

ORDINANCE NO. 15-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR an unplatted parcel known as the N1/2SE1/4 of Section 3, T1S, R25E, an 80 acre parcel of land, generally located on the southwest corner of the intersection of Shiloh Road and Broadwater Avenue

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC*, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.
2. DESCRIPTION That an unplatted parcel known as the N1/2SE1/4 of Section 3, T1S, R25E, an 80 acre parcel of land, generally located on the southwest corner of the intersection of Shiloh Road and Broadwater Avenue is presently zoned **Agriculture-Open Space (A-1)** and is shown on the official zoning maps within these zones.
3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Agriculture-Open Space (A-1) to Planned Development (PD)** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to the **attached Planned Development Agreement (Exhibit A)** as set out in the Billings, Montana City Code.
4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.
5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading January 26, 2015.

PASSED, ADOPTED AND APPROVED on second reading February 9, 2015.

CITY OF BILLINGS:

BY: _____
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin, City Clerk
Zone Change #929 – Broadwater & Shiloh – Billings Clinic

Exhibit A
**PLANNED DEVELOPMENT AGREEMENT
BILLINGS CLINIC WEST SUBDIVISION**

This **PLANNED DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 20__, 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 59107-7000 ("Billings Clinic") and **THE CITY OF BILLINGS, MONTANA**, a Municipal corporation, with mailing address at 210 North 17th Street, Billings, Montana 59101 ("City").

RECITALS

A. Billings Clinic is the owner of fee simple title to 80 acres of real property ("Property") located in Yellowstone County, Montana described as follows:

**Township 1 South, Range 25 East, of the Principal Montana Meridian,
Yellowstone County, Montana**

Section 3: N½SE¼

EXCEPT that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded January 20, 1955, in Book 511, under Document No. 536800, records of Yellowstone County, Montana.

EXCEPT that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded January 20, 1955, in Book 511, under Document No. 536801, records of Yellowstone County, Montana.

EXCEPT that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 11, 1955, in Book 519, under Document No. 539621, records of Yellowstone County, Montana.

The Property shall be known as the **BILLINGS CLINIC WEST SUBDIVISION** (the "Subdivision").

B. Billings Clinic intends to develop the Subdivision as a mixed-use development including a Medical Services campus with other complimentary uses.

NOW THEREFORE, the parties to this Agreement establish and declare the following plan for the Subdivision which shall apply to the entire Subdivision and shall bind all of the present and future owners of Lots and Common Area within the Subdivision and shall run with the land.

1. Recitals. The foregoing Recitals are incorporated into the terms and conditions of this Agreement.

2. Development Concept and Purposes.

a. Planned Unit Development. The Property shall be developed as a Planned Unit Development in accordance with this Agreement and the Minor Plat attached hereto as **Exhibit A**. This Agreement is hereby approved and incorporated into the Ordinance.

b. Purpose. This Agreement is intended to create a subdivision with a township-like atmosphere containing a Medical Services campus with appropriate and complimentary commercial and retail uses and the possibility of residential uses. The Subdivision will contain features that promote superior functionality and way-finding, easy access to quality healthcare, a satisfying and safe environment for the individuals who work in and visit the Subdivision, easy pedestrian access, limited vehicular congestion, and pleasant and

consistent landscaping and architectural design. This Agreement is intended to provide Billings Clinic with maximum flexibility for future development within a sound development structure.

3. Definitions. Unless otherwise defined herein, all terms used in this Agreement shall have the same meanings as specified in Chapter 27 of the City of Billings, Montana Municipal Code. The following definitions apply to this Agreement:

a. Common Area. “Common Area” means any property or facility that Billings Clinic owns or creates by easement in the Subdivision that is for the common use or benefit of the Lot Owners and/or the Lot Owner’s tenants, employees, agents, patients, customers, licensees, and invitees. Common Area may include, but is not limited to, private streets, sidewalks, walking pathways, bike trails, park areas, gardens, water features, playgrounds, open spaces, and landscaped entryways and buffers within the Subdivision.

b. Common Area Director. “Common Area Director” means the person or firm appointed by Billings Clinic in accordance with the terms and conditions of this Agreement or otherwise to maintain the Common Areas within the Subdivision.

c. Medical Services. “Medical Services” shall be defined to its broadest extent to include, but not be limited to: hospitals and hospital-related services; hospital-related access points such as emergency facilities and helicopter access; medical and dental professional clinics and/or offices; medical laboratories; pharmacies; physical therapy facilities; research and testing facilities related to the practice of health and medicine; health and fitness-related businesses; and ancillary healthcare services, along with their customary accessory uses and structures.

d. Medical Services Uses. “Medical Services Uses” are uses relating to Medical Services.

e. Lot. “Lot” means a portion of the Subdivision depicted as a separately identified parcel on a recorded subdivision plat or survey that may be independently owned and conveyed. The term refers to the land as opposed to structures or other improvements on the Lot. The term does not include private streets within the Subdivision.

f. Lot Owner. “Lot Owner” means the record owner of a Lot, whether one or more.

g. Manufacturing. “Manufacturing” means to produce something by industrial process or to make something using raw materials, especially on a large industrial scale.

