. To assist with the Vacation Process Billings Clinic, at its sole expense, has provided City with an ownership report prepared by Chicago Title Insurance Company showing the ownership of all properties abutting the City Exchange Property and will otherwise cooperate with the process as reasonably requested by City. City will not require the completion of a Traffic Accessibility Study as part of the Vacation Process and has waived the need for an appraisal or fee. All of the properties abutting the City Exchange Property are owned by Billings Clinic, except for Lots 13 through 20 of Block 25, Fosters Addition which is owned by Kirby Development Company Inc., a Montana corporation (“Kirby”). If the Vacation Process is completed and City takes action to vacate the City Exchange Property Interest, the Resolution approving the Vacation (the “Vacation Resolution”) shall expressly provide: a) a specific effective date of the Vacation to correspond with the Closing Date; b) that because all of the consideration for the Vacation of the City Exchange Property Interest is being contributed by Billings Clinic as described in this Agreement, City intends for Billings Clinic to acquire fee simple ownership to all of the Street Segments upon the Vacation; and c) that in view of the delivery of the Kirby Quit Claim Deed (defined below) abandoning to Billings Clinic any right Kirby may have to any reversionary interest in the Street Segments it is the City’s intent that Kirby will acquire no interest in the Street Segments by virtue of the Vacation or otherwise. Because all of the consideration for the Vacation of the City Exchange Property Interest is being contributed by Billings Clinic as described in this Agreement, it is the intention of the Parties that fee simple title to the Street Segments vest in Billings Clinic upon the Vacation. In order to ensure that any interest in the Street Segments acquired by Kirby by virtue of the Vacation is conveyed to Billings Clinic, this Agreement is expressly contingent upon Kirby providing a Quit Claim Deed in the form attached hereto as **Exhibit C** (the “Kirby Quit Claim Deed”) conveying any and all of its interest in the Street Segment abutting its property to Billings Clinic, which shall be delivered to the Closing Agent and recorded immediately after the recording of the City’s Vacation Resolution.

(ii) **Easements.** The Parties acknowledge that the City and the following private utility companies have the following utilities located in the Street Segments which shall not be affected by the Vacation Process:

**Parcel 1 – 9<sup>th</sup> Ave. North between North 29<sup>th</sup> and North 28<sup>th</sup>**

- City of Billings Water Main
- City of Billings Sewer Main
- City of Billings Storm Drain
- NorthWestern Energy Electrical Lines and Facilities
- Montana Dakota Utilities Gas Main and Facilities
- Qwest Communications Lines and Facilities
- Bresnan Communication Lines and Facilities

**Parcel 2 – Portion of North 28<sup>th</sup> Street between 10<sup>th</sup> Ave. North and 11<sup>th</sup> Ave. North**

- City of Billings Water Main
- Montana Dakota Utilities Gas Main and Facilities

**Parcel 3 – Portion of North 28<sup>th</sup> Street between 7<sup>th</sup> Ave. North and 8<sup>th</sup> Ave. North**

- City of Billings Water Main
- City of Billings Storm Drain

**Parcel 4 – Portion of North 28<sup>th</sup> Street from 8<sup>th</sup> Ave. North to 9<sup>th</sup> Ave. North**

- City of Billings Water Main
- City of Billings Sewer Main
- City of Billings Storm Drain
- NorthWestern Energy Electrical Lines and Facilities
- Montana Dakota Utilities Gas Main and Facilities
- Qwest Communications Lines and Facilities
- Bresnan Communication Lines and Facilities

This Agreement is expressly contingent upon Billings Clinic acquiring each private utility's consent to, and execution of, a written easement agreement memorializing the scope of its easement for utilities, in a form acceptable to Billings Clinic, for recording with the Yellowstone County Clerk and Recorder. With respect to the possible relocation of private utilities, the City agrees that it will not unreasonably withhold its consent to a private utility relocation within other City property or rights-of-way.

With respect to the City's utilities located in the Street Segments, the City's Vacation Resolution shall expressly provide that the easements reserved to the City for such utilities shall be subject to the right of the owner of the Street Segments, in its sole and absolute discretion, to elect to remove and relocate such utilities at its sole cost and expense, and that the City will not unreasonably withhold its consent to a relocation within other City property or rights-of-way.

c. **Conveyance Documents.** On or before the Closing Date, City shall execute and deliver to the Closing Agent:

(i) the City's Vacation Resolution approving the Vacation and containing the provisions outlined in Paragraph 4.b(i) and (ii) above, for recording with the Yellowstone County Clerk and Recorder.

(ii) any and all documents reasonably necessary to vacate the City Exchange Property Interest.

d. **Title Evidence.** Billings Clinic has received title evidence for the Street Segments in the form of a commitment for a standard coverage ALTA owner's policy of title insurance in the amount of the City Exchange Property Interest Value (the "City Title Commitment"). If Billings Clinic's examination (at Billings Clinic's expense) of

the City Title Commitment discloses title irregularities unacceptable to Billings Clinic, then City shall proceed with reasonable diligence (at City's expense) to correct the same if such irregularities are specified in a written notice delivered to City on or before ten (10) days after the City Title Commitment has been made available to Billings Clinic. If, on the Closing Date, City has been unable to cure or remove any such title irregularities specified in the written notice, then this Exchange Agreement may be rescinded at the option of Billings Clinic. Within a reasonable time after the Closing Date, City shall cause a standard coverage ALTA owner's policy of title insurance to be issued to Billings Clinic in accordance with the terms of this paragraph. The premium for the standard coverage ALTA owner's policy of title insurance shall be paid by City.

e. **Property Taxes and Assessments.** Billings Clinic shall be responsible for paying all taxes and assessments with respect to the Street Segments after the Closing Date, as applicable.

f. **City Representations and Warranties.** City makes the following representations and warranties to Billings Clinic concerning the City Exchange Property Interest and Street Segments, which representations and warranties shall be accurate, true, and correct as of the Closing Date:

(i) City has rights-of-way whereby the public has the right to use the Street Segments that are included in the Vacation Process.

