



**VIDEO CONFERENCE FORMAT**

**NOTICE TO THE PUBLIC**

**\*\*ATTENTION\*\***

Due to the COVID-19 health concerns, this meeting will be held in a virtual videoconferencing environment. Zoning Commission members will attend the meeting via a remote location, using a virtual meeting method. The regular meeting rooms will be closed during the meeting. In order to honor the Right of Participation and the Right to Know in Article II, sections 8 and 9, of the Montana Constitution, the City/County Planning Division is making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook:  
<https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda. Comments may be sent to Board via email before 10:00 AM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101
  - Email: [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov)
- Call in during the Public Comment periods as indicated on the agenda:
  - Citizens may call in during specific Public Comment periods at **406.237.6165**.  
All callers will be placed in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be limited to 3 minutes of testimony as is customary.  
Future delivery methods may be explored as best practice is learned.

Please direct questions to Administrative Secretary Robbin Bartley at [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov) or 406-247-8676

**Call the meeting to order.**

**Introduction of City Zoning Commission Members and Planning Department Staff.**

**Public Comment**

**Approval of Minutes:**

The minutes of the Board meeting of April 6, 2021.

**Disclosure of any Conflict of Interest-Members of the Commission and Staff**

**Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff**

**a.The Exparté Communication Binder is available at the Sign-In and Agenda Station.**

**Regular Business:**

- Opening of public hearings.
- Reading of rules for the procedure by which the public hearings will be conducted.
- Reading of notices of the public hearings on the following items:

**Public Hearings:**

- a. Zone Change 991 - Lenhardt Square Planned Development Amendment - proposed amendments to the Lenhardt Square Planned Development zone based on the findings of the 10 review criteria.

## **Other Business/Announcements**

### **Adjournment**

**The City Council has designated Monday, May 24, 2021, at 5:30 p.m.** as the date and time to receive the Zoning Commission recommendation and **conduct a public hearing for the first reading of the ordinance for this zone change** request. If approved on first reading, a **second reading public hearing will occur on Monday, June 14, 2021 at 5:30 pm.**

Before taking any action on an application for a **zone change**, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a zone change other than the one advertised. The City Council shall take one of the following actions on the zone change requests: 1) approve the application; 2) deny the application; 3) allow withdrawal of the application; or 4) delay the application for a period not to exceed thirty (30) days.

As provided in Montana Code Annotated, Section 76-2-305(2), in the event of a protest petition against such **zone change** signed by the owners of twenty-five (25) percent or more of: (1) the area of the lots included in any proposed change; or (2) those lots or units, as defined in MCA 70-23-102, **one hundred fifty (150) feet from a lot included in a proposed change**, such proposed amendment shall not become effective except by the favorable vote of two-thirds (2/3) of the present and voting members of the city council. For purposes of this protest provision interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located. The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change or by the presiding officer of the association of unit owners. The protest petition must be received in the Planning Division office **by 5:00 p.m. on the Friday preceding the first reading of the ordinance by the City Council.**

Testimony regarding the above-mentioned item may also be submitted in writing to the Planning Division, 2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor, Miller Building, Billings, MT 59101 (247-8676) or to the Mayor and City Council, P.O. Box 1178, Billings, MT 59103.

Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov).

**City Zoning Commission**

**Meeting Date:** 05/04/2021

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**Information**

**Subject**

The minutes of the Board meeting of April 6, 2021.

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**Attachments**

APRIL 6, 2021 MINUTES

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## City of Billings Zoning Commission Meeting Minutes April 6, 2021

The City of Billings Zoning Commission met on Tuesday, April 6, 2021 at 4:30 p.m. in a Virtual Zoom meeting,

Chairman Larson called the meeting to order at 4:30 p.m. The City Council has designated **Monday, April 26, 2021** at 5:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the zoning applications.

Commission and Staff		0	0	0	0	0	0	0	0	0	1	1	1
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Mike Larson	Chairman	1	1	E	1								
Daniel J. Brooks	Commissioner	1	1	1	1								
Jack King	Commissioner	1	1	1	1								
Greg McCall	Vice Chairman	E	1	E	E								
Trina White	Commissioner	1	1	1	A								
Wyeth Friday	Director, Planning & Community Services	-	-	-	-								
Monica Plecker	Division Planning Manager	-	-	-	-								
Nicole Cromwell	Planner Zoning Coordinator	1	1	1	1								
Tammy Deines	Planning Clerk	-	-	-	-								
Dave Green	Planner II	-	-	-	-								
Karen Husman	Planner I	1	1	1	-								
Robbin Bartley	Administrative Support	1	1	1	1								

Total Number of 2021 Applications	0	0	0	0	0	0	0	0	0	1	1	1	T O T A L	
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	Zone Change	-	2	1	1*									4
	Special Review	2	-	-	-									2

Chairman Larson introduced the Planning Division Staff and Commission: Attending Staff were Nicole Cromwell, Zoning Coordinator, Robbin Bartley, Administrative Assistant.

- Zone change application withdrawn.

**In Attendance** : Greg Reid of WWC Engineering

**Public Comment**

Chairman Larson called for public comments. There were no public comments. Chairman Larson closed the public comment portion of the meeting.

**Approval of Minutes:**

Approval of February 2, 2021 and March 2, 2021.

**Motion**

Commissioner King made a motion and Commissioner Brooks seconded the motion to approve the February 2, 2021 and March 2, 2021 meeting minutes.

COMMISSIONER	Yes	No	ABSTAINED	ABSENT
Mike Larson	X			
Daniel J. Brooks	X			
Jack King	X			
Greg McCall				X
Trina White				X

The motion for approval then carried with a unanimous voice vote 3-0.

**Motion**

Commissioner King made a motion and Commissioner Brooks seconded the motion to approve the March 2, 2021 meeting minutes.

<b>COMMISSIONER</b>	<b>Yes</b>	<b>No</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Mike Larson	X			
Daniel J. Brooks	X			
Jack King	X			
Greg McCall				X
Trina White				X

**The motion for approval then carried with a unanimous voice vote 3-0.**

**Disclosure of Conflict of Interest**

<b>COMMISSIONER</b>	<b>Yes</b>	<b>No</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Mike Larson		X		
Daniel J. Brooks		X		
Jack King		X		
Greg McCall				X
Trina White				X

**Disclosure of Outside Communication**

<b>COMMISSIONER</b>	<b>Yes</b>	<b>No</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Mike Larson		X		
Daniel J. Brooks		X		
Jack King		X		
Greg McCall				X
Trina White				X

**Public Hearings:**

No public hearing was held.

**City Zone Change 990 – 304 Rhea Lane - Heavy Commercial to Residential Manufactured Home** - A zone change request from Heavy Commercial (CX) to Residential Manufactured Home (RMH), on Lot 19 and the south ½ of Lot 18, Flanagan Subdivision, a 4.42 acres parcel of land. A pre-application neighborhood meeting was held on February 18, 2021, on a virtual meeting platform. Tax ID: D014940

**The applicant has submitted a request to withdraw the application for City Zone Change 990.**

**Motion**

**Commissioner Brooks made a motion and Commissioner King seconded the motion to approve the withdrawal of City Zone Change 990.**

<b>COMMISSIONER</b>	<b>Yes</b>	<b>No</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
Mike Larson	<b>X</b>			
Daniel J. Brooks	<b>X</b>			
Jack King	<b>X</b>			
Greg McCall				<b>X</b>
Trina White				<b>X</b>

**The Motion carried to approve withdrawal of City Zone Change 990 with a 3-0 vote.**

**Other Business: Next meeting May 4, 2021, 1 application.  
Commissioner McCall will not attend.**

**Adjournment: The meeting adjourned at 4:37PM.**

**ATTEST: To be Approved** by a motion at the next scheduled meeting.

## Zoning Commission

**Date:** 05/04/2021  
**Title:** Zone Change 991 - Lenhardt Square Planned Development Amendment  
**Presented by:** Nicole Cromwell  
**Department:** Planning & Community Services  
**Presentation:** Yes

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### Information

#### RECOMMENDATION

Planning staff recommends approval of the proposed amendments to the Lenhardt Square Planned Development zone based on the findings of the 10 review criteria.

#### BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

This is a zone change request to amend parts of the Lenhardt Square Planned Development agreement including:

- **Eliminate** the Residential Single Family and Residential Multi-Family (four-plex) (MF-4) underlying zone district (single family and up to 4-unit dwelling units allowed - more than 4 units requires special review approval)
- **Change** the underlying zoning of two parcels, Tracts 2A and 5A-1 of C/S 2063, currently zoned MF-4 to the Residential Multi-Family-Restricted (MF-R) zone. The MF-R zone allows any number of dwelling units in a structure based on lot area
- **Change** building height measurement from numerical height in feet to number of building stories
- **Increase** maximum average dwelling unit density in the MF-R zone from 20 to 21 dwelling units per acre and in the Mixed Use (MU) zone district from 20 to 35 dwelling units per acre.
- **Minor** changes to wording and language to update the original 2008 Planned Development agreement and Master Site Plan

#### APPLICATION DATA

OWNER: Lenhardt Square Master Association - Allan R. Lenhardt  
AGENT: Sanderson Stewart - Rick Leuthold, P.E.  
LEGAL DESCRIPTION: All lots in the Lenhardt Square Planned Development  
ADDRESS: King Avenue West and 44th St West  
CURRENT ZONING: Planned Development  
EXISTING LAND USE: Developed and Undeveloped Land  
PROPOSED USE: Residential and Mixed Use  
SIZE OF PARCEL: 114.5 acres

The applicants conducted a pre-application neighborhood meeting on March 29, 2021, in a virtual format. Thirteen surrounding property owners or agents for owners attended the meeting. The surrounding owners were concerned with connection to and access from Shiloh Road, and the importance of allowing single family and two-family dwellings (not just multi-family) in the MF-R zone districts. One surrounding property owner, Sharon Wetsch owner of 4625 King Ave West, provided written comment to the Planning Division. Mrs. Wetsch's concern is building height, and multi-family apartments as opposed to single family or two-family dwellings. No other comments were received by the Planning staff.