h. Review Committee. “Review Committee” shall mean that committee structured and appointed by Billings Clinic to have the duties and responsibilities identified in this Agreement or otherwise, including but not limited to responsibility for reviewing and approving or denying the design of all projects proposed for any Lot within the Subdivision.

i. Shiloh Corridor Requirements. “Shiloh Corridor Requirements” means the Shiloh Corridor Overlay District Zoning Regulations, Section 27-1400, et seq., City of Billings, Montana Municipal Code.

j. Shiloh Drain and Shiloh Drain Easement Area. “Shiloh Drain” and “Shiloh Drain Easement Area” mean the area established by the reservation made in the Quitclaim Deed and Reservation of Easement dated August 9, 2004 and recorded September 3, 2004 with the Yellowstone County Clerk and Recorder as Document No. 3303618.

4. Persons Bound by this Agreement. The City of Billings and all individuals, corporations, or other entities who presently have or shall hereafter acquire any interest in and to any of the Property within the Subdivision shall be held to agree to all of the terms of this Agreement and all such individuals, corporations, and other entities, their heirs, devisees, successors, assigns, tenants, and trustees shall be bound by this Agreement, the terms of which shall run with the land.

5. Regulation of Uses.

a. Permitted Land Uses within the Subdivision. The primary use of the Lots in the Subdivision shall be Medical Services Uses although other commercial, retail and professional uses and residential uses may also be permitted. In addition, the Subdivision may contain private streets, sidewalks, walking pathways, bike trails, park areas, gardens, water features, playgrounds, athletic fields, open spaces, and landscaped entryways.

b. Interim Land Uses within the Subdivision. Billings Clinic may, in its absolute and sole discretion, permit farming operations within the Subdivision.

c. Prohibited Uses within the Subdivision. The following land uses shall not be allowed as permitted uses and/or structures within the Subdivision:

i. Alcoholic Beverages. Any business or establishment that sells alcoholic beverages, including liquor stores and bars, unless operated in conjunction with a restaurant with food service and also excepting the sale of packaged beer and wine for off-premises consumption by a general retail store. A restaurant serving alcoholic beverages cannot engage in gaming or gambling activities. Alcoholic beverages may be sold at special catered events within the Subdivision with the prior express written consent of Review Committee, which consent may be withheld or granted in the exclusive discretion of the Review Committee.

ii. Billboard Signs.

iii. Casinos. Any establishment engaged in gaming or gambling activities, including casinos and bingo parlors.

iv. Clubs & Fraternal Organizations. Any clubs or fraternal organizations which serve alcoholic beverages or liquor.

v. Pornographic Materials. Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia, except that such prohibition shall not limit the sale of books, periodicals, music products, and video products by a bookstore and/or music store carrying a full line of adult and/or children's titles, such as, by way of example, but not limited to, Barnes and Noble bookstores.

vi. Sexually-Oriented Businesses. Sexually-oriented businesses as defined by Section 27-611 of the City of Billings, Montana Municipal Code.

vii. Tobacco Sales. Sale of cigarettes, cigars, and tobacco products, except incidental to the operation of a general retail store.

viii. Marijuana Sales, whether for medical purposes or otherwise.

ix. Automobile & Truck Repair, Sales & Service Businesses, Auto Parts Supply, Auto & Truck Leasing and Rental, RV Sales & Service, Heavy Truck/Tractor Sales & Service.

x. Taproom, Brewery, or Microbrewery, except as incidental to a restaurant with food service.

xi. Gas Stations & Service Stations for Automobiles, Trucks, Trailers, or Recreational Vehicles.

xii. Gun and Archery Ranges and the Sale of Guns and Ammunition, unless incidental to a general retail store.

xiii. Equipment Rental Shops, unless related to Medical Services Uses.

xiv. Manufactured Homes.

xv. Deferred Deposit Lenders, Wage Brokers, Pawnbrokers and Pawn Shops, and Consumer Loan Licensee Businesses.

xvi. Bail Bond Businesses.

xvii. Tattoo Parlors.

xviii. Pool or Billiard Hall.

xix. Propane Sales.

xx. Industrial Uses that are inconsistent with commercial zoning or a commercial/Medical Services Uses development, including, but not limited to: warehouses, packing plants, grain mills, sawmills, petroleum refining, cement plants, bulk processing or storage of stone, clay, gravel, and/or glass, metal fabrication, recycling centers, cemeteries, mining, and general contractor operations.

xxi. Manufacturing Uses, unless related to Medical Services.

xxii. Second Hand Stores, Flea Markets & Junk Shops. This prohibits the sale of used household furniture and clothing, appliances, and equipment.

xxiii. Car & Truck Washes.

xxiv. Fireworks. The sale or manufacture of fireworks.

xxv. Title Loan Businesses.

xxvi. Commercial Storage Facilities & Mini Storage Facilities. This prohibits all storage rental facilities.

xxvii. Tire Sales, except as incidental to the operation of a general retail store.

xxviii. Animal Kennels or Animal Raising Facility, except that a Veterinarian can have limited overnight boarding in conjunction with the administration of veterinarian services.

xxix. Building Contractor or Subcontractor Operations.