(ii) Upon delivery of the Kirby Quit Claim Deed from Kirby to Billings Clinic, City has full authority to vacate the City Exchange Property Interest and thereby effectuate Billings Clinic's ownership of the Street Segment and will have as of Closing complied with any and all requirements relating to such action. The Street Segments shall remain subject to all existing easements which continue in effect and survive the Vacation by the City.

(iii) No suit, action, or legal, administrative, arbitration, or other proceeding or governmental investigation is pending or, to City's knowledge, is threatened against City which would affect the City Exchange Property Interest or the Street Segments. There is no outstanding judgment, decree, or order against City that affects the City Exchange Property Interest or the Street Segments.

(iv) To City's knowledge, there are no encroachments onto the City Exchange Property or the Street Segments, other than encroachments associated with Billings Clinic. To City's knowledge, there are no easements, rights-of-way or claims thereof affecting the Street Segments except as indicated in Paragraph 4.b(ii) above.

(v) City shall keep the City Exchange Property Interest and the Street Segments in the same condition from the date of this Exchange Agreement to the Closing Date.

The warranties and representations set forth in this Exchange Agreement will survive the Closing Date. City will indemnify and hold Billings Clinic harmless from any damage, loss, claim, or liability arising from the falsity, omission, or misstatement of any of the representations set forth in this Exchange Agreement. The City is agreeing to vacate its right-of-way interest in the Street Segments, but makes no representation that it has fee simple title to the Street Segments, nor that it has the power under the Laws of Montana

to affect any rights third parties, such as easement holders or abutting landowners, may have in the Street Segments.

5. **Terms and Conditions Applicable to Both Transactions.**

a. **Closing.** The closing (“Closing”) of this Exchange shall be held within ten (10) business days after the satisfaction of the contingencies expressed in Paragraph 5.e.(v) and (vi) and simultaneously with the effective date of the Vacation as contemplated in the Vacation Resolution (the “Closing Date”), at the office of Chicago Title Insurance Company, Billings, Montana (“Closing Agent”), unless otherwise mutually agreed by the parties. The Parties will deposit with the Closing Agent all instruments necessary to complete the Exchange in accordance with this Exchange Agreement. Closing fees, which do not include attorney fees and costs of the parties, shall be shared equally by Billings Clinic and City. The Parties shall each pay their own attorney fees for counsel and for review and preparation of documents prior to Closing.

b. **Possession.** Each Party shall be entitled to possession of the property acquired by it under this Exchange Agreement on the Closing Date.

c. **Property Investigation.** Each Party shall have the right, at its expense, to inspect and investigate the Property being acquired pursuant to the terms and conditions of this paragraph. Each Party shall have the right to enter the Property being acquired at reasonable times and in a reasonable manner for the purpose of investigating the Property. After making such investigation, the investigating Party shall restore the Property to its condition prior to such investigation. The investigating Party shall indemnify, defend, and hold harmless the Property owner from any claims, loss, or damage in connection with such investigation.

d. **Party Representations and Warranties.**

(i) **Billings Clinic.** Billings Clinic warrants and represents to City, which warranties and representations shall be true and correct as of the Closing Date:

A. Billings Clinic is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of Montana, and is duly qualified to do business in the State of Montana. Billings Clinic has full power and authority to carry on its business and to own, use, and sell its assets and properties and acquire properties.

B. Neither the execution and delivery of this Exchange Agreement, nor Billings Clinic’s consummation of any of the transactions contemplated hereby, will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree, nor conflict with or result in the breach of any term, provision, covenant, or condition of any agreement or other instrument to which Billings Clinic is a party or by which it may be bound, or which with the giving of notice or lapse of time or both would constitute an event of default thereunder.

These warranties and representations will survive the Closing. Billings Clinic will indemnify and hold City harmless from any damage, loss, claims, or liability arising out of any falsity, omission, or misstatement of the matters set forth in this paragraph.

(ii) **City.**

A. City is municipal corporation duly organized, validly existing, and in good standing under the laws of the State of Montana. City has full power and authority to carry on its business and to own, use, and sell its assets and properties and acquire properties.

B. Neither the execution and delivery of this Agreement, nor City's consummation of any of the transactions contemplated hereby, will result in a breach of any applicable statute or regulation, or of any administrative or court order or decree, nor conflict with or result in the breach of any term, provision, covenant, or condition of any agreement or other instrument to which City is a party or by which it may be bound, or which with the giving of notice or lapse of time or both would constitute an event of default thereunder.

These warranties and representations will survive the Closing.

e. **Conditions Precedent to Obligations.** The Parties' obligations to consummate the transactions contemplated by this Exchange Agreement are subject to and conditioned upon, the satisfaction of the following conditions ("Conditions Precedent") on or before the Closing Date, unless otherwise noted:

(i) All representations and warranties set forth herein shall be true and correct in all material respects.

(ii) There shall not exist, or a Party shall have delivered or arranged to be delivered to the Closing Agent all documents necessary to remove or release, any title defect or encumbrance affecting the Properties not permitted under this Exchange Agreement.

(iii) There shall have been no material adverse change in the condition of the Properties from the date of this Exchange Agreement.

(iv) Each Party's investigation of the Property being acquired by it and approval or disapproval of the condition and status thereof.

(v) The approval of the terms and conditions of the Exchange Agreement and the transactions contemplated hereunder, together with the approval to vacate the City Exchange Property Interest, by the Billings City Council by July 15, 2011.

(vi) The satisfaction of the conditions expressed in Paragraph 4.b. by July 15, 2011.

(vii) Each Party's reasonable satisfaction with the form and substance of all documents to be executed and delivered under this Exchange Agreement.