#### SURROUNDING LAND USE & ZONING

NORTH: Zoning: Agriculture (A)  
Land Use: Vacant land and Agriculture  
SOUTH: Zoning: NX3 and CMU2  
Land Use: Hoop Dreams Apartments and vacant land  
EAST: Zoning: St V's Healthcare PD and RR1  
Land Use: Vacant land and single family residences  
WEST: Zoning: Agriculture (A) and RR1  
Land Use: Agricultural and single family residences

In 2008, the original Planned Development for this family-owned farm property was proposed along with an annexation to the city. At the time, the water pressure for this area of Billings was not adequate to supply the number of potential dwelling units in the development, in addition to the surrounding developments in Montana Sapphire, Western Sky Subdivision, St. Vincent's Healthcare, Legends West Subdivision, Twin Pines development and the Morningstar Senior Living development, all west of Shiloh Road. The annexation was at first denied and then conditioned to allow only 600 dwelling units until the city resolved the water pressure issue by upgrading the existing reservoir system for this area. This water system upgrade has been installed and now there are no restrictions on the number of dwelling units based on water supply.

The market for all types of housing choices in Billings has significantly changed since 2008 and especially in the last year during the pandemic. Housing demand has reached a high level while supply of all types of housing choices has not kept up with the demand. At least two decades ago, our local planning and growth policy documents indicated a need for independent living units for aging residents who want to "downsize" from a maintenance heavy single family dwelling on a large lot to unit ownership or townhomes as well as rental apartments. The 2010 Census indicated Billings, like many other urban areas, saw a reduction in average household size to 2.3 persons.

Smaller households, aging residents and the higher costs of all housing has driven the demand for apartments, townhomes, and smaller multi-family products. Developers have made robust investments in multi-family dwelling choices in Lenhardt Square already including the InterUrban and Interpointe Apartments, and the KWO Apartments. A new multi-family project is planned for the northern piece of Lenhardt Square. Several other multi-family developments have come on-line in the last 15 years around King Avenue West and Shiloh Road. Apartments, townhomes and unit ownership housing choices are still in high demand in Billings especially in areas close to shopping, schools and recreational opportunities.

The proposed changes to the Planned Development will adjust the maximum average dwelling unit density for the majority of the subdivision from 20 dwelling units an acre to 21 dwelling units an acre. This is a minor adjustment and the existing and proposed developments in the MF-R zone will not be perceptively larger than current code allows. This minor increase will not alter the current forms and styles in Lenhardt Square that are already close to the 20 dwelling units/acre maximum average density. The calculation of this density is based on the gross acres of the parcel minus the open-space and pathways. For example, Tract 5A-1 is 11.56 acres total and 1.08 acres is intended to be open-space and pathways. The proposed increase from 20 dwelling units per acre would add only 10 dwelling units over this 10.5 acre development area. The proposed density increase in the MU zone appears to be more significant, however the existing zone district uses and intention for a landmark building or building complex on this King Ave W frontage lot can handle the additional dwelling units. This level of mixed use and dwelling unit density is not usually found in Billings outside the downtown area. The intent of the MU zone is to allow an urban design and to distinguish this location as a neighborhood center. The Shiloh Commons development at Shiloh Rd and Central Avenue is the most recent mixed use development in Billings. Each of these four buildings has ample parking with a first floor of retail and service business. The dwelling unit density of Shiloh Commons is about 26 dwelling units per net acre of land. This works well with the 4-story design with ground-floor commercial, retail, services and offices. Closer to downtown, the Avenue C Apartments northwest of the West Park Plaza are at about 30 dwelling units per net acre of land. This is also a 4-story apartment building with amenities and parking but no ground-floor commercial businesses. Several apartment building downtown are in the range of 40 to 45 dwelling units per net acre of land, such as the Pinehurst Apartments at 6th Ave N and N 30th St or the apartments in the Montana Power Building at 113/115 N Broadway.

The Montana Department of Transportation (MDT) in partnership with the City of Billings manages the access to and development of King Avenue West at this location. Several planned intersection improvements will help ameliorate the poor performance of these locations. These include future traffic control measures and accommodations for turning lanes. A traffic study has been completed and updated for Lenhardt Square when new developments are proposed. In 2009 at the time of the first filing of Lenhardt Square Subdivision, MDT indicated a likelihood that King Avenue West at this location west of Shiloh would someday need to be a 5-lane arterial street to accommodate all the traffic from the adjacent developments and to continue the favorable east/west arterial traffic flows. Current construction is a three to four lane street from the Shiloh roundabout up to 44th St West that narrows down to a 2 lane street west of 44th St West. Existing traffic counts for average daily traffic are not yet significant, however peak travel times - morning and late afternoon - can cause long wait times to make safe turn movements into and out of the adjacent neighborhoods onto to King Ave West. Another portion of Monad Rd, to the north end of Lenhardt Square, will likely be built this coming season to accommodate the new 4-year medical college planned for the adjacent St. Vincent's Healthcare Subdivision (east). This will not complete the road section all the way to Lenhardt Square, but additional development on the north end of Lenhardt Square will require completion of the full road section to create a second access into and out of the property. This connection is essential to further development.

The Planning staff has reviewed the proposed amendments and has proposed findings of the 10 review criteria that support a recommendation of approval of the amendments to this Planned Development agreement for Lenhardt Square. The original development document would have allowed about 2,000 dwelling units on this 114-acre parcel of land or about 17.5 dwelling units per gross acre. The proposed increase in the dwelling unit average density increases this amount by about 14% or about 2.5 more dwelling units per acre after the remaining vacant parcels are developed - if the lots are developed at the maximum allowed average density of 21 dwelling units and 35 dwelling units per acre. There will still be a diversity of actual dwelling unit density based on the form and housing choice proposed by each developer. The city, state and private developers have invested in the necessary infrastructure to support this additional development density in West Billings. The city's new Capital Improvement Plan for the coming fiscal year includes additional investments as well.

There are challenges to an area of urban development that is on the edge of the city limits. These challenges include ensuring the adjacent county property owners and uses are protected as much as possible from conflicts with the new urban neighborhood residents and uses. This is not meant to ensure similarity or homogenous development patterns between the city and county, but the development plan includes buffering, connectivity where and when needed, and recognition of similar goals for both types of property. The 2016 Billings Growth Policy and the 2001 West Billings Neighborhood Plan goals and policies support the proposed change to the Planned Development agreement. The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer a range of housing choices and development densities. The proposed changes support these goals. The 2016 Billings Growth Policy supports a broad range of housing choices, encourages more walkable neighborhoods with connectivity to other transportation options, and building the community fabric through urban designed public spaces. The proposed zone change supports these goals as well.

Before making a recommendation to the City Council on the proposed zone change, the Zoning Commission shall consider the following findings:

*1. Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change is consistent with the following guidelines of the 2016 Growth Policy and the West Billings Neighborhood Plan (2001):

The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer a range of housing choices and development densities. The West Billings Plan adopted a number of Goals, Policies, and Implementation Strategies. The proposed amendments to the Planned Development agreement and the master plan map changes are consistent with the following adopted Policies of

**Planned Growth Goal 1: Establish Development Patterns that Use Land More Efficiently**

*Policy R "Encourage innovative land-use planning techniques to be used in building higher density and mixed-use developments as well as infill developments."*

The proposed adjustments to the underlying zoning map are compatible with goals of the West Billings Neighborhood Plan. The proposed amendment will accommodate uses that are compatible in a mixed-use environment. The proposed development will also have good access to outdoor activities and is in close proximity to commercial centers and transportation options.

The proposed amendment is also in line with the adopted 2016 Growth Policy goals for:

**Strong Neighborhoods:**

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, goodwill and social interaction
- Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale street lights, street trees and walkable access to public spaces
- Neighborhoods that are safe and attractive and provide essential services are much desired
- Implementation of the Infill Policy is important to encourage development of underutilized properties

**Home Base:**

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings
- Public safety and emergency service response are critical to the well-being of Billings' residents
- Homes that are safe and sound support a healthy community

The proposed change to the PD agreement will expand the density allowed for multi-family development and even mixed-uses where neighborhood service businesses are paired with apartments. The efficient and economical use of land will continue to support the significant investments made and planned for in this area of West Billings. Lenhardt Square has additional master design guidelines and restrictions that govern most lot landscaping and the zoning for Lenhardt Square includes specifications for street frontage improvement, open-space and pathways throughout. The design guidelines and zoning requirements will ensure the compatibility between this urban neighborhood and the county areas to the north and west. The proposed landscaping and street scape will ensure the livability of this neighborhood.