xxx. Livestock and Farm Equipment. Any establishment engaged in the sale of livestock, ranch or farm equipment.

xxxi. Massage Parlors, excluding therapeutic massage.

xxxii. Mortuary, Funeral Home, or Crematorium.

xxxiii. Truck Stops and Truck Terminals as defined by 27-201 of the City of Billings, Montana Municipal Code.

xxxiv. Warehouses, unless incidental to Medical Services Uses.

xxxv. Adult Book Store, Adult Video Store, Adult Movie Theater or other establishment selling, renting or exhibiting pornographic materials or drug-related paraphernalia, except that this provision shall not prohibit the operation of a bookstore or video store which carries a broad inventory of books or videos and other materials directed towards the interest of the general public, as opposed to a specific segment thereof.

xxxvi. Amusement Park or Arcade.

6. Condition of Subdivision Lots and Improvements.

a. Maintenance of Lots. Lot Owners shall at all times, at their sole cost and expense, keep and maintain their Lot, and any improvements thereon, in a safe and clean condition and appearance and shall comply with all applicable governmental, health, fire, and safety laws, ordinances, regulations, requirements, directives and covenants. The owner of every unimproved Lot shall remove weeds, brush, and rubbish at least every three (3) months and when directed to do so by the City of Billings or Billings Clinic. The owner of every improved Lot shall remove any accumulated rubbish at regular and frequent intervals. Billings Clinic and the Common Area Director may perform any maintenance and clean-up on any Lot that is not maintained as required and may charge the Lot Owner for all costs relating to such work.

b. Noxious Weeds. All noxious weeds, as identified on the then current Yellowstone County Noxious Weed List, must be controlled on all Property within the Subdivision. All cost associated with such noxious weed control shall be the responsibility of each Lot Owner.

c. Sewer and Water Facilities. All development within the Subdivision shall be served by public sewer facilities and public water service.

d. Outside Storage. Outside storage shall not be permitted in the Subdivision except for limited, short-term outside storage during construction and designated storage areas approved by the Review Committee. No trailer (horse, boat, snowmobile, etc.), boat, camper, motor home, recreational vehicle, snowmobile, vehicle or other equipment generally associated with recreation and leisure time activity shall be situated or parked on any Lot or street in the Subdivision for more than five (5) days in any calendar year, unless it is enclosed by a garage meeting the design requirements of this Agreement and, at a minimum, the Shiloh Corridor Requirements. Notwithstanding the foregoing, the Review Committee may approve designated temporary parking for motor homes used by patients receiving Medical Services and their families.

e. **The Shiloh Drain.** Lot Owners shall at all times conduct their use and activities in a manner that will preserve the integrity of the Shiloh Drain, including the prevention of any degradation of water quality, any reduction in the flow of water, and any damage to the bed or banks of the Shiloh Drain. Lot Owners shall not conduct, permit or encourage any of the following activities:

i. The discharge of any liquid (except storm water runoff as directed by the details of an engineered storm drainage management plan), solid, or gas into the Shiloh Drain;

ii. The planting or dropping any non-native fish, animal, reptile, or plant into the Shiloh Drain area;

iii. The dumping of grass clippings or landscaping material or debris into the Shiloh Drain;

iv. The dumping of any refuse into the Shiloh Drain;

v. The polluting of the water in the Shiloh Drain; or

vi. The discharge of any Hazardous Materials into the Shiloh Drain. The term "Hazardous Materials" shall mean: petroleum products, asbestos, poly-chlorinated biphenyls, radioactive materials, and all other dangerous, toxic, or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. The term "Environmental Law" shall mean all federal, state, county, city, local, and other statutes, laws, ordinances, and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

7. **Common Area.**

a. **General Common Area.** Billings Clinic may designate areas of the Subdivision, including the Shiloh Drain and setback buffers along public right-of-ways, as Common Areas for private streets, sidewalks, trails, pathways, park areas, gardens, water features, playgrounds, athletic fields, open spaces, green space, landscaped areas, lighting, and signage. Such Common Areas may consist of property owned by Billings Clinic outside of designated Lots or areas created by easement over Lots. The Common Area shall be developed and maintained at no cost to the City and the Lot Owners shall contribute on a prorata basis based upon Lot size to a fund for the purpose or development and maintenance of Common Areas.

b. **Private Streets.** The streets within the Subdivision shall be private streets owned by Billings Clinic to which the Lot Owners and their tenants, employees, agents, patients, customers, licensees, invitees and their successor and assigns shall be granted easements for use. Billings Clinic and the City of Billings Public Works Department will enter into a Development and Maintenance Agreement to provide for the development and maintenance of the private streets. With the development of the private streets within the Subdivision, Billings Clinic shall grant and convey to the City perpetual right-of-way easements for the purposes of constructing, reconstruction, maintaining, operating, servicing, repairing, and replacing sanitary sewers, water lines, and other utilities. The private streets shall be considered Common Area of the Subdivision and shall be maintained as Common Area by the Common Area Director. Billings