If a Party in good faith disapproves or is unable to confirm any of the Conditions Precedent by the date indicated, the other Party's only remedy is to rescind this Exchange Agreement by written notice to the other Party.

f. **Risk of Loss.** Risk of loss associated with each of the Properties remains with its current owner through the Closing Date.

g. **Remedies on Default.** If either Party fails to consummate this Exchange Agreement in accordance with its terms for any reason within the control of that Party, other than for a reason set forth in Paragraph 5.e above, which is not cured within ten (10) days after written notice of such violation (in either case, a “Defaulting Party”), then the other Party shall have as its sole remedy the option of either of the following:

- (i) Rescinding this Exchange Agreement by giving written notice to the Defaulting Party; or
- (ii) Enforcing specific performance of the Defaulting Party’s obligations hereunder.

h. **Notice.** Any notice to be given hereunder shall be in writing and shall either be served upon a Party personally, or served by registered or certified mail, return receipt requested, directed to the Party to be served at the following addresses:

Billings Clinic:

Billings Clinic  
P. O. Box 37000  
Billings, Montana 59107  
Attention: Mitch Goplen, Executive Director of Facility Services

with a copy to:

Legal Department  
Billings Clinic  
P.O. Box 37000  
Billings, Montana 59107-7000

City:

City Attorney  
City of Billings  
P.O. Box 1178  
Billings, Montana 59103

Notice served by mail shall be deemed complete when deposited in the United States Mail, postage prepaid. A Party wishing to change its designated address shall do so by notice in writing to the other Party. Rejection or other refusal to accept notice, or the inability to deliver notice because of a change of address for which no notice was given, shall be deemed receipt of the notice.

i. **Assignment.** Neither Party may assign his or its right, title or interest in or under this Exchange Agreement.

j. **Independent Investigation.** Each Party enters into this Exchange Agreement in full reliance upon its independent investigation and judgment, and neither

Party nor any of their respective agents or attorneys make any warranties or representations to the other Party about any of the property described herein, except as specifically stated herein. There are no verbal or other agreements which modify or affect this Exchange Agreement.

k. **Brokers Fees.** Each Party represents and warrants to one another that neither has engaged any brokers or real estate agents in connection with this exchange who might claim a fee or commission by reason of this exchange.

l. **Attorney Fees.** If either Party defaults in its performance hereunder and the other Party employs an attorney because of such default, the Defaulting Party agrees to pay, on demand, all costs, charges and expenses, including reasonable attorney and paralegal fees, incurred at any time by the other Party because of the default.

m. **Facsimiles and Counterparts.** A facsimile or electronic copy of this Exchange Agreement containing the signature of either party shall be accepted as the original. This Exchange Agreement may be executed in one or more counterparts, which taken together shall constitute one and the same document.

n. **Time and Binding Effect.** Time shall be of the essence of this Exchange Agreement. Subject to the limitations of use contained herein, the terms and conditions hereof shall inure to the benefit of, and be binding upon, the heirs, legal representatives, successors and permitted assigns of the parties hereto.

o. **Governing Law.** This Exchange Agreement shall be governed by the laws of the state of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

p. **Survival.** The provisions of this Exchange Agreement shall survive Closing.

q. **Entire Agreement.** This Exchange Agreement embodies the entire agreement between the parties, and supersedes all prior negotiations, understandings and agreements, if any, relating to the Property. This Exchange Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both parties hereto.

r. **Waiver.** If one Party waives any term or provision of this Exchange Agreement at any time, that waiver will be effective only for the specific instance and specific purpose for which the waiver was given. If either Party fails to exercise or delays exercising any of its rights or remedies under this Exchange Agreement, that Party retains the right to enforce that term or provision at a later time.

IN WITNESS WHEREOF, this Exchange Agreement has been executed on the day and year first above written.

**BILLINGS CLINIC** f/k/a Deaconess Billings  
Clinic

**THE CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Mayor

“Billings Clinic”

Attest:

\_\_\_\_\_  
City Clerk

(Seal)

“City”

**EXHIBIT A**

**Billings Clinic Exchange Property**

Lots 13, 14, 15, 16, 17, 18, 19, 20, and the North 22 feet of Lot 21, Block 49, of Foster's Addition, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, together with all appurtenances, buildings, improvements, and fixtures.