*2. Is the new zoning designed to secure from fire and other dangers?*

The zoning requires minimum setbacks, open and landscaped areas and building separations. The zoning realignment would not change provisions for adequate building separations and the proposed density limits will provide security from fire and other dangers.

*3. Whether the new zoning will promote public health, public safety and general welfare?*

Public health and public safety will be promoted by the proposed change. Undeveloped city land can create uncertainty for surrounding owners and prolong the inconvenience for residents dealing with development activity in a new neighborhood. This 114-acre parcel has been under development since 2009 but only about 26 acres has been developed during that time. Public health, safety and welfare will be promoted by these adjustments to the zoning that encourages and supports a steady rate of development. Areas where major portions of a subdivision remain undeveloped, experience lower or stagnant property values and a more challenging market for new builders and buyers.

*4. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?*

**Transportation:** The city has reviewed a traffic study for the entire subdivision and proposed uses. The developer will be implementing the required mitigation and traffic improvements stipulated by Engineering. As new developments are proposed, the City will re-review the traffic study to ensure the requirements are still sufficient. City Engineering may require periodic updates to the study.

**Water and Sewer:** The City will provide water and sewer to the property. There will be no additional impacts to the system from the proposed changes.

**Schools and Parks:** Schools and parks may be effected by the proposed amendment, but this would depend on the demographic of the new residents. SD #2 did not provide any comments.

**Fire and Police:** The subject property is served by city public safety services. The Police and Fire Departments had no concerns with the zone change.

*5. Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

*6. Will the new zoning effect motorized and non-motorized transportation?*

Non-motorized travel – walking and biking – is an essential part of the circulation plan both within the proposed development and connecting to adjacent areas including the multi-use trail on Shiloh Road and to the nearby Shiloh Conservation Area Trail system to the east. Pedestrian connections will be ensured through the development, and the property is close to a fixed route MET bus line. Traffic counts in the area on King Ave West and 48th St West are well below the expected volume on a principal arterial street. King Avenue West has an average daily traffic volume of 8,010 vehicles per day at this location, less than Poly Drive at 13th Street West. 48th Street West is less than most local streets with about 860 vehicles per day. As development increases in the area, these 2 arterial streets will need to build in additional controls, management facilities and safety features. MDT retains jurisdiction over the management of King Avenue West

*7. Will the new zoning will promote compatible urban growth?*

The proposed increase in the overall development density is compatible with urban growth and the provision of city level services to the new residents. The proposed zone district boundaries are consistent with the urban growth in this area and will be compatible with the surrounding neighborhood.

*8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?*

The proposed zoning does consider the character of the district and the suitability of the property for the proposed use. This area between Shiloh Road and 48 th St West is an area undergoing rapid urban development and growth. Demand for local neighborhood and commercial services is increasing. Increasing the area for these services is suitable for this location.

*9. Will the new zoning conserve the value of buildings?*

The property is a combination of developed and undeveloped parcels. Approval of the zone change will continue to provide certainty to surrounding landowners and may help to maintain property values of adjacent buildings.

*10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?*

The proposed amendment may encourage the most appropriate use of this land in Billings.

## **ALTERNATIVES**

The City Zoning Commission may:

- Adopt the findings of the 10 review criteria and recommend approval to the City Council; or,
- Adopt different findings of the 10 review criteria and recommend denial to the City Council; or
- Delay the decision on the proposed zone change until the next available meeting date; or
- At the request of an applicant, allow the proposed zone change to be withdrawn.

## **FISCAL EFFECTS**

Approval or denial of the proposed zone change should not have an effect on the Planning Division budget.

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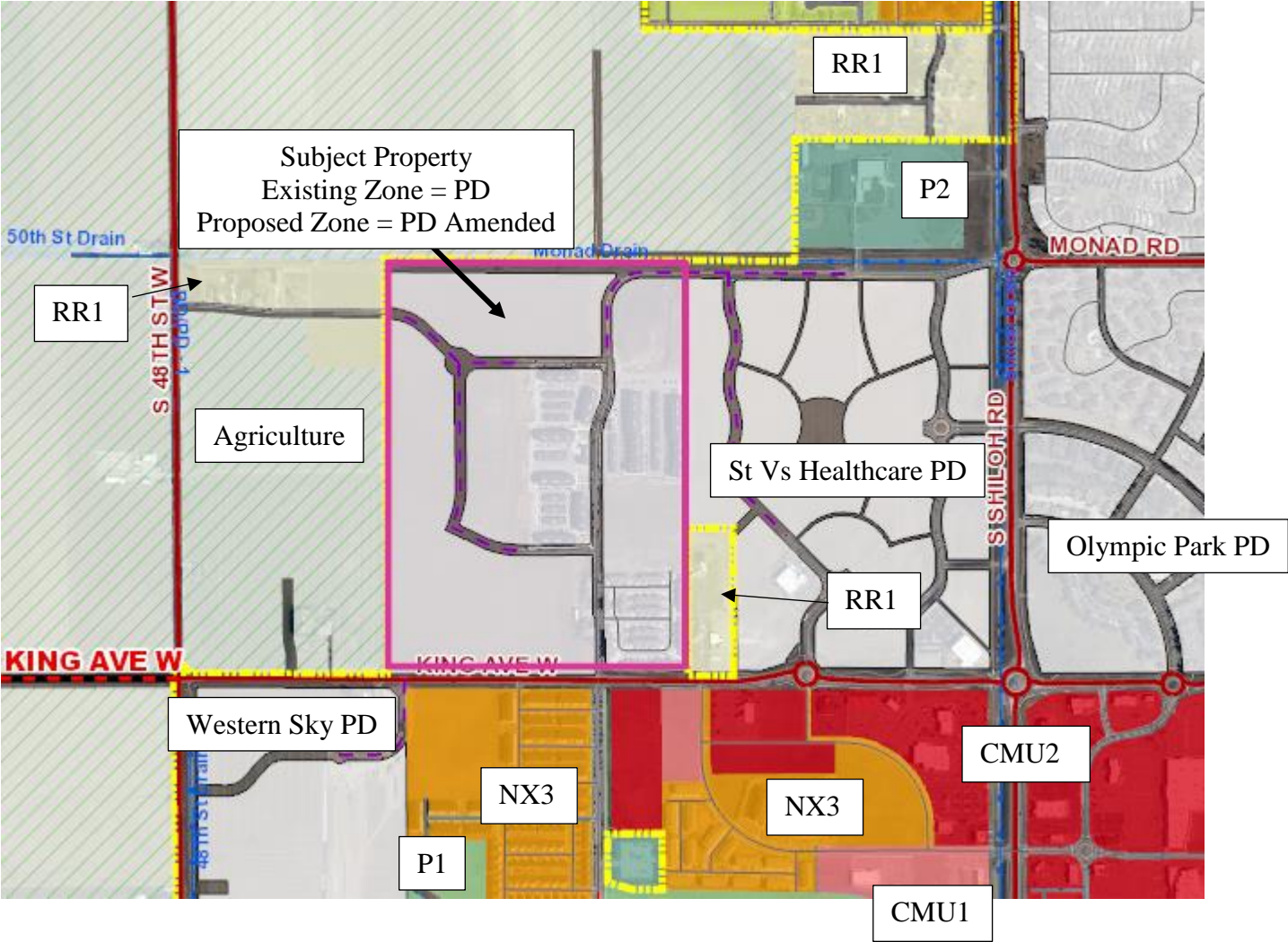
## **Attachments**

Zoning Map and Site Photos  
Existing PD Agreement and Master Plan  
Proposed Amended Lenhardt Sq PD and Master Plan  
Preapplication Meeting Notes  
Applicant Letter  
Public Comments as of April 27 2021  
Zoning History