Clinic may require a minimum five (5) foot landscaped boulevard adjacent to the private streets, and the Lots within the Subdivision may be subject to reciprocal easements for the development of such buffers to serve the Subdivision. Each Lot Owner will be responsible for the development and maintenance of the landscaping contained in the landscaping buffers which shall meet specific design standards developed by Billings Clinic and enforced by the Common Area Director.

c. **Multi-Use Pathways.** Billings Clinic may provide for the development of sidewalks, trails and pathways, together with adjacent minimum five (5) foot wide landscaping buffers (“Multi-Use Pathways”) within the Subdivision to provide pedestrian and/or bicycle access throughout the Subdivision. Lots and Common Area within the Subdivision may be subject to reciprocal easements for the development, construction, and use of such Multi-Use Pathways to serve the Subdivision. No building shall be constructed within ten (10) feet of a Multi-Use Pathway easement, unless the express written consent of Billings Clinic, in its sole and absolute discretion, is obtained. Each Lot Owner will be responsible for the development and maintenance of the Multi-Use Pathways which shall meet specific design standards developed by Billings Clinic and enforced by the Common Area Director. Billings Clinic, at its discretion, can direct that certain maintenance functions relating to the Multi-Use Pathways shall be the responsibility of the Common Area Director.

8. **Site Development, Building, and Landscape Standards.** These standards are provided to establish minimum guidelines for the development of facilities within the Subdivision, including site work, landscaping, buildings and accessory structures, and parking areas. They are designed to provide developers with a guide that defines the aesthetic quality of the Subdivision and to create and maintain quality and harmony between all areas within the Subdivision, yet maintain flexibility to adjust to changes in the ever evolving arena of property development. These guidelines will not define specific styles of architectural character for the various uses possible in the Subdivision.

a. **General Development Standards.**

i. **General.** The following general development standards shall apply to the Subdivision:

- Except as specifically provided herein, the Shiloh Corridor Requirements shall be the minimum standards for the Subdivision and the underlying default zoning shall be Community Commercial.
- All site development shall be designed to encourage reciprocal access and parking between adjacent properties.
- All utilities shall be underground with any surface elements screened by structural or landforms and landscaping elements.
- All antenna and satellite receiver dishes shall be hidden from street view and otherwise screened from view by structures or landscaping elements.

ii. **Lot Coverage.** The total combined lot coverage for all structures on any Lot shall not exceed sixty percent (60%) of the total square footage of the Lot. However, a Lot Owner may request a variance for Lot coverage up to eighty percent (80%) after receiving the express written consent of the Review Committee. Approval of any Lot coverage variance will be through the City Board of Adjustments.

iii. **Setback Buffers.** In addition to the requirement of the Shiloh Corridor Requirements and setback requirements contained in the City of Billings, Montana Municipal Code relating to, among other things, clear vision triangles and arterials, the following setback buffers shall apply to the Subdivision:

- **Front Yard Setback:** Minimum of twenty-five (25) feet from the Lot line
- **Side Yard Setback:** Minimum of twenty (20) feet from the Lot line.
- **Rear Yard Setback:** Minimum of twenty (20) feet from the Lot line.

A. **Determining Setbacks.** The street side of a Lot shall be deemed to be the Front for the purposes of setbacks. If a Lot fronts two streets, the Lot Owner shall select one of the streets as the front for the purpose of determining setbacks.

B. **Building on Lot Lines.** The Review Committee, in its sole and absolute discretion, may allow the construction of buildings on Lot lines. In such event, the affected Lots must be owned by the owner, and may not be separately conveyed so long as the building remains. In the event that the Review Committee allows construction over a Lot line, no setbacks shall apply to the covered Lot line, and the combined Lots shall be treated as one (1) Lot. Upon the approval of the Review Committee, restrictive covenants shall be recorded against the affected Lots to provide that they may not be mortgaged or conveyed separately.

C. **Development of Setback Areas.** Setback areas that are not occupied by required minimum landscaping buffers may be used for driveways and parking.

D. **Required Landscaping of Buffer Areas.** All developments are required to place landscaped buffer areas adjacent to and along the length of all public rights-of-way. All landscaped buffer areas shall meet or exceed the Shiloh Corridor Requirements.

E. **Waivers and Variances.** A Lot Owner may request a variance of up to minus 10% of the setback requirements specified herein, after receiving the express written consent of the Review Committee. Approval of any setback variance will be by the City Board of Adjustments.

iv. **Green Belt Buffers Along the Shiloh Drain.** The Owners of all Lots adjoining the Shiloh Drain Easement Area shall maintain the easement area as a landscaped green belt. The Owners of all Lots along the Shiloh Drain Easement Area shall also maintain landscape space in the right-of-way up to the back of the curb or edge of the paving of the street.

v. **Height Restrictions.** Within the following perimeter of the Subdivision, building height cannot exceed forty-five (45) feet: 500 feet from Shiloh Road and 150 feet from Broadwater Avenue, 44th Street West and the southern boundary of the Subdivision. No building height restrictions exist within the interior portion of the Subdivision bounded by the above-described perimeter, except that the maximum number of stories in a building cannot exceed ten (10) stories.

vi. **Township-Like Development.** Lots may be developed with a juxtaposition of buildings of many different functions which encourages and facilitates easy pedestrian circulation, develops an identifying style, and creates a sense of place as a neighborhood environment.