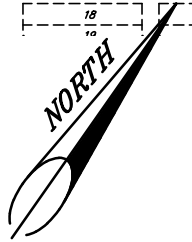
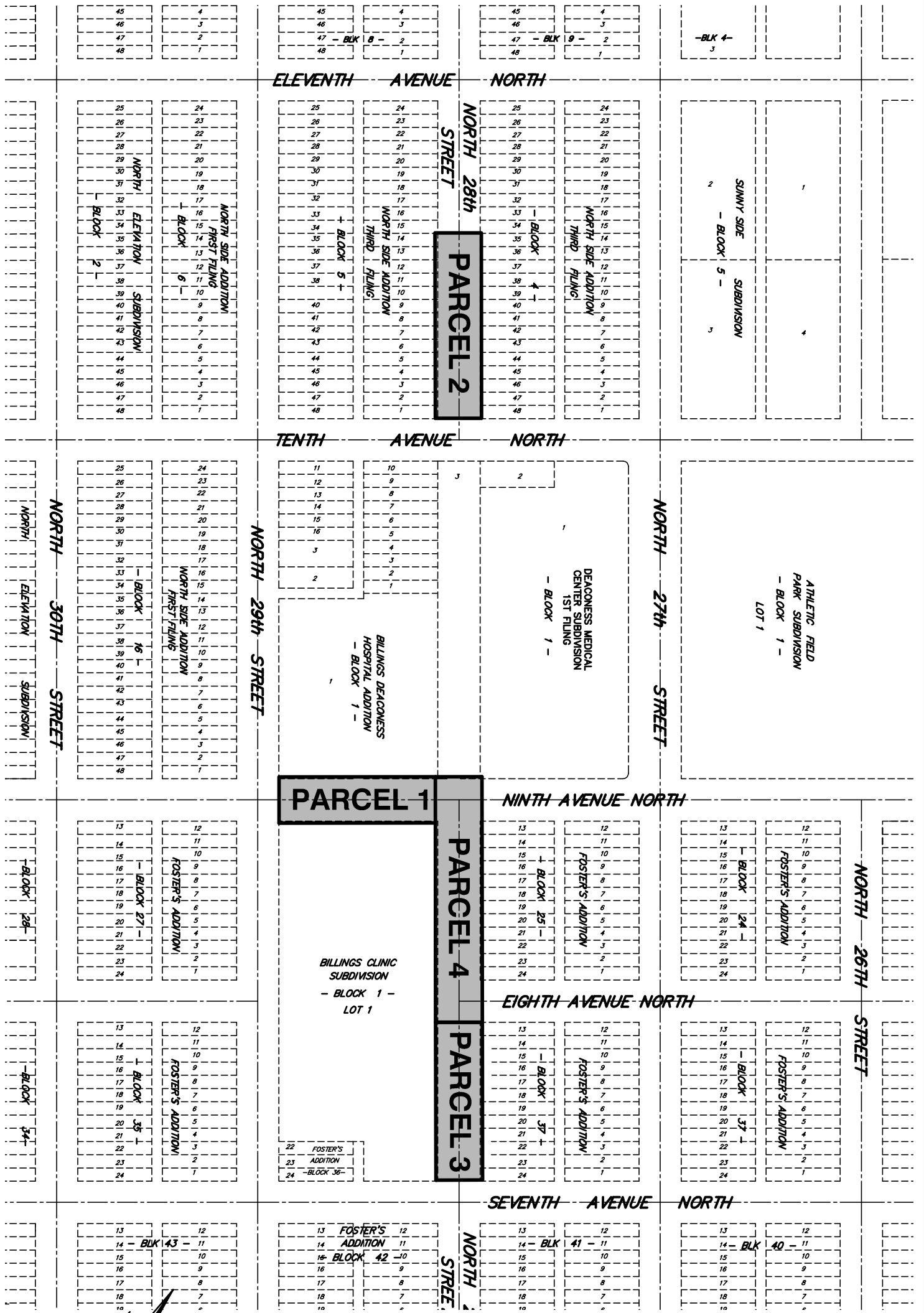
**EXHIBIT B**

**Street Segments**

Street Segments 1, 2, 3, and 4 depicted on the attached map.

# EXHIBIT "B"

## CITY EXCHANGE PROPERTY

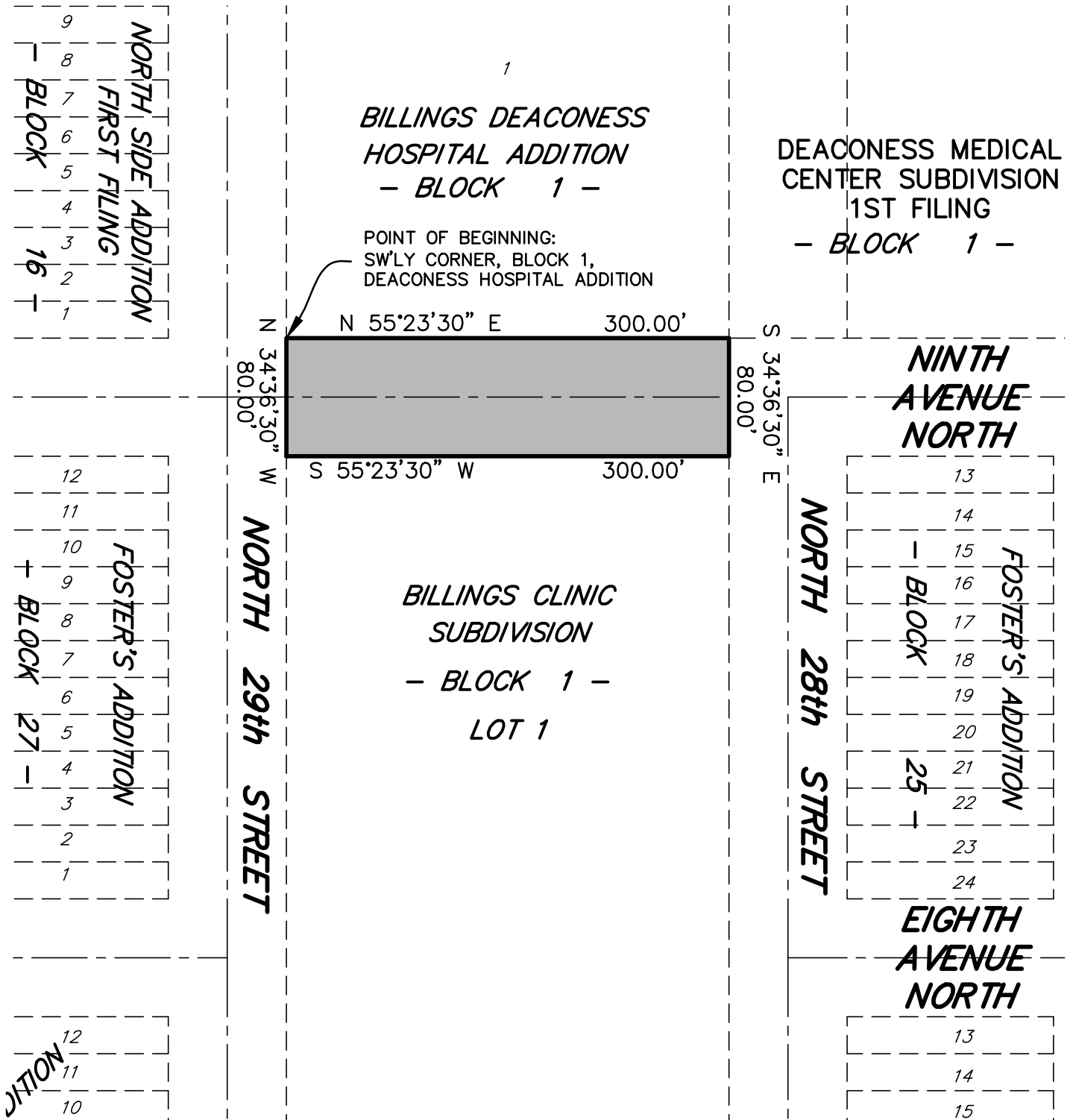


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# EXHIBIT "B"