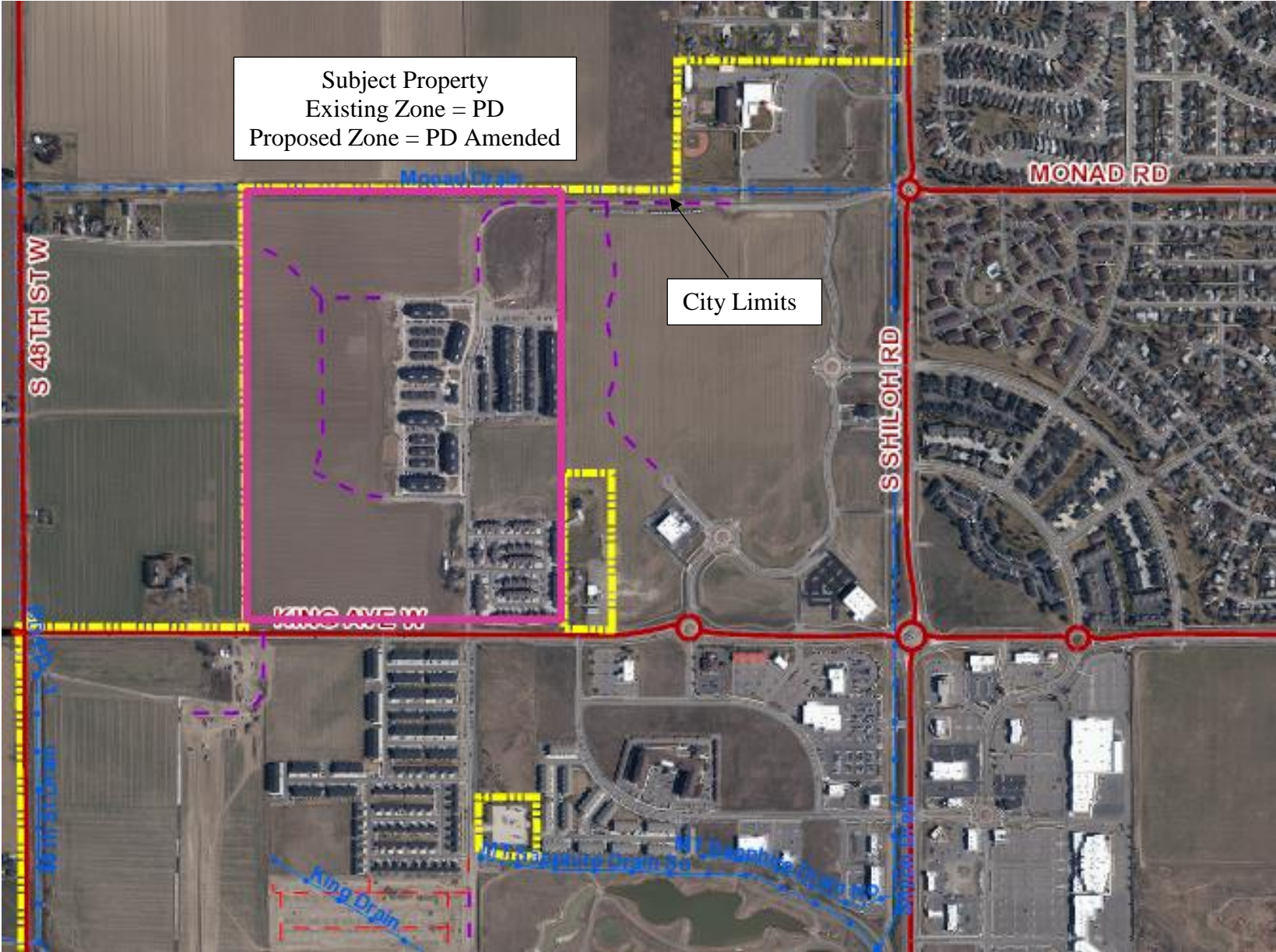
City Zone Change 991 – Lenhardt Square

Zoning Map and Site Photos

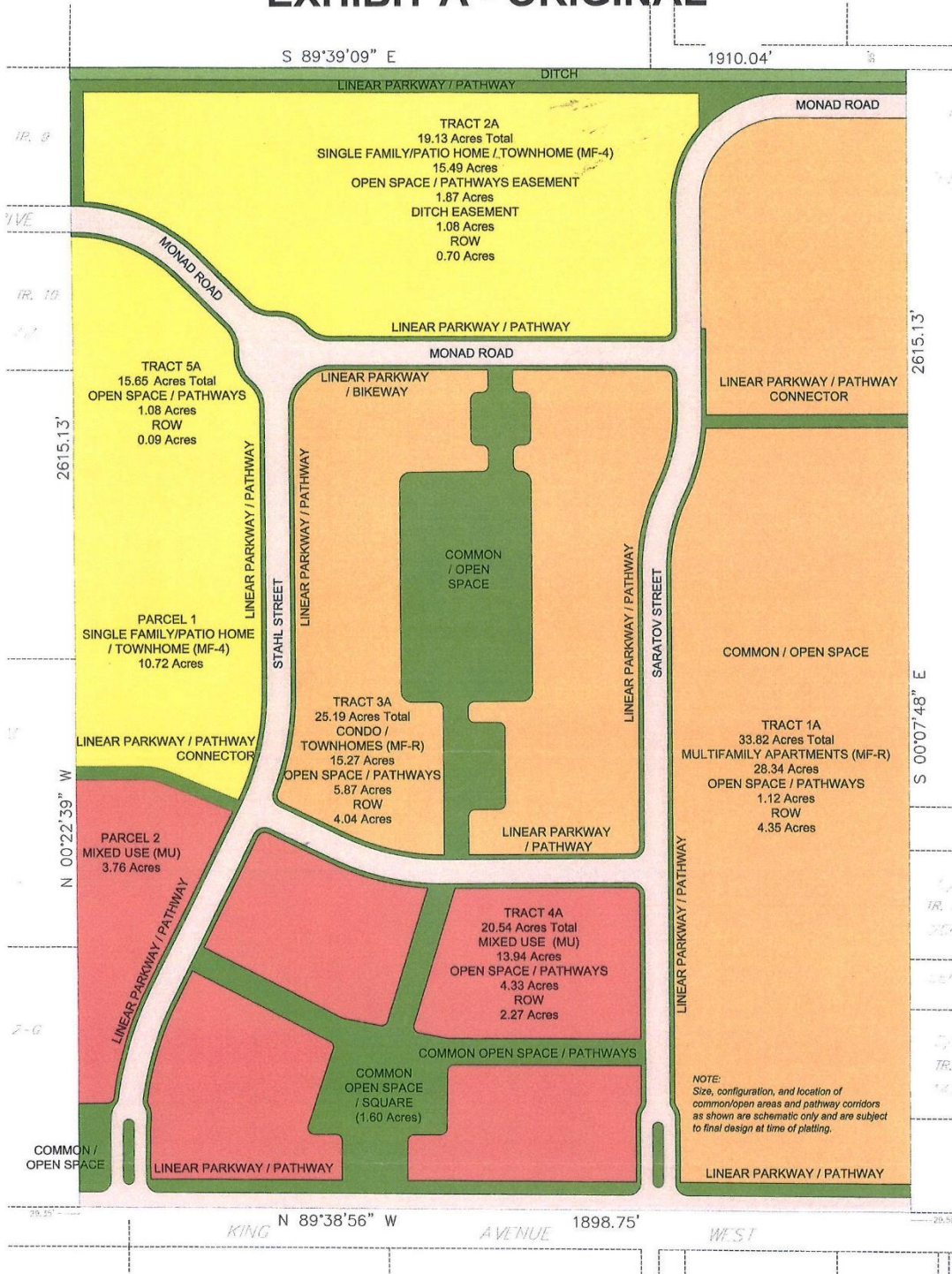


Subject Property  
Existing Zone = PD  
Proposed Zone = PD Amended

City Limits



# EXHIBIT A - ORIGINAL



## LENHARDT SQUARE

CONCEPTUAL MASTER PLAN

Billings, Yellowstone County, Montana

January 22, 2008



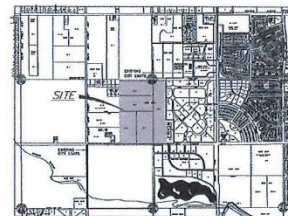
Land Planning / Landscape Architecture / Design  
1001 S. Rainbow Blvd. Suite 205  
Las Vegas, Nevada 89146  
T: 702.388.1044  
F: 702.265.0469  
www.studiovbm.com



**ENGINEERING, INC.**  
Consulting Engineers and Land Surveyors  
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GRAPHIC SCALE  
0 100 200'  
1" = 100'