b. **Site Development Standards.**

i. **Access.** Access to all Lots within the Subdivision shall be from internal private streets and by Multi-Use Pathways. Shared accesses are encouraged.

ii. **Parking.** Adequate off-street parking shall be provided by each Lot Owner for customers, visitors, and employees. Reciprocal parking arrangements between

Lots and adjacent uses are encouraged and can be utilized to ensure that the two Lots combined meet the parking requirements of this Agreement and the Shiloh Corridor Requirements. All off-street parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscape and screening elements as provided herein or by other directive of Billings Clinic. The parking requirements for each Lot shall meet the standards of the City of Billings for each use proposed for a Lot, but shall not exceed 120% of the City's minimums. Each Lot Owner shall install a permanent bike rack for each building constructed on a Lot.

A. Off-Site Parking. Parking requirements may be satisfied by on-site parking, approved street parking, and off-site parking facilities, or any combination thereof. All uses must provide the required number of parking spaces designated for the use as defined by the current City of Billings Site Development Ordinance, but not more than the maximum number set forth in this PDA (120% of the City minimums). Required parking for buildings or uses located in the Subdivision shall be located within six hundred (600) feet of the building or use, which distance shall be measured along a straight line between the two (2) nearest points of the lots containing the main use and the accessory parking use.

Each off-street parking area shall be accessible by a public right-of-way and/or a private right-of-way and shall be owned or leased by the owner of the building, use, or activity served by such parking area. The term of any such lease shall be for the duration of the time that the building, use, or activity served by such parking area is in existence at such location. Each lease shall be subject to prior review by Billings Clinic and the City of Billings, and shall provided that if the right to use the designated off-site parking is for any reason terminated or forfeited prior to cessation of the use of the building, or cessation of the use or activity, Billings Clinic and the City shall be immediately advised. In case of such termination or forfeiture, the Lot Owners shall, within ninety (90) days of the termination or forfeiture, present the City and Billings Clinic with a plan to cure any parking shortage within twelve (12) months. All requirements for setbacks, landscaping, signage, and lighting shall apply to off-site parking facilities.

With respect to parking, no more than fifty (50) percent of the required parking for primarily "nighttime uses" may be provided or supplied off-site.

Handicapped accessibility requirements shall be satisfied on site.

B. Shared Parking. Billings Clinic and the City of Billings may authorize the joint use of off-street parking areas by nonresidential commercial business, Medical Services Uses, and other uses or activities, if the following conditions are met:

- No more than fifty percent (50%) of the off-street parking spaces required by this Agreement for primarily "nighttime uses" may be provided or supplied by a use in the other category, or of the other type (provided for a nighttime use by daytime use, and vice versa) by means of a joint parking lease or agreement.
- The building or use for which application is being made to utilize the off-street parking facilities of another building or use shall be located within six hundred (600) feet of such parking facilities, which distance shall be measured along a straight line between the two (2) nearest points of the lots containing the building or primary use and the lot containing the accessory parking use. Safe, lighted, and convenient pedestrian access shall connect the two (2) locations.
- The applicant shall show that there is and will be no substantial conflict between the principal operating hours at the two (2) buildings or uses for which joint use of off-street

parking facilities is proposed, and shall show that there are and will be no conflicting demands for such parking by the respective employees, customers and clients of the two (2) buildings or uses.

- At the time a building permit is applied for, the applicant shall present to Billings Clinic and the City of Billings an appropriate and enforceable lease or reciprocal parking agreement, executed by the parties concerned, for their joint use of off-street parking facilities. The term of the lease or agreement shall be for the duration of the time that each use is in existence at its said location. Each such lease or agreement shall provide that all parties thereto shall notify Billings Clinic and the City of Billings prior to its termination or dissolution for any reason, and shall provide for developing additional required parking at the share lot or at different sites for the users of the shared parking if changes occur to the ownership, types of uses, or parking needs, or if other circumstances require parking be provided at the same time and same location for the businesses served.
- No building permit shall be issued by the City of Billings until such lease or reciprocal parking agreement has first been reviewed by the City and found to meet the requirements of this PDA and to be binding and enforceable. A copy of each such agreement shall be filed with the respective building permit.
- Written approval is obtained from Billings Clinic, in its sole and absolute discretion.

In case of termination or dissolution of any such lease or reciprocal parking agreement, the Lot Owner shall, within ninety (90) days of the termination or forfeiture, present the City and Billings Clinic with a plan to cure any parking shortage within twelve (12) months.

iii. Loading and Service Areas. Loading and service areas shall not be permitted in the front of any Lot within the Subdivision and shall be screened from public view from all streets. Proper integration of landscape and screening elements must be provided between loading and service areas and any street or adjoining Lot. All loading and service areas shall be designed so that vehicles may load and unload without having to back up into any private street within the Subdivision or public right-of-way. All loading and service areas shall be carefully planned, positioned, and screened from off-site ground-level view and streets. On-site views of loading and service areas shall be minimized as much as possible. Screening elements may include landscape materials, landscaped berms and/or building materials similar to those used for the building located on the Lot and shall comply with all applicable building setbacks.

iv. Garbage Collection Areas. Garbage collection areas shall adhere to the following standards:

- All outdoor garbage containers and collection areas shall be screened visually with at least a six (6) foot tall enclosure so that outdoor garbage containers and collection areas are not visible from adjacent properties or Common Areas. No garbage containers or collection areas shall be located between a street and the front of a building, unless otherwise approved in writing by Billings Clinic.