## PARCEL 1

RIGHT-OF-WAY VACATION FOR NINTH AVENUE NORTH BETWEEN  
NORTH 29TH STREET AND NORTH 28TH STREET



### DESCRIPTION: NINTH AVENUE NORTH VACATION

A tract of land situated in the SE1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the southwesterly corner of Block 1 of the Billings Deaconess Hospital Addition; thence, from said Point of Beginning along the southerly line of said Block 1, N 55°23'30" E a distance of 300.00 feet, to the southeasterly corner of Block 1 of said Billings Deaconess Hospital Addition, thence, crossing the right-of-way of Ninth Avenue North, S 34°36'30" E a distance of 80.00 feet, to the northeasterly corner of Block 1 of Billings Clinic Subdivision: thence, along the northerly line of said Block 1, S 55°23'30" W a distance of 300.00 feet to the northwesterly corner of said Block 1, thence, crossing the right-of-way of Ninth Avenue North, N 34°36'30" W a distance of 80.00 feet, to the Point of Beginning; said described tract having an area of 24,000 square feet.

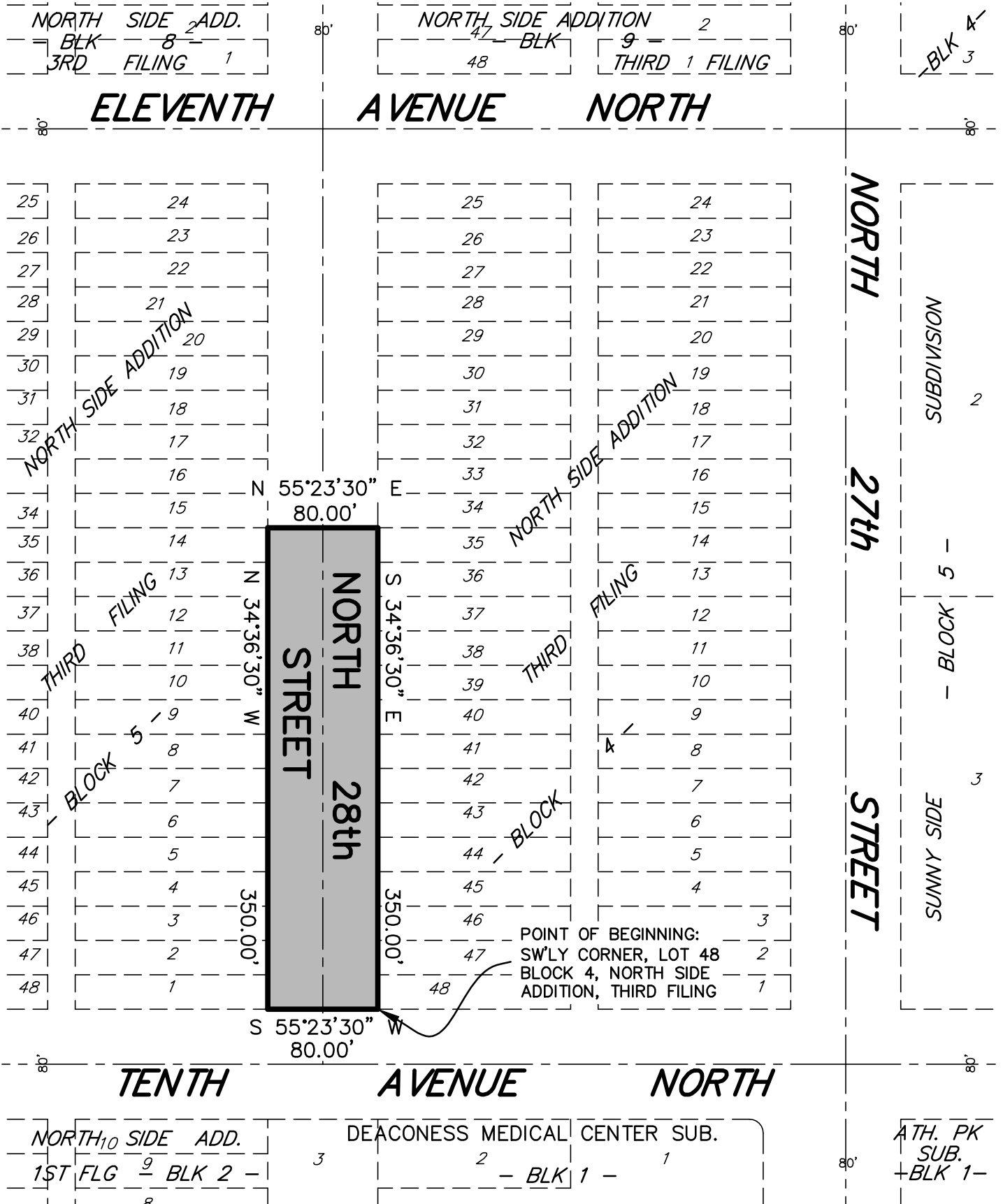


SCALE: 1" = 100'