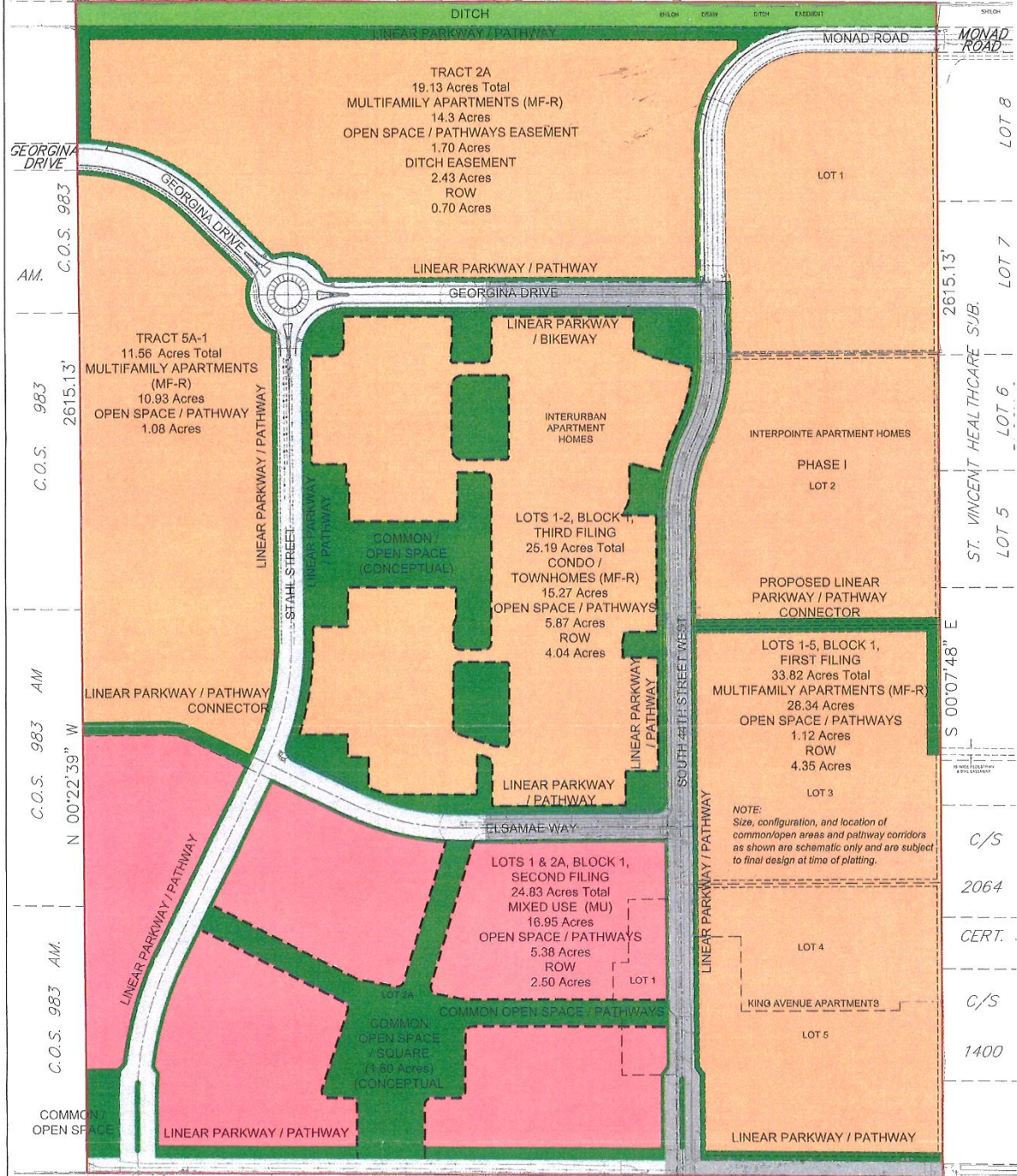


# EXHIBIT A - AMENDED

UNPLATTED  
S 89°39'09" E

CERT. 2828

1910.04' DRAINAGE DITCH RIGHT-OF-WAY



NOTE:  
Size, configuration, and location of common/open areas and pathway corridors as shown are schematic only and are subject to final design at time of platting.

## LENHARDT SQUARE

Billings, Yellowstone County, Montana

APRIL, 2021



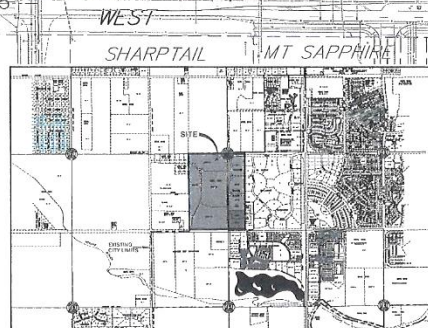
Land Planning / Landscape Architecture / Design  
1601 S. Rainbow Blvd. Suite 250  
Las Vegas, Nevada 89146  
T: 702.396.1044  
F: 702.255.0466  
www.studiovbm.com



Enduring Community Design  
PH: 07054-15 LENHARDT MASTER PLAN 0201.DWG ATVB5A  
24-36-COLOR-MASTER



GRAPHIC SCALE  
0 100 200  
(IN FEET)  
1" = 100' 0"







Lenhardt Square view north from King Ave West at S 44<sup>th</sup> St W



Lenhardt Square view north west across property from King Ave W



KWO Apartments from King Ave West view north and east



Hoop Dreams Apartments from King Ave West & S 44<sup>th</sup> St W view south



Hoop Dreams Apartments from King Ave West & S 44<sup>th</sup> St W view south and west



KWO Apartments in Lenhardt Square view east along King Ave West at S 44<sup>th</sup> St W

Return to: City of Billings  
Cari Martin, City Clerk  
210 N. 27<sup>th</sup> Street  
Billings, MT 59101



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**PLANNED DEVELOPMENT AGREEMENT FOR  
LENHARDT SQUARE**

**By and between:**

**LENHARDT PROPERTY, LP, LENHARDT FARM, LLC, LENHARDT  
ENTERPRISES, LLC**

**and**

**THE CITY OF BILLINGS, MONTANA**



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## PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE

This PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE (“Agreement” or “PDA”) is made and entered into this 28th day of April, 2008, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively “Founders”), and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27th Street, Billings, Montana 59101.

### RECITALS

#### NOW WHEREAS:

1. Founders own as tenants in common approximately 114 acres of real property in Billings, Montana, more particularly described as:

Tracts 1A, 2A, 3A, 4A, 5A of Certificate of Survey 2063, Amended according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana as Document Number 3460596.

The foregoing property, which has been owned and farmed by the Lenhardt family for many decades, shall hereafter be known collectively as “LENHARDT SQUARE.” The five individual parcels that make up the Lenhardt farm shall hereafter be known as the “Tracts” or, if referred to individually, as a “Tract.”

2. In furtherance of their plan to liquidate the property and terminate their co-tenancy relationship, the Founders desire to place certain building and use restrictions on the property within LENHARDT SQUARE, specify certain land use and design regulations for LENHARDT SQUARE, and establish a pattern of development that is consistent with Lenhardt family values and that protects the value of the investment property being liquidated.

3. In 2001 the City of Billings and Yellowstone County adopted a neighborhood plan titled the “West Billings Plan.” The purpose of the plan was to establish development guidelines in West Billings “to meet the community’s shared vision for the future of West Billings, enabling it to thrive on growth and change through innovative, aesthetic land use and responsible development” (page 1). The West Billings Plan established these policy goals, among others, for future development in the West Billings area:

- Recognition that it is not desirable for West Billings to develop with a low-density, rural character (p. 14);
- More compact development patterns are desirable because they make full use of urban services, offer cost-effective infrastructure, and hold down costs to the taxpayer (p. 15);



- Concentrate multi-family, office, and non-retail uses between commercial nodes along arterial streets (p. 17);
- Provide opportunities for a mix of housing types and mixed-use development by encouraging planned unit developments (pp. 22, 24);
- Increase residential densities and promote medium and high-density residential development within walking distance to commercial centers, medical facilities, and recreational amenities (pp. 21, 23);
- Link pedestrian-friendly residential, commercial, mixed-use, and park areas through a linear open space network, subdivision entryways, and special arterial treatments (p. 38);
- Create commercial developments with unique, identifiable focal points such as parks and linear open space (p. 38).

4. The City of Billings is growing to the west, adding more commercial and professional businesses. By providing convenient, nearby living opportunities for employees, our community can reduce the cost of constructing roads, sewers, and other infrastructure and consume fewer scarce natural resources.

5. The Shiloh Interchange and Shiloh Road have created a major new entryway into Billings that provides convenient access for commuters and visitors coming from Montana communities to the west and Wyoming communities to the south, leading to increased commercial growth along the King Avenue and Shiloh Road corridors.

6. LENHARDT SQUARE is located near what will likely become the most important new commercial area in Billings. In 2001 the City approved Montana Sapphire Subdivision, a 65-acre commercial development located on the southwest corner of the King Avenue/Shiloh Road intersection and southeast of LENHARDT SQUARE. In 2004 the City approved the Planned Development Agreement for The Village, a planned unit development managed by St. Vincent Healthcare Foundation, Inc. located on the northwest corner of the King Avenue/Shiloh Road intersection and directly to the east and adjacent to LENHARDT SQUARE. The Village will be a quality, mixed-use development with commercial, clinical, medical, and residential uses. In July 2007 the City approved a petition to annex the 164 acre Western Sky Subdivision located on the south side of King Avenue immediately south of LENHARDT SQUARE. This subdivision is being re-platted as King Meadows Subdivision and will consist of small single family lots and also provide for multi-family development. Lastly, the City is currently in the process of reviewing an application for approval of Shiloh Crossing Subdivision, which, if approved, will be a 74-acre commercial development on the southeast corner of the King Avenue and Shiloh Road intersection that is intended to house a large retail mall.

7. The increasing cost of residential lot development and single family housing construction makes quality single family housing cost-prohibitive for many young professionals, working families and retired seniors, many of whom will be working in the emerging commercial districts along King Avenue and Shiloh Road and/or seeking convenient access to medical services provided in The Village.



8. Founders desire to provide an opportunity for future development consistent with the West Billings Plan that will accommodate a variety of residential living opportunities and necessary services to support the increased commercial development occurring on the west end of Billings; encourage pedestrian and non-motorized interconnectivity; promote densities that economically support the extension of city services; and utilize economies of scale to increase the affordability of residential housing in West Billings.

9. Founders enter into this Agreement with the City to ensure that LENHARDT SQUARE will be developed and maintained in a manner that is complementary to the neighborhood and other planned developments in the area, including The Village, and that will protect the value of any property of Founders that remains undeveloped.

10. Founders seek the City's approval of the LENHARDT SQUARE planned development zoning district described in this Agreement in accordance with Unified Zoning Regulations Sec. 27-1301 through 27-1310.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for LENHARDT SQUARE, including such restrictions and protective covenants as set forth herein that shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners of such real estate, and shall run with the land.