- Garbage containers and collection areas should be appropriately designed to contain all garbage generated on site and deposited between collections. Deposited garbage should not be visible from outside the garbage container or collection area.
- Refuse collection areas should be located upon the Lot to provide clear and convenient access to refuse collection vehicles and thereby minimize wear and tear to on-site and off-site developments.

v. **Accessory Structures, Fences, and Walls.** Construction of accessory structures, fences, and walls shall be according to the following standards:

- All fences shall comply with the City of Billings, Montana clear vision standards, in compliance with §27-615 of the City of Billings, Montana Municipal Code.
- No fence or wall shall exceed a height of six (6) feet, except at trash enclosures or as otherwise approved in writing by Billings Clinic. Any wall over 6 feet must have a City Building Permit.
- No fence or wall shall be constructed between a street and the front of a building, unless otherwise approved in writing by Billings Clinic.
- Accessory structures, fences, and walls shall be of a character, color, and material to match the adjacent buildings and shall coordinate with the overall architectural scheme of the adjacent buildings and shall be integrated into the landscape of the Lot.
- Lot Owners within the Subdivision are required to seek Billings Clinic's written approval, in its sole and absolute discretion, prior to erecting, constructing, or requesting a permit from the City for accessory structures, fences, and walls as set forth herein.
- Chain link fencing, or other wire-type fencing, shall not be permitted in the Subdivision.

vi. **Snow Storage.** Areas adjacent to parking lots shall be provided for on-site snow storage. The snow storage area shall not be adjacent to the streets. Common storage areas between adjacent lots are encouraged. Landscaping shall be maintained if the storage is not done in the paved parking area. Minimum parking requirements shall not be reduced for snow storage.

vii. **Site Lighting Standards.** All outdoor lighting must comply with the Shiloh Corridor Requirements and must conform to uniform lighting requirements developed by Billings Clinic.

viii. **Exterior Mechanical and Electrical Equipment and Transformers.** All exterior mechanical and electrical equipment and transformers shall be screened. Screening may consist of plantings, shrubbery, or durable enclosures. Building parapets shall be designed and built so as to screen roof-mounted mechanical and electrical equipment. If a building parapet does not adequately screen roof-mounted mechanical and electrical equipment, an unobtrusive screening device shall be used. Such screening device shall coordinate with the overall architectural scheme or the equipment shall be completely enclosed within the structure of the building. Lot Owners within the Subdivision are required to seek

Billings Clinic's written approval, in its sole and absolute discretion, prior to erecting or constructing screening devices.

ix. Utilities. All exterior utilities, including but not limited to, drainage systems, sewers, gas lines, water lines, electrical, telephone, and communication wires and equipment shall be installed and maintained underground. Lot Owners within the Subdivision are not required to seek Billings Clinic's written approval prior to installing utilities as set forth herein.

c. Landscape Design Standards. Every Lot shall be developed in accordance with the Shiloh Corridor Requirements, even if a Lot is more than 500 feet from the centerline of Shiloh Road. Billings Clinic may develop more stringent and specific landscaping standards.

i. Waiver or Variance (Modification) of Minimum Setbacks. The minimum setbacks prescribed in the Shiloh Corridor Requirements may be waived or modified after review of the design for the development of the Lot or Lots. Any Waiver or Variance must be approved, in writing, by the Review Committee before application may be made to the City Board of Adjustments. Any Waiver or Variance approved by the Review Committee and the City Board of Adjustments must be submitted to the City along with any application for a Building Permit. The criteria for waiver, to be weighed and considered by the Review Committee are set forth below. Not all of the following criteria must be satisfied, as determined in the sole discretion of the Review Committee:

- The utility easement inside the street-side Lot line shall be maintained clear without overhangs, projections, trees, signs, or other improvements obstructing access to it or placed in it.
- The design concept for development of a Lot or Lots is master planned for a streetscape urban style with building facades located close to the streets and pedestrian ways.
- Landscaping required for buffer areas is located elsewhere upon the Lots.
- Pedestrian circulation and access is maintained to interconnect to adjacent properties;
- The sightline to the fronts of existing adjacent buildings is not obstructed.
- A written approval for waiver is issued by Billings Clinic, in its sole and absolute discretion.
- Written approval from adjacent Lot Owners or users.
- A demonstration of a hardship.

ii. Irrigation. All landscaping must be irrigated with an underground sprinkler system, designed and maintained to provide sufficient water for the landscaping to grow, survive and thrive. Water conservation systems are encouraged.

iii. Loading and Service Areas. Loading and service areas shall be enclosed with either solid screen walls not to exceed six (6) feet or landscaping elements planted in such a manner to create a visually opaque screen when mature. The plant material screen must develop 75% of its maturity within three (3) years from the time of planting.