# EXHIBIT "B"

## PARCEL 2

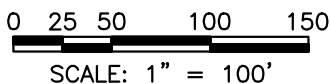
RIGHT-OF-WAY VACATION FOR A PORTION OF NORTH 28TH STREET  
BETWEEN TENTH AVENUE NORTH AND ELEVENTH AVENUE NORTH



**DESCRIPTION: NORTH 28TH STREET VACATION**

A tract of land situated in the NE1/4 and SE1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

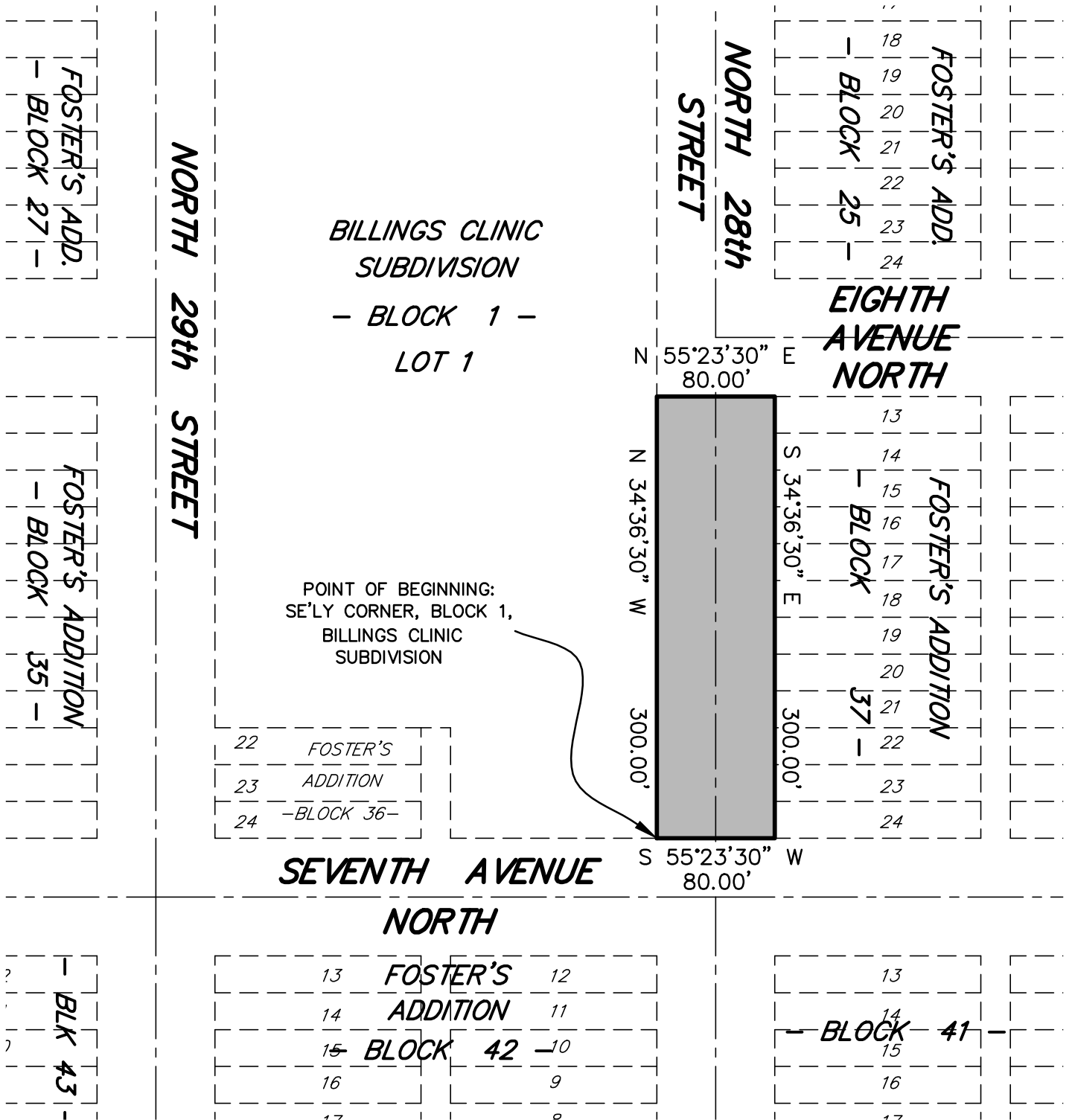
Beginning at a point which is the southwesterly corner of Lot 48, Block 4 of the North Side Addition, Third Filing; thence, from said Point of Beginning, crossing the right-of-way of North 28th Street,  $S 55^{\circ}23'30'' W$  a distance of 80.00 feet to the southeasterly corner of Lot 1, Block 5, North Side Addition, Third Filing, thence; along the easterly line of said Block 5,  $N 34^{\circ}36'30'' W$  a distance of 350.00 feet to the northeasterly corner of Lot 14, Block 5, North Side Addition, Third Filing, thence; crossing the right-of-way of North 28th Street,  $N 55^{\circ}23'30'' E$  a distance of 80.00 feet to the northwesterly corner of Lot 35, Block 4, North Side Addition, Third Filing; thence, along the westerly line of said Block 4,  $S 34^{\circ}36'30'' E$  a distance of 350.00 feet to the Point of Beginning; said described tract having an area of 28,000 square feet.



SCALE: 1" = 100'

# EXHIBIT "B" PARCEL 3

RIGHT-OF-WAY VACATION FOR NORTH 28TH STREET  
BETWEEN SEVENTH AVENUE NORTH AND EIGHTH AVENUE NORTH



**DESCRIPTION: NORTH 28TH STREET VACATION**

A tract of land situated in the SE1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the southeasterly corner of Block 1 of Billings Clinic Subdivision, thence, from said Point of Beginning, along the easterly line of said Block 1, N 34°36'30" W a distance of 300.00 feet thence, crossing the right-of-way of North 28th Street, N 55°23'30" E a distance of 80.00 feet to the northwesterly corner of said Block 37 of Foster's Addition, thence, along the westerly line of said Block 37, S 34°36'30" E a distance of 300.00 feet to the southwesterly corner of said Block 37; thence, crossing the right-of-way of said North 28th Street, S 55°23'30" W a distance of 80.00 feet to the Point of Beginning; said described tract having an area of 24,000 square feet.