**AGREEMENT**

**ARTICLE I – PURPOSES**

**A. Neighborhood Compatibility and Complementary Features.** The planned development zoning district described in this Agreement is intended to provide an opportunity for future development that will create an attractive and functional neighborhood with a variety of living opportunities in close proximity to the growing commercial development on the west end of Billings. It will include planned circulation patterns to encourage pedestrian access and reduce vehicular congestion and pedestrian/vehicular conflicts. LENHARDT SQUARE will create livable residential areas with necessary services and businesses within walking distance of each other and adjacent residential and commercial areas. It will provide connectivity to other adjacent neighborhoods of West Billings as they develop, and complement the existing planned developments in the area.

**B. Flexibility for Future Development.** This Agreement and the development it describes shall permit flexibility to meet the demands of the residential, commercial, and health care markets as they change over time. In accordance with that goal, this Agreement is designed and intended to afford the future Developer of each Tract within LENHARDT SQUARE latitude to design and construct future development in a way that meets the needs and desires of the time while still ensuring sound development for the benefit of the Founders' remaining Tracts and the neighborhood generally.

**C. Specific Goals for Tract Development.** The parties enter into this Agreement to accomplish the purposes set forth herein and further the following additional objectives of



LENHARDT SQUARE:

1. To provide for an appealing architectural arrangement of buildings and spaces through the use of a wide variety of living opportunities, architectural sizing, and residential services;
2. To provide for ample but not excessive off-street parking that is well screened and landscaped and that incorporates multilevel parking where feasible;
3. To provide for well-configured squares, plazas, walkways, bikeways, greens/commons, landscaped streets and parks that are woven into the pattern of the entire development and dedicated to collective social activity, recreation, and visual enjoyment;
4. To require attractive landscaping beneficial to residents and the community;
5. To provide for a pedestrian-friendly and bicycle-friendly environment;
6. To facilitate and foster complementary uses serving the needs of the residential, commercial, professional and medical community in the area;
7. To promote a unique, attractive, and distinctive mixed-use development;
8. To promote and assist in the orderly development of LENHARDT SQUARE and the west end of Billings;
9. To encourage creativity in design, quality, and character of new development; and
10. To minimize adverse aesthetic impacts associated with excessive lighting, signage, parking and other design features.

**D. Consistency with Overall Community Goals.** The parties understand, acknowledge and agree that this plan for LENHARDT SQUARE includes and promotes consideration of the following:

1. Creating a planned development zone that permits single family, small and large scale multi-family, and residential-commercial mixed-use development uses in proximity to one another, while protecting and respecting the character and quality of adjacent uses;
2. Increasing urban densities to utilize land use efficiencies and economies to slow suburban sprawl;
3. Encouraging flexibility in design and use of mixed-use and residential zones to allow for economy, convenience, variety, and amenity;



- 4. Enhancing the aesthetics of the increasingly commercialized King Avenue and Shiloh Road corridors;
- 5. Ensuring adequate provision of public services such as water, sewer, public safety, public parks, open space, storm water control, and vehicular and pedestrian-bicycle circulation; and
- 6. Reducing traffic congestion and degradation of the existing air quality.

**ARTICLE II – DEFINITIONS**

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein either expressly or by implication. The following definitions shall apply to this PDA:

**A. Annexation Agreement.** “Annexation Agreement” refers to the Annexation Agreement for Lenhardt Square executed by Founders and the City in conjunction with this Agreement.

**B. Common Areas.** “Common Areas” means any property or facility that the Master Association or an Owners Association owns or in which it otherwise holds possessory or use rights or owes maintenance obligations for the common use or benefit of more than one Unit in LENHARDT SQUARE. Common Areas may include but are not limited to open spaces, green roofs, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. Common Areas may include both public or private parks, sidewalks, and other facilities. Common Areas do not include prohibited competitive sporting facilities described in Article IV.J.9.

1. **“Master Common Areas”** means those Common Areas established in the Master Plan for LENHARDT SQUARE that are owned by, or the possessory or use rights are held or maintenance obligation are owed by, the Master Association. Master Common Areas have been defined by approximate size, general location, and intended purpose. Actual size, location, size, improvements and purpose shall be established by Developers during the platting process for each Tract, subject to the approval and consent of the Reviewer.

2. **“Developer Common Areas”** means those Common Areas that are owned by, or the possessory or use rights are held or maintenance obligations are owed by, an Owners Association.

**C. Conditions, Covenants, and Restrictions.** The “Conditions, Covenants, and Restrictions” (also referred to as the “CCRs”) means those conditions, covenants, and restrictions recorded against all or any part of the real property in LENHARDT SQUARE by Founders as the Declarant.



**D. Developer.** “Developer” means any person or entity who purchases a Tract or any portion of a Tract within LENHARDT SQUARE from Founders or their successors in interest for further subdivision, development, or resale in the ordinary course of business or for investment purposes.

**E. Dwelling Unit.** “Dwelling Unit” means one (1) or more rooms designed for or occupied by one (1) family for living or sleeping purposes and may contain kitchen and/or bathroom facilities for use solely by one (1) family. All rooms comprising a Dwelling Unit shall have access through an interior door to other parts of the Dwelling Unit. A studio/efficiency apartment constitutes a Dwelling Unit.

**F. Founders.** “Founders” means Lenhardt Property, L.P., Lenhardt Farm, L.L.C., and Lenhardt Enterprises, L.L.C., co-tenants and co-owners of LENHARDT SQUARE. Any rights inuring to Founders under this Agreement shall be exercised by Founders jointly, and if any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

**G. Green Roof.** “Green Roof” means an engineered roofing system that allows for the propagation of rooftop vegetation and the retention or detention of storm water while maintaining the integrity of the roof structure and membrane. A Green Roof may be intended for exclusively decorative and environmental purposes with a shallow planting medium and a substrate depth ranging between approximately two inches and six inches and weighing between approximately 165 pounds and 375 pounds per square yard, designed to accommodate hardy, low height, drought resistant plant species. Alternatively, a Green Roof may be designed to accommodate deeper planting media, irrigation systems, complex landscaping features, and a broad range of plant species, and may be designed to support human occupant loads.

**H. Home Occupation.** “Home Occupation” shall have the same meaning as that phrase has in the Unified Zoning Regulations (Sec. 27-606) and shall be subject to the same restrictions described therein except as provided in Article IV.J.8.

**I. Linear Parkways.** “Linear Parkways” means those Master Common Areas depicted on Exhibit A that are linear open spaces containing developed bikeways, pathways, or pedestrian trails that are intended to provide alternative means of non-motorized transportation within LENHARDT SQUARE and connections to adjacent properties.

**J. Lot.** “Lot” means a portion of LENHARDT SQUARE depicted as a separately identified parcel of land on a recorded subdivision plat or survey other than a Tract owned by Founders that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Common Areas, as defined above, or property dedicated to the public.

**K. Master Association.** “Master Association” means the association established by Founders to own, operate and/or maintain the various Master Common Areas and improvements and to administer and enforce the CCRs and other governing documents pertaining to LENHARDT SQUARE.



L. **Master Design Guidelines.** “Master Design Guidelines “ means the design standards and architectural and aesthetic guidelines adopted pursuant to the CCRs, as they may be amended, which govern construction, modification, and maintenance of Common Areas and Units, including structures, landscaping, and other improvements.

M. **Master Plan.** “Master Plan” means a concept plan and drawing showing existing Tracts and zoning as well as proposed streets, access points, Common Areas and other site improvements intended for LENHARDT SQUARE. The details depicted in the Master Plan are conceptual in nature and may be further refined by subsequent platting or amendment of this Agreement. The current Master Plan of LENHARDT SQUARE is attached to this Agreement and marked “Exhibit A.”

N. **Mixed-Use.** “Mixed-use” refers to the mixing of different land uses – residential, retail, employment, entertainment, lodging, civic, cultural, etc. – in one relatively discrete area featuring stacked uses in low to mid-rise buildings, arranged along streets and around public squares or other open spaces. Mixed-used developments have these additional characteristics:

1. The development promotes synergy of uses and a sense of place featuring an integrated, interactive community with its own recognizable identity, focused on one or more central community features or land uses and dedicated to collective social activity and common, but diverse, business interests;

2. The development includes within the mixed-use area three or more different, significant uses such as retail, entertainment, office, medical, residential, hotel, civic, cultural, and/or recreational that are complementary and together promote a sense of community, but at least one of which is residential; and

3. The development includes uninterrupted pedestrian connections and other physical and functional components that promote integration of community businesses, residential and civic elements to create a mutually supportive community and efficient and intensive use of land.

O. **Owners Association.** “Owners Association” means an association of owners of property within a portion of LENHARDT SQUARE, other than the Master Association, established by a Developer to administer additional covenants applicable to that particular area, and/or to own, operate and/or maintain any Developer Common Areas within the area, including but not limited to associations of owners of Units, business properties, condominiums, townhomes, or single family homes.

P. **Pocket Park.** “Pocket Park” means a small park that is approximately one-half (1/2) of an acre or smaller.

Q. **The Reviewer.** “The Reviewer” means that person, entity, or committee appointed by Founders that shall have all of the rights, duties and responsibilities assigned to the Reviewer in this Agreement and the CCRs, including but not limited to the review and approval or denial of the design and planning elements of all subsequent development of Tracts and



subdivision plats filed for property within LENHARDT SQUARE.

**R. Shiloh Drain.** “Shiloh Drain” means the lateral drainage ditch that lies within the boundaries of the Shiloh Drain Easement Area shown on Exhibit A.