iv. **Financial Responsibility.** The Lot Owner or its tenant shall have sole financial responsibility for the installation of all landscape improvements within the right-of-way adjacent to their Lot. The landscaping within the remaining yard will be installed by each Lot Owner or its Lessee to blend with the landscaping installed in the right-of-way.

v. **Damage or Demolition.** Any demolition in the right-of-way of the landscape and irrigations system installed by Billings Clinic or the Common Area Director at vehicular access points or by other construction-related disturbances shall be repaired and restored by the Lot Owner as part of the construction efforts in the development of the Lot. The Lot Owner shall maintain water flow within any common area irrigation system during construction and re-establish the existing plantings, grading and irrigation system altered during the construction process. Any other existing on-site landscaping disturbed or demolished during repairs, additions, remodels, or other work to a building or site or by disasters must be restored, replanted, or revised to a condition equal to or better than the quality that existed prior to the work or disaster. Like-size trees and shrubs must be used for replacement or existing trees and shrubs shall be relocated.

vi. **Landscaping.** Lots shall be landscaped and maintained in a neat, clean, orderly, and healthful condition. Maintenance shall include proper pruning of trees and shrubs, mowing of lawns, weeding, removal of litter, fertilizing, replacement of plants when necessary, and the regular watering of all plantings. Required landscaped areas shall be provided with a permanent watering or sprinkling system which shall consist of underground piped water lines terminating in an appropriate number of sprinklers to insure a sufficient amount of water for plants within the landscaped area.

vii. **Reciprocal Landscaping Agreements.** The owner of any Lot in the Subdivision may enter into a reciprocal landscaping agreement with the owner of any other Lot in the Subdivision. The purpose of any such agreement shall be to ensure that the two Lots combined meet all of the landscaping requirements specified in this Agreement and the Shiloh Corridor Requirements. With respect to reciprocal landscaping, the affected Lots must be contiguous and must be developed to present a uniform appearance.

9. **Signs.**

a. **Signage.** Healthcare Purposes signs, as defined by Section 27-706(d) (2) City of Billings, Montana Municipal Code, shall be allowed in the Subdivision as though the Subdivision were a part of the Medical Corridor. All signs, other than Healthcare Purposes signs, shall comply with the Shiloh Corridor Requirements.

b. **Hospitals.** Nothing in this Agreement shall prohibit or restrict a hospital or clinic from using and/or displaying the types of signage required and/or mandated by any state or federal law or regulation with respect to any Hospital Emergency Room and/or Trauma Center.

c. **Sign Easement Areas.** Billings Clinic reserves an easement for Healthcare Purposes Signs, Way Finding Signs, and Green Space Signs in the Sign Easement Areas shown on the Plat. Billings Clinic reserves an easement, including ingress and egress, to access, service, install, repair, replace, and maintain signs within the Sign Easement Areas shown on the Plat. Only Healthcare Purposes Signs, Way Finding Signs, and Green Space Signs may be placed in the Sign Easement Areas. The Healthcare Purposes Signs, Way Finding Signs and Green Space Signs in the Sign Easement Areas may be Off Premises Signs. These signs may also provide public service information and announcements related to the community, the Subdivision, and the medical services community, and giving identity to the Subdivision in general.

d. **Sign Approval.** All signage in the Subdivision is subject to approval by the Review Committee. The Review Committee, in its sole and absolute discretion, may further limit or condition the use of any sign in the Subdivision that it deems to be inconsistent with the objectives for the Subdivision set forth in this Agreement. All signs shall require a Sign Permit from the City, except those signs exempt from City permits under Section 27-701, et seq. of the City of Billings, Montana Municipal Code.

e. **Sign Maintenance.** Any sign that has been approved or for which a permit has been issued shall be maintained by the Lot Owner or its tenant of the Lot on which the sign is located. Maintenance shall be such that the signage continues to conform to the conditions imposed by the sign permit and this Agreement. Any damaged sign base shall be repaired within thirty (30) days. Any signage which has been damaged to such extent that it may pose a hazard to a passerby shall be repaired or removed immediately.

f. **Nonconforming Signs.** Nonconforming signs are not permitted. If any sign is erected or installed without proper permits or approvals, it shall be considered nonconforming and shall be removed. All signs which do not conform to the requirements of this Agreement are nonconforming and shall be removed or changed to conform to the requirements of this Agreement. Any sign not removed within thirty (30) days of notice of nonconformance may be removed by the Common Area Director and the costs for removal shall be the responsibility of the owner of the sign.

g. **Landscaping for Monument Signs.** All monument signs shall be located in a landscaped area. Landscaping should be appropriately sited to ensure that signs are not blocked or obscured by trees or bushes.

