

CONDITIONAL VARIANCE AGREEMENT

This Agreement made and entered into this ____ day of _____, _____, by and between the City of Billings, Montana of 210 North 27th Street, Billings, Montana (hereinafter "City"), and Broadwater, LLC, a Montana limited liability company, of 708 Broadwater Avenue, Billings, Montana 59102 (hereinafter "Property Owner").

WHEREAS, Broadwater, LLC wants to occupy certain property located at 708 Broadwater Avenue in the City of Billings, more particularly described as follows:

Parcel A:

Lots 40 and 41, of First Addition to Block 4, Yellowstone Addition to the City of Billings, Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana under Document No. 452104.

Parcel B:

Lots 42 through 50 (inclusive), Block 4, of Yellowstone Addition to the City of Billings, Yellowstone County, Montana, according to the official plat now on file and of record in the office of the clerk and Recorder of Yellowstone County, Montana under Document No. 4067;

and,

WHEREAS, the site development ordinance requirements for a building of the size Broadwater, LLC intends to occupy would require Broadwater, LLC to provide seventy (70) off-street parking spaces, but preliminary site plan provides for only forty-four (44) off-street parking spaces; and

WHEREAS, City is amenable to providing a site development variance to this particular occupant of the building because Broadwater, LLC has advised City that they do not have any walk-in business, that all patients who come to the site will have scheduled appointments, that Broadwater, LLC would require a maximum of fifteen (15) employees at the site at any point in time and a maximum of twenty (20) parking spaces for patients, and that Broadwater, LLC has expressly represented to City that the forty-four (44) parking spaces called for the site plan will be quite adequate for their unique needs both now and in the future; and

WHEREAS, City is not willing to grant a site development variance to Broadwater, LLC if said variance were to continue beyond the unique use to which Broadwater, LLC is putting this building, and

WHEREAS, Broadwater, LLC does not desire to obtain a site development variance beyond its occupancy of the building pursuant to any variance that may be granted by City.

WITNESSETH:

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES OF THE PARTIES, it is hereby agreed as follows:

IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS, the City does hereby grant to Broadwater, LLC a site development variance reducing the number of required off-street parking from 70 spaces to

44 parking spaces. Broadwater, LLC acknowledges and agrees that the subject variance approval is only for Broadwater, LLC's proposed location described hereinabove. No other use or explanation of this approval is approved or implied.

Development of the property shall be in substantial conformance with the preliminary site plan submitted with Broadwater, LLC's application to the City for a Site Development Variance, dated _____, _____, unless specifically modified by this variance approval. Deviations from the approved site plan that change the size, shape, square footage, use or location of buildings or parking spaces/areas will require additional City Council review and approval. Any unapproved deviation immediately revokes the variance and all applicable City of Billings parking regulations shall apply, without any variance to the referenced property, shall be met by Broadwater, LLC, and will be enforced by the City.

This Conditional Variance Agreement shall run with the land, shall be filed and recorded as a permanent restriction on the permitted use of the property in the Office of the Clerk and Recorder of Yellowstone County, Montana, and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Approval of this parking variance does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit or zoning compliance permit level. This variance is for the use as noted and no other request is being considered with this application. The use and development of the property must be in accordance with the submitted and approved site and parking plans.

A permanent restriction(s) will be placed on the site development variance for the property located at 708 Broadwater Avenue, as described above, and is to run with the property ownership regarding a variance from the required off-street parking requirements. The variance is for a reduction of the required 70 parking spaces to 44 parking spaces. The parking variance is approved and effective only so long as the property is used for, and limited to, the activities which include the following:

The Medical Center – The primary use of the property is for those medical practices, and related services, that schedule business by appointment.

Any and all property uses must conform to those mentioned above. If at any time the property use does not meet that described, this site development variance for parking requirements will be immediately revoked and the parking must meet the current parking requirements of the City of Billings for the proposed use.

This Agreement is intended to be personal to the parties hereto and is entered into by and between the parties solely because of the specific circumstances that exist at the time of its execution. Neither the City nor Center nor Property Owner shall have the right to assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of all the other parties hereto.

This writing constitutes the entire agreement between the parties. Covenants or representations not contained therein or made a part thereof by reference, are not binding upon the parties. There are no understandings between the parties other than as set forth of this Agreement. All