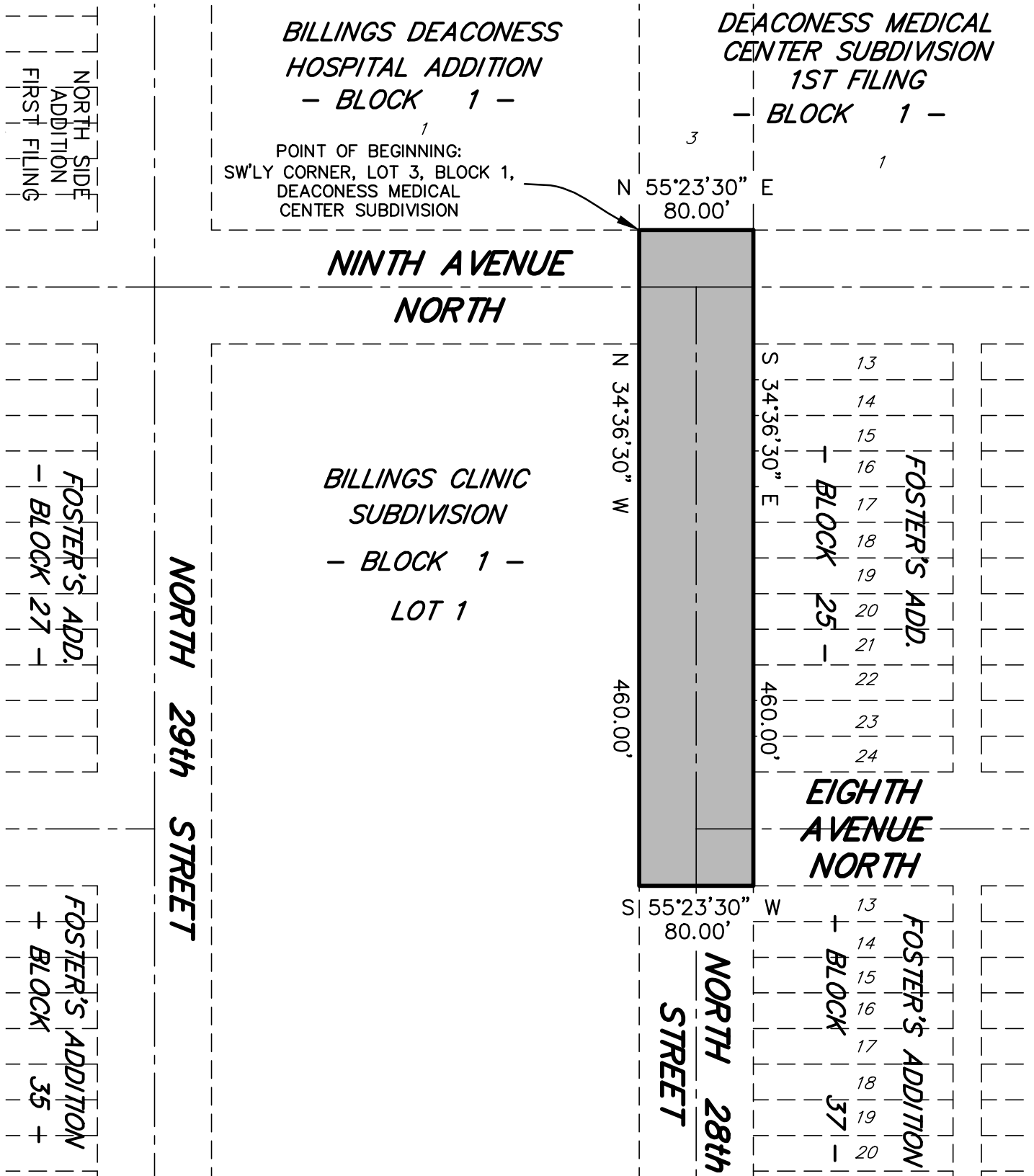


SCALE: 1" = 100'

# EXHIBIT "B"

## PARCEL 4

RIGHT-OF-WAY VACATION FOR NORTH 28TH STREET  
FROM EIGHTH AVENUE NORTH TO NINTH AVENUE NORTH



**DESCRIPTION: NORTH 28TH STREET VACATION**

A tract of land situated in the SE1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the southwesterly corner of Lot 3, Block 1, of the Deaconess Medical Center Subdivision, 1st filing, thence, from said Point of Beginning, along the southerly line of said Block 1, N 55°23'30" E a distance of 80.00 feet to the southwesterly corner of Lot 1, Block 1, Deaconess Medical Center Subdivision 1st filing; thence, S 34°36'30" E a distance of 460.00 feet crossing the right-of-way of Ninth Avenue North, along the westerly line of Block 25, Foster's Addition and crossing the right-of-way of Eight Avenue North, to the northwesterly corner of Block 37, Foster's Addition; thence, S 55°23'30" W a distance of 80.00 feet crossing the right-of-way of North 28th Street, to a point on the easterly line of Lot 1, Block 1, Billings Clinic Subdivision; thence N 34°36'30" W a distance of 460.00 feet along the easterly line of said Block 1, and crossing the right-of-way of Ninth Avenue North, to the Point of Beginning; said described tract having an area of 36,800 square feet.