10. **Enforcement.**

a. **Right to Enforce.** The terms of this Agreement shall be enforced as provided for in Article 27-1100 of the City of Billings, Montana Municipal Code.

b. **Enforcement.** The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the Lot Owners. The terms of this Agreement may be enforced by the parties hereto, as well as Lot Owners.

c. **Abatement and Suit.** If, at any time, Billings Clinic or any Lot Owner within the Subdivision objects (the "Objecting Party") to any other Lot Owner's performance of its obligations under this Agreement (the "Defaulting Party"), the Objecting Party shall have all of its rights and remedies at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative. The Objecting Party shall, in addition to and not in contravention of all other rights and remedies it may have under this Agreement, have the right to provide the Defaulting Party with thirty (30) days' written notice of its objection, specifying the particulars of its objection. If, within thirty (30) days of receipt of such notice, the Defaulting Party fails or refuses to take action to remedy its performance under this Agreement, the Objecting Party may perform whatever maintenance, repair, or operation, or other curative action, as needed to remedy the default. The Defaulting Party shall pay upon demand to the Objecting Party the costs of such maintenance, repair, or operation, or other curative action, together with interest allowed by law, from the date of disbursement of such costs until paid in full. The Objecting Party is not responsible for the continued maintenance, repair, or operation of the Defaulting Party's obligations under this Agreement. The Objecting Party may also prosecute a proceeding at law or in equity against the Defaulting Party to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied, or to recover damages for said violation.

11. **General Provisions.**

a. **Appointment of Agent.** Billings Clinic may, in its sole and absolute discretion, hire, appoint, or designate an individual or entity to fulfill its duties and obligations

hereunder. Notice of appointment shall be made in writing and shall be recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for the Subdivision, or any portion thereof, affected by the appointment. Notice of appointment shall also be provided to the City at the address specified herein. Once the notice of appointment has been recorded in the real estate records of Yellowstone County, Montana, Billings Clinic shall have no further responsibility or liability for the future performance or non-performance of this Agreement, and the City and all Lot Owners shall look exclusively to the appointed person or entity. Billings Clinic may, in its sole and absolute discretion, withdraw an appointment or make an additional appointment by simply recording such notice in the real estate records of Yellowstone County, Montana, and providing a copy of such notice to the City.

b. Neutral Interpretation. Billings Clinic and the City hereby stipulate and agree that this Agreement shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party.

c. Amendment, Modification, and Termination. This Agreement may not be amended, modified, or terminated, in whole or in part, except with the unanimous written consent of Billings Clinic and the City. All amendments and modifications shall be made in accordance with the procedures set forth under the City of Billings, Montana Municipal Code.

d. Notices. All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipt therefore. All notices or demands to Billings Clinic or the City shall be given at the following addresses or such other addresses as Billings Clinic or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Billings Clinic: Billings Clinic
Attn: Vice President Facility Services
PO Box 37000
Billings, Montana 59107-7000

With copies to: Legal Department
Billings Clinic
PO Box 37000
Billings, Montana 59107-7000

If to the City: City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

e. Waiver. Failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights which the non-defaulting party may otherwise have at law or in equity.

f. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

g. Limitation on Enforcement. This Agreement is for the benefit of Billings Clinic, the City, the Lot Owners, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of

this Agreement or to enforce the covenants, conditions, and restrictions contained herein, judicially or otherwise.

h. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, terrorist acts, governmental regulations, inclement weather, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

i. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

j. No Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

k. Captions and Headings. The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

l. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

m. Construction. In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

n. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

o. Conflict. It is the intent of the parties to implement the Shiloh Corridor Requirements throughout the Subdivision. In the event of any conflict between the express terms of this Agreement and the Shiloh Corridor Requirements, the express terms and conditions of the Agreement shall govern. In the event that there is any conflict between this Agreement and other zoning regulations and/or ordinances, the terms and conditions of this Planned Development Agreement shall govern.

p. Run with the Land. The terms and conditions of this Agreement shall run with the land and shall be binding upon and shall inure to the benefit of Billings Clinic, the City, the Lot Owners, and their heirs, successors, and assigns.

q. Contact Person. Billings Clinic shall designate a contact person who may be contacted with respect to any questions, comments, or concerns. The contact person shall be the _____ or his/her designee. At the time of recording, the contact person shall be _____, _____ (telephone (406) _____).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN THE BILLINGS CLINIC WEST SUBDIVISION, OF THE EXPRESS RESTRICTIONS PLACED UPON THE LOTS WITHIN THE BILLINGS CLINIC WEST SUBDIVISION, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.

BILLINGS CLINIC f/k/a Deaconess Billings
Clinic

THE CITY OF BILLINGS, MONTANA,
a Montana Municipal Corporation

By: _____
Name: _____
Its: _____

By: _____
Name: Thomas W. Hanel
Its: Mayor

“Billings Clinic”

Attest:

Cari Martin, City Clerk

(Seal)

“City”

STATE OF MONTANA)
 : ss
County of Yellowstone)

This instrument was acknowledged before me on the _____ day of _____, 20__, by _____, as the _____ of **BILLINGS CLINIC**, a Montana corporation, f/k/a Deaconess Billings Clinic.

[NOTARIAL SEAL]

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

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 20__ before me a Notary Public for the State of Montana, personally appeared **THOMAS W. HANEL and CARI MARTIN**, known to me to

be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they executed the foregoing instrument.

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

_____ (Signature)

(SEAL)
Name)

_____ (Printed

Notary Public for the State of Montana
Residing at Billings, Montana
My Commission Expires: _____