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PLANNED DEVELOPMENT AGREEMENT
LOT 4, BLOCK 1, MK SUBDIVISION IN THE CITY OF
BILLINGS, MONTANA

THIS AGREEMENT is made and entered into this ____ day of _____, 2018, by and between **MYK Enterprises, LLC**, whose address for the purpose of this agreement is 218 Brookshire Blvd Unit 2, Billings, MT 59102, hereinafter referred to as “Owner,” and **City of Billings**, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the Owner owns approximately 3.6 acres of real property in Billings, Montana specifically described as Lot 4, Block 1 of the MK Subdivision. The foregoing property shall be known as “Hawk Creek Planned Development,” or a related name that may be assigned later.

WHEREAS, the Hawk Creek Planned Development will consist of a mixture of commercial, retail, professional, medical and related uses.

WHEREAS, the Owner desires to place certain building and use restrictions on the property, specify certain land uses, and create a pattern of development that promotes community service, economic activity, convenience, and amenity for the Hawk Creek Planned Development and surrounding neighborhoods.

WHEREAS, the aforesaid Owner and the County desire to ensure the Hawk Creek Planned Development will be developed and maintained consistent with the standards described in this agreement.

THEREFORE, the undersigned hereby establish and declare the following plan for the Hawk Creek Planned Development as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

AGREEMENT

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporations, or other entities, who shall hereafter acquire any interest in and to the above described property, in whole, or in part, shall be taken and held to agree, to conform to, and observe the following land uses, restrictions, and other stipulations as to the use thereof, and as the construction of improvements thereon.

II. LAND USES AND BUILDING RESTRICTIONS

Unless expressly designated below, all other standards or requirements of the Zoning Regulations for the City of Billings shall be followed for the type of use within each of the areas described herein.

A. Restricted Uses for Underlying City Zone: Neighborhood Commercial – NC

No land may be used for purposes that include gaming (casinos) or adult entertainment or sexually oriented businesses. No variances or special review approvals may be requested or granted for those businesses.

All allowed land uses as outlined within the City of Billings Zoning regulations for the underlying zone shall be allowed within the Planned Development, with the following exceptions:

Exceptions (uses not allowed):

Division A: Agriculture, Forestry, and Fishing

Group 07 – Agricultural Services

- Veterinary services for Animal specialties – Outpatient Only

Division B: Mining

- Construction sand and gravel mining (1442)

Division D: Manufacturing

Group 20 – Food and Kindred Products

- All sub-groups except offices

Division E: Transportation, Communications, Electric, Gas and Sanitary Sewer

Group 46 – Pipelines, except natural gas

Group 48 – Communications

- All uses except offices

- Group 48 – Commercial Antenna Support Structures
- Group 49 – Electric, Gas, and Sanitary Services
 - Transmission and distribution, electric and gas

Division G: Retail Trade

- Group 54 – Food Stores
 - Convenience Store with Gas Pump Islands
- Group 55 – Automotive Dealers and Gasoline Service Stations
 - All uses

Division I: Services

- Group 70 – Hotels, Rooming Houses, Camps, and Other Lodging Places
 - Rooming, boarding houses; organization hotels and lodging houses, on a membership basis (702, 704)
- Group 72 – Personal Services
 - Coin-operated laundries and dry cleaning (7215)
 - Funeral service and crematories (726)
- Group 75 – Automotive Repair, Services, & Parking
 - Automobile parking (752)

Division K: Non-Classifiable Establishments

- Dwellings – Modular Homes

Allowances:

The subject property shall be allowed use of one (1) cabaret license and one (1) brewing/taproom license. Subsequent subdivision of the subject parcel shall not increase the number of licenses allow for use within the Planned Development.

III. OPERATIONAL RESTRICTIONS – Alcoholic Beverage Manufacturing and Cabaret License

The Developer and City recognize the sensitive location of the Hawk Creek Planned Development and the need to include specific operational restrictions and site requirements not normally required for the uses listed above.

A. Developer Agrees to the Following:

- a. Any outdoor seating areas associated with the brewing/taproom or cabaret operations shall be located on either the east, west or south elevations of the structures. Under no circumstances shall seating areas with either taproom or cabaret operation be located off of the north elevation of the structure(s).
- b. Any seating area outside of any enclosed building for use by the patrons of the alcoholic beverage manufacturer or cabaret operation shall have a fence

installed at least 42-inches in height enclosing the outdoor area. There shall be no entry to the outdoor seating area for patrons except through the operating building.

- c. Any music or entertainment, including any permanent or temporary speakers, outside of an enclosed building shall only be installed/located along the western or southern elevations of the structure.
- d. Any outdoor activities associated with operation of the facilities shall cease by 9 pm.
- e. Operating hours for the taproom and cabaret license shall be dictated by Montana State Law outlined in the MCA 16.3.2 and MCA 16.4.1, respectively.

IV. SIGNAGE AND LIGHTING

The intent of signage and lighting design regulation is to encourage the use of signage and lighting as a design component to enhance buildings, landscaping, or other site features while not detracting from the aesthetics of adjacent neighborhoods. Developers should encourage night sky's visibility to reduce the general illumination of the sky in the surrounding area. Design elements should reduce horizontal light glare and vertical light trespass from a development site onto adjacent parcels. Developers should encourage the judicious use of lighting in conjunction with other security methods to increase site safety.