SCALE: 1" = 100'

**EXHIBIT C**

**Kirby Deed**

After recording return to:

Legal Department  
Billings Clinic  
PO Box 37000  
Billings, MT 59107-7000

**QUITCLAIM DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is acknowledged, the undersigned,

**KIRBY DEVELOPMENT COMPANY INC.**, a Montana corporation, of 823 North  
Broadway, Billings, Montana 59101,

does hereby remise, release and quitclaim unto

**BILLINGS CLINIC**, a Montana nonprofit corporation, of 2800 10<sup>th</sup> Avenue North, Billings,  
Montana 59101,

real property in Yellowstone County, Montana, described on **Exhibit A** attached hereto and incorporated herein.

TO HAVE AND TO HOLD unto the Grantee, and its successors and assigns forever.

Dated: \_\_\_\_\_, 2011.

**KIRBY DEVELOPMENT COMPANY INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MONTANA )

: ss.

County of Yellowstone )

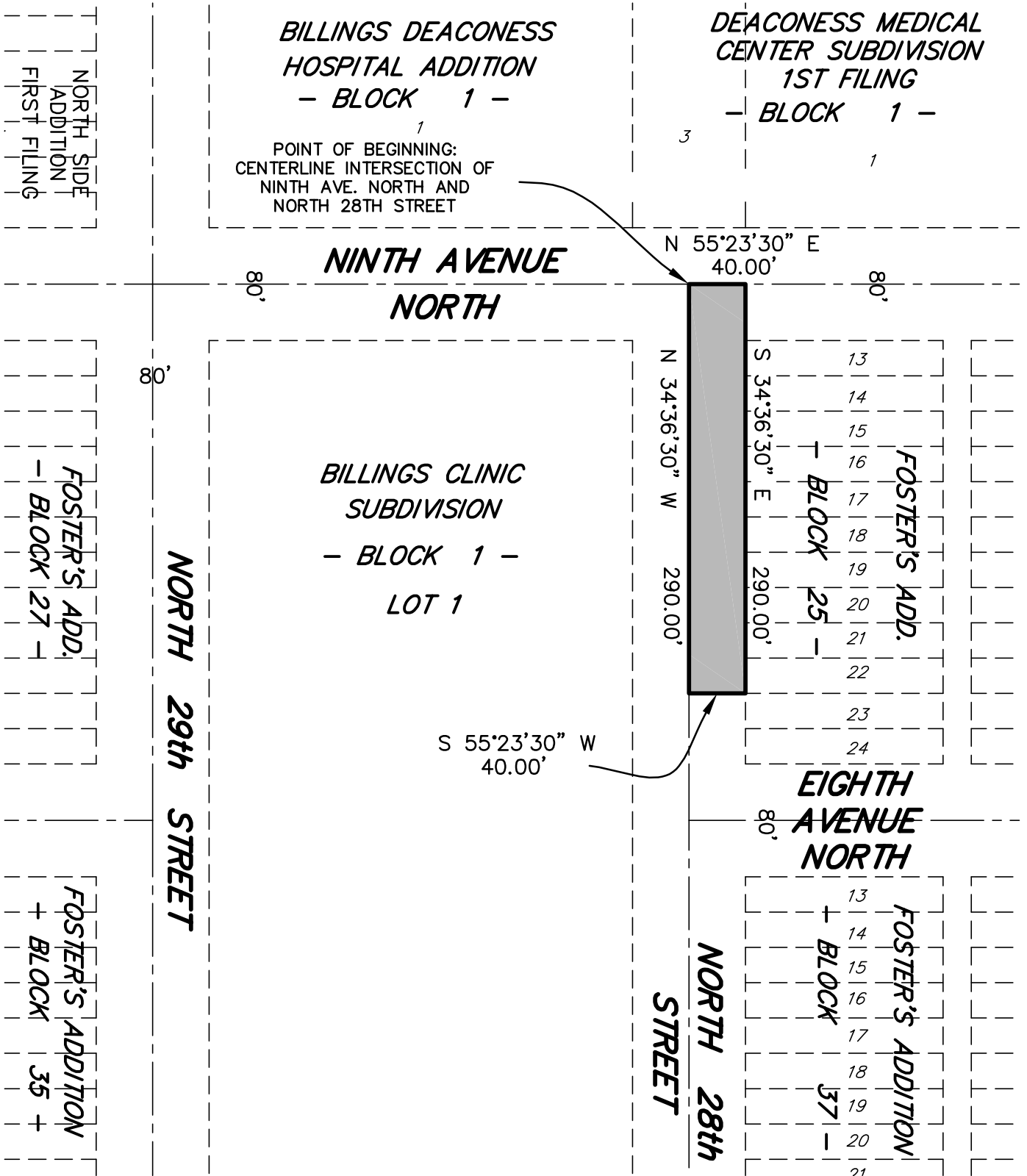
This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2011 by  
\_\_\_\_\_, as \_\_\_\_\_, of **KIRBY DEVELOPMENT  
COMPANY INC.**, a Montana corporation.

\_\_\_\_\_  
Type or Print Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_, 20\_\_

[NOTARIAL SEAL]

# EXHIBIT A

## QUIT CLAIM DEED PARCEL EXHIBIT



**PARCEL DESCRIPTION:**

A tract of land situated in the SE1/4 of Section 32, T. 1 N., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, being more particularly described as follows, to-wit:

Beginning at a point which is the centerline intersection of Ninth Avenue North and North 28th Street; thence, from said Point of Beginning, N 55°23'30" E along the centerline of Ninth Avenue North, a distance of 40.00 feet to a point being perpendicular to and 40.00 feet northerly of the northwest corner of Block 25 of Foster's Addition; thence, S 34°36'30" E along the westerly line of said Block 25, a distance of 290.00 feet to the southwesterly corner of Lot 22 of said Block 25; thence, leaving said westerly line, S 55°23'30" W a distance of 40.00 feet to the centerline of North 28th Street; thence N 34°36'30" W along said centerline of North 28th Street, a distance of 290.00 feet to said Point of Beginning; said described tract having an area of 11,600 square feet.