**S. Shiloh Drain Easement Area.** The “Shiloh Drain Easement Area” means the easement within which the Shiloh Drain is located on the north property line of LENHARDT SQUARE as depicted on Exhibit A hereto.

**T. Small In Scale.** “Small in scale” means a retail, professional or other commercial space not exceeding 8,000 square feet in total floor space on all levels.

**U. Special Review Approval.** “Special Review Approval” means approval by the City of Billings pursuant to the Special Review Approval process established in Sections 27-613 and 27-1503 of the Unified Zoning Regulations and as modified by this Agreement, including approval by the Reviewer in its discretion.

**V. Tract.** “Tract(s)” means one or more of Tracts 1A through 5A of C.O.S. 2063, Amended. Parcels in Tract 5A designated on the Master Plan by a number (e.g., Tracts 5A, Parcel 1 and Parcel 2, hereafter “Tract 5A.1” and “Tract 5A.2”) are conceptual only and are depicted on the Master Plan for zoning and planning purposes only. Parcels in Tract 5A designated by a number are not legally distinct parcels and may not be separately conveyed or transferred. If the exterior boundaries of any Tract or any parcel in Tract 5A are changed for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, any reference herein to a particular Tract or parcel shall be deemed to instead apply to that successor Tract or parcel that most closely approximates the boundaries, location, size and character of the Tract or parcel originally referenced in this Agreement and depicted on the Master Plan attached hereto. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract or parcel.

**W. Unified Zoning Regulations.** “Unified Zoning Regulations” means the Unified Zoning Regulations of the City of Billings, Yellowstone County Jurisdictional Area.

**X. Unit.** “Unit” means a portion of LENHARDT SQUARE depicted as a separately identified Lot, parcel or condominium on a recorded subdivision plat or survey that may be independently owned and conveyed. The term “Unit” refers to the land, if any, that is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a structure containing multiple dwellings that may be independently owned and conveyed, each such dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit. The term does not include Common Areas, as defined above, or property dedicated to the public.

**Y. Unit Owner.** “Unit Owner” means the owner of a Unit within one of the Tracts in LENHARDT SQUARE.



**ARTICLE III – BINDING EFFECT**

**A. 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 real property within LENHARDT SQUARE shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement.

**B. Founders.** Any obligations of Founders arising under this Agreement shall be binding upon all of the Founders jointly, and all rights inuring to Founders under this Agreement shall be exercised by Founders jointly. If any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

**ARTICLE IV – USE RESTRICTIONS**

**A. Land Use Restrictions Generally.** Tracts in LENHARDT SQUARE shall be located and classified by zone as described below. In the event that the external boundaries of any Tract changes for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, the zoning classification and other Tract-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area has the same zoning classification and restrictions as the successor Tract of which the area becomes a part. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract.

**1. Tracts 1A and 3A – Residential Multi-Family-Restricted (MF-R).** Tracts 1A and 3A are located, respectively, along the east border and in the center of LENHARDT SQUARE as shown on Exhibit “A” hereto. The use of the Lots in Tracts 1A and 3A is contemplated to be multi-family residential in scale and character. These tracts are intended primarily to accommodate apartments, townhomes, condominiums, and other multi-family and attached single-family complexes and uses permitted in the Residential Multi-Family-Restricted Zoning District as defined in the Unified Zoning Regulations; however, single family residences are permitted. Additional requirements for multi-family Units in Tracts 1A and 3A are set forth in Exhibit “B.”

**2. Tract 4A and Tract 5A.2 – Mixed-Use (MU).** Tracts 4A and 5A.2 are located, respectively, on the southern and western borders of LENHARDT SQUARE near King Avenue West as shown on Exhibit “A.” Tracts 4A and 5A.2 are designed for residential and complementary commercial uses as further described in the definition of “mixed-use” found in Article II, including, but not limited to, in-home and small-scale professional and retail space. These tracts may be developed as a combination residential-commercial-cultural center with retail activities conducted in a unified



development designed to serve the residential Dwelling Units in the Tract and surrounding neighborhood with shopping facilities consisting of convenience, retail and personal service establishments that secure their principal trade by supplying the daily needs of the neighboring population. Multi-family residential uses are also permitted.

3. **Tract 5A.1 and Tract 2A – Residential Single Family and Residential Multi-Family (Four-Plex) (MF-4).** Tract 5A.1 is located along the northwest border and Tract 2A is located along the northern border of LENHARDT SQUARE as shown on Exhibit “A.” Use of the Lots in Tracts 5A.1 and 5 is contemplated to be residential in nature, including single family dwellings and multi-family structures containing up to four Dwelling Units.

**B. Procedure for Obtaining Reviewer Approval; Mixed-Use Requirements.**

Any Developer of property in LENHARDT SQUARE shall obtain the written approval of the Reviewer prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the Developer first presents written evidence of the Reviewer’s approval. Neither the Reviewer nor the City shall approve the Developer’s application unless the proposed development complies with the requirements of this Agreement. Any development proposed for Tract 4A or Tract 5A.2 shall be mixed-use in character as described in this Agreement. In making this determination the Reviewer and the City shall examine the plan for development of all property proposed for development by the Developer in the two tracts. An individual structure or Lot may be devoted to a single use that is not mixed-use as long as the Reviewer determines in its discretion that the Developer’s project as a whole satisfies the mixed-use requirements of this Agreement and:

1. There is or will be sufficient residential, commercial, professional, or other non-residential uses included in the subject structure or on other nearby Lots that are part of the Developer’s project to preserve and promote the mixed-use character of the project and Tracts 4A and 5A.2 intended by this Agreement; and
2. The Developer’s project will otherwise comply with all other requirements of this Agreement.

C. **Permitted and Prohibited Uses – Generally.** Lots in each of the Tracts identified below may be used for any of the uses specifically permitted below. Lots in each of the Tracts identified below may not be used for any of the uses specifically prohibited. If a use is neither specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by the Reviewer.

D. **Permitted Uses – Tracts 1A and 3A (MF-R).** Units in Tracts 1A and 3A, unless otherwise prohibited herein, may be used for any of the following uses:

1. Accessory uses and detached structures (other than garages) less than 300



square feet in size that are associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement.

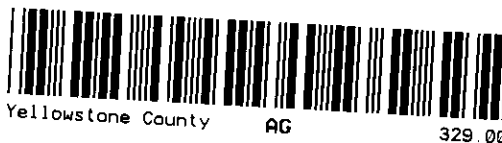
2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community center;
6. Community residential facility as defined by Unified Zoning Regulations;
7. Garages, subject to size limitations described in Article V.B.4.(d);
8. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;
9. Home occupations;
10. Family day care home serving up to 6 children or adults;
11. Multi-family or attached dwellings including apartments, residential suites, condominiums, townhomes and other multiplex housing units;
12. Single family residential uses;
13. Any use that is permitted in a residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

**E. Permitted Uses – Tract 4A and Tract 5A.2 (Mixed-Use).** Units in Tract 4A and Tract 5A.2, unless otherwise prohibited herein, may be used for any of the following uses, provided that nonresidential permitted uses shall be restricted to spaces not exceeding 8,000 square feet of gross floor area except upon special review:

1. Animal grooming facilities;
2. Art galleries;
3. Assisted living facilities serving any number of persons;
4. Bakeries;
5. Banks, credit unions, and savings and loan offices;
6. Barber and beauty shops;



7. Bicycle sales, rental, and repair shops;
8. Boarding, lodging, and bed and breakfast houses;
9. Bookstores;
10. Building supply stores and hardware stores (but not lumber yards);
11. Bus stops;
12. Camera, hobby, toy, and gift stores;
13. Ceramics and pottery shops;
14. Charitable, religious, educational or nonprofit institutions;
15. Clothing and apparel stores;
16. Common Areas;
17. Community centers;
18. Community residential facility as defined by Unified Zoning Regulations serving up to 8 persons on a 24-hour-a-day basis;
19. Convalescent, nursing, and retirement homes;
20. Convenience and specialty food stores (but no gasoline sales);
21. Cultural, educational, and instructional facilities;
22. Day care center (as defined in Unified Zoning Regulations Sec. 27-201);
23. Denturists;
24. Department stores;
25. Drug stores - prescription and pharmacy;
26. Dry cleaning or laundry drop-off and pick-up store;
27. Eating and drinking establishments that do not sell alcohol for on-site consumption;
28. Education facilities, including elementary and secondary schools, colleges, universities, professional schools, and junior colleges;



29. Family day care home (as defined in Unified Zoning Regulations Sec. 27-201) serving up to six children or adults;
30. Finance and loan companies;
31. Florists;
32. Food and grocery stores;
33. Furniture - retail only;
34. Flower shops and nurseries (provided that there is no outside storage);
35. Garages, subject to size limitations described in Article V.B.4.(d);
36. Group day care home services (as defined in Unified Zoning Regulations Sec. 27-201) for 7 to 12 children or adults;
37. Hardware and appliance – retail only;
38. Health clubs, spas, and gymnasiums;
39. Health and fitness related businesses;
40. Home occupations (mixed-use area)
41. Hotels and motels;
42. Jewelry stores;
43. Libraries, museums, and art galleries;
44. Liquor stores
45. Medical and dental offices;
46. Membership organization offices;
47. Multifamily residential uses consistent with a mixed-use development, including apartments, residential suites, condominiums and townhomes;
48. Offices, including real estate, financial, counseling, professional, medical, and dental;
49. Office supply and equipment, copying and mail services stores – retail only;