A. Signage

- a. Signage should be provided in accordance with the PDA, with the intent to compliment the pedestrian-oriented environment. The signage requirements included in Article 27-700 of the United Zoning Regulations and any subsequent amendments thereto shall govern the regulation of signage in Hawk Creek Planned Development so far as they are not inconsistent with the Planned Development Agreement and the below standards.
- b. All signs shall comply with the design guidelines below:
 - i. All signs, except for neighborhood identification signs, shall be placed flat against a building or designed as part of an architectural feature thereof.
 - ii. No electronic message displays or signs are allowed.
 - iii. No neon signs are allowed.
 - iv. No balloon signs as defined by the City of Billings Code are allowed.
 - v. No string of pennants, flags, or other similar types of non-informative non-holiday decorations are allowed.
 - vi. One (1) free-standing sign is allowed indicating the name and/or nature of the occupancy for each developed parcel/tenant. Signs may not exceed fifteen (15) feet in height and fifteen (15) feet in width.

vii. No rooftop signs are allowed.

B. Exterior Lighting

- a.** Developers shall provide adequate lighting levels in all areas used by pedestrians or automobiles, including building entries, walkways, parking areas, and circulations areas.
- b.** All exterior lighting must be installed or shielded to minimize light intrusion into residential units in adjacent neighborhoods.
 - i.** All outdoor pole lighting shall be fully shielded and mounted at heights no greater than fifteen (15) feet above grade.
 - ii.** All outdoor lighting, except street lighting, shall be aimed or shielded so as to minimize stray light trespassing across property boundaries.

V. LANDSCAPING REQUIREMENTS

All landscaping and performance standards as outlined within section 27-1101 of the City of Billings Zoning ordinance shall be followed as required within the underlying City zone. Additionally, all development must comply with the requirements outlined in this Section of the Planned Development.

A. General Landscape Area Requirements

- a.** A palette of regionally appropriate drought and climate tolerant plant materials is required to be used.
- b.** The use of drip irrigation and/or other irrigation systems is required.
- c.** All development should create a pedestrian-friendly environment on the street and connect to adjacent developments as identified in the conceptual master plan.
- d.** A variation of elements should be provided along public frontage; no less than two (2) types of trees may be used in a single development lot.
- e.** One (1) 2-inch tree is required per 2,000 sf of total landscape area per development lot or parcel.
- f.** One (1) large shrub (mature height over three feet) is required for every 500 sf of total landscape area per development lot or parcel.
- g.** Trees and shrubs should be grouped for aesthetic and irrigation purposes.
- h.** Lawn must have a minimum width of six (6) feet.
- i.** Plant materials must be maintained and dead plants must be replaced in a timely manner.

B. Landscaped Green Belt Improvements

- a.** A minimum 25-foot landscaped green belt, which may be incorporated into any required building setbacks, shall be landscaped and maintained along the northern property boundary.
- b.** Developers shall be responsible for installation and maintenance of the landscaped green belts in accordance with Section V.A of this document.

- c. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt or the setback.
- d. All improvements shall comply with The City of Billings and Yellowstone County's clear vision standards.

C. Parking Lot Landscaping

- a. All parking lot landscaping may be included as part of the landscaped area as calculated in Section V.A of this document.
- b. Trees shall be planted and incorporated into parking lot layouts at a density of one (1) 2-inch tree for every sixteen (16) parking spots.

VI. SITE LAYOUT AND ORIENTATION

All development must comply with the site layout and orientation requirements outlined in this Section of the Planned Development.

A. Building Requirements

- a. Buildings shall be located in the south two-thirds of the lot allowing for parking or green space on the north third of the lot.
- b. Buildings can be located directly against sidewalk with no front lot setback requirements.
- c. Sidewalks shall be a minimum of 5-feet wide and a minimum of 7-feet wide when directly adjacent to parking areas.
- d. Building height shall be no greater than 34-feet from grade.
- e. No more than fifty (50) percent lot coverage is allowed by the building.
- f. Buildings containing the use of either a brewery/taproom or cabaret license shall be designed with a likeness to traditional agricultural structures in both elevation and profile views.
- g. All dumpsters shall be contained within a privacy fence that aligns the architecture features of the building.
- h. All development shall provide for bike parking and non-motorized accessibility.

B. Parking Requirements

- a. Parking shall be provided at a one (1) parking spot for every 200-square-foot of building.
- b. Reciprocal parking access shall be provided for all businesses within the development.
- c. Parking lots must be a minimum of 30-feet from the northern boundary with the landscaped green belt counting towards the setback requirement.
- d. Bike parking shall be provided at a one (1) parking spot for every 2,000-square-foot of building with a minimum of two (2) spaces for each building.

VII. MODIFICATION OF THE APPROVED PLANNED DEVELOPMENT

Any modification of the approved development plan shall be processed using the same procedures for a new application, as set forth in the City of Billings Zoning regulations. However, minor modifications may be approved by the zoning coordinator if he/she makes the following findings:

No change in the overall character of the development;

No increase in the number of residential units greater than two (2) percent;

No additional allowed uses;

No reduction in open space greater than two (2) percent; and

No change in the approved minimum setbacks, maximum lot coverage or maximum allowed height.

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

“OWNER”

Patricia Kramer

By: _____

**MYK Enterprises, LLC
Managing Member**

STATE OF MONTANA)

: ss

County of Yellowstone)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____ of **Patricia Kramer, Managing Member of MYK Enterprises, LLC** who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public in and for the State of Montana

Printed Name: _____

Residing at: _____

My commission expires: _____

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 20__.

“CITY”

CITY OF BILLINGS, MONTANA

Mayor

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the Mayor of the City of Billings, Montana, whose name are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____