50. Open spaces, park areas, gardens, squares, athletic fields, bike trails, playgrounds, and walking paths, and other Common Areas;
51. Parking facilities, including above or below ground parking garages;
52. Parks, playgrounds, pools, sport courts;
53. Pet stores;
54. Photo studios, shops, and processing - retail only;
55. Physical therapy facilities;
56. Postal service facilities;
57. Public administration facilities, including government facilities, except correctional institutions;
58. Publicly-owned or government operated buildings and uses;
59. Retail stores;
60. Satellite dishes up to 2 feet in diameter if not otherwise restricted by applicable design criteria or other restrictions;
61. Senior and assisted living residential facility;
62. Sports medicine and rehabilitation facilities;
63. Theaters;
64. Veterinary clinic, outpatient only;
65. Wine store;
66. Any use permitted in a residential multi-family, residential multi-family restricted, residential professional, neighborhood commercial or community commercial zoning district pursuant to the Unified Zoning, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

**F. Permitted Uses – Tracts 5A.1 and 2A.** Lots in Tracts 5A.1 and 2A, unless otherwise prohibited herein, may be used for any of the following uses:

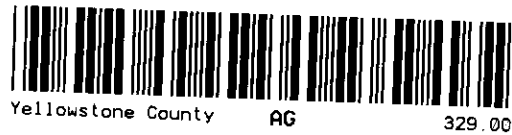
1. Accessory uses and structures (other than garages) not larger than 300 square feet associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement;



2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community centers;
6. Community residential facilities as defined by Unified Zoning Regulations serving up to eight (8) persons on a 24-hour-a-day basis;
7. Family day care facilities serving up to six (6) children or adults;
8. Garages, subject to size limitations described in Article V.B.4(d);
9. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;
10. Home occupations;
11. Multi-family residential structures containing up to four (4) Dwelling Units;
12. Single family residential units;
13. Any use permitted in a single family residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

**G. Permitted Uses Subject to Special Review – All Tracts.** Uses identified below and designated with an asterisk (\*) are permitted in Tracts 4A and 5A.2 without special review under Article IV.E. above. The following uses are permissible in other Tracts only upon consent of the Reviewer and the approval of the City of Billings through the special review process and may be subject to appropriate conditions. For purposes of this provision, the special review procedures contained in the Unified Zoning Regulations shall apply subject to any additional requirements contained in this Agreement, including the requirement of Reviewer consent. The following special review uses may be permitted in Tracts 1A, 2A, 3A, 4A, and 5A unless specifically restricted to particular Tracts:

1. Accessory structures in Tract 4A and Tract 5A.2 (other than garages) associated with a permitted principal structure and subject to the additional allowances and requirements of Article V.B.9 of this Agreement;
2. Animal boarding facilities (allowed in Tract 4A and Tract 5A.2 only);
3. Assisted living facilities serving more than 8 persons;\*



4. Bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption (allowed on Tract 4A and Tract 5A.2 only). However, bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption are exempt from Sec. 27-612(a)(1).

5. Cell, communication and satellite towers and satellite dishes greater than 2 feet in diameter provided such towers are incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);

6. Convalescent, nursing and retirement homes;\*
7. Day care centers serving more than 12 children or adults;\*
8. Churches, synagogues, and places of worship;
9. Emergency services, including fire stations and ambulance services;
10. Funeral homes and mortuaries;
11. Group day care home serving 7 to 12 children or adults;\*
12. Health and fitness related businesses not associated with a residential facility;\*
13. Hospitals and hospital related services (allowed in Tract 4A and Tract 5A.2 only);
14. Medical, dental and health-related clinics (allowed in Tract 4A and Tract 5A.2 only);
15. Medical, dental, and other professional offices;\*
16. Medical laboratories (allowed in Tract 4A and Tract 5A.2 only);
17. Modular homes;
18. Offices and small-scale retail;\*
19. Pharmacies (allowed in Tract 4A and Tract 5A.2 only);
20. Physical therapy facilities;\*
21. Research and testing facilities (allowed in Tract 4A and Tract 5A.2 only);
22. Residential multi-family housing consisting of more than four (4)



Dwelling Units (special review required only in Tracts Tract 5A.1 and 2A);

- 23. Non-residential permitted uses requiring more than 8,000 square feet of floor space (allowed in Tract 4A and Tract 5A.2 only);
- 24. Retirement facilities larger than eight (8) persons per Unit;
- 25. Sports and rehabilitative commercial facilities;\*
- 26. Veterinary clinic with boarding facilities (allowed in Tract 4A and Tract 5A.2 only).

**H. Permitted Uses Subject to Special Review – Factors to be Considered.** The City of Billings may authorize the preceding special review uses through the Special Review Approval process if the proposed use conforms to the following standards and criteria. To make this determination the City shall conduct a public hearing and make findings of fact to determine whether:

- 1. The proposed use is consistent with the terms, intent and objectives of this Agreement;
- 2. The proposed use is compatible with surrounding uses;
- 3. The proposed use is not detrimental to other property in LENHARDT SQUARE;
- 4. The proposed use complies with other provisions of law and ordinances of the City of Billings;
- 5. Reviewer has given its written consent to the special use (Reviewer may, in its discretion, withhold its consent, and no special review shall be granted for any use in LENHARDT SQUARE without the express written consent of Reviewer);
- 6. The proposed use will not attract large volumes of vehicular traffic or create traffic congestion that cannot be properly managed and regulated with traffic control equipment;
- 7. The proposed use is of a similar architectural scale to existing development in the neighborhood, or will use an existing building for its purposes;
- 8. Minimum visual and functional conflict will be created between the proposed use and nearby uses;
- 9. Anticipated noise and congestion created by the proposed use will be comparable to the levels created by other uses permitted on that Unit.



**I. Prohibited Uses.** The following operations and uses shall not be permitted on any property in LENHARDT SQUARE, regardless of where the property is located:

1. Amusement park services or facilities;
2. Animal shelters, public or private;
3. Apparel fabrication;
4. Arcades, including but not limited to video arcades;
5. Auction houses or auction yards;
6. Auto body and collision repair;
7. Automobile repair shops;
8. Automotive Sales and Service. Any establishment engaged in automotive sales, leasing, repair, service, salvage, rental, or storage;
9. Auto parts supply;
10. Competitive sporting facilities as described in Article IV.J.9.
11. Beverage bottling plant or wholesaling operations;
12. Billboard signs;
13. Body Alteration Salons. Any establishment engaged in body painting, body piercing, or tattooing;
14. Brewery (except as incidental to a restaurant, such as a brew pub);
15. Broadcasting (radio and television) stations, studios and antenna support structures;
16. Building fabrication, except construction of buildings for use on-site;
17. Building construction operations other than for temporary, on-site construction by general contractors or subcontractors unless office-only without outside equipment or materials storage;
18. Bus terminal and maintenance facilities, except for shuttle bus storage facilities intended to service shuttle buses that operate solely within LENHARDT SQUARE or the immediately surrounding neighborhood;



19. Campground;
20. Car wash;
21. Casinos and gambling or gambling activity, as defined in M.C.A. 23-5-112, unless permitted with legally enforceable restrictions described in the CCRs;
22. Chain link fencing;
23. Crematoriums;
24. Dumping concrete, cement residue, refuse, dirt, garbage, or fill materials without authorization of property owner;
25. Drugs or drug paraphernalia. Using, promoting, or facilitating the use of illegal drugs or any business engaged in selling so-called drug paraphernalia;
26. Dry cleaning, laundry plant or public laundromat, but this prohibition shall not be applicable to facilities for pickup and delivery by the ultimate consumer;
27. Electronic component manufacturing;
28. Equipment rental shop;
29. Excavation. Businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;
30. Exotic dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;
31. Extractive industries. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals unless such sale or storage is an ancillary part of a hardware, home-improvement, or similar retail store;
32. Fire sale or bankruptcy sale;
33. Fireworks. Fireworks manufacture and/or sales;
34. Flea markets;
35. Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations;
36. Foundries and factory operations;
37. Furniture fabrication;



38. Garbage handling.. Any dumping, disposing, incineration or reduction of garbage, but this prohibition shall not prohibit garbage compactors located near the rear of any building or small-scale recycling containers intended to collect recyclable materials as a convenience for neighborhood residents;

39. Gas or diesel stations;

40. Go-cart tracks;

41. Greenhouses for commercial or retail purposes;

42. Gun or archery range unless located within a structure and not visible or audible from outside the structure;

43. Guns and Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;

44. Heavy equipment sales and service;

45. Ice manufacturing for resale of ice not intended for use on-site ;

46. Illegal Drugs. The sale, manufacture, or possession of illegal drugs;

47. Industrial production or manufacturing facilities;

48. Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities, except public facilities if permitted by Section 76-2-411, Montana Code Annotated;

49. Junk shops, second-hand stores, and antique stores;

50. Livestock and Wild Animals. No swine, poultry, goats, horses, cows, or other livestock or domestic or wild animals shall be kept on the property within LENHARDT SQUARE except for domestic pets and other animals specifically permitted under this Agreement and, which shall be subject to any applicable restrictions contained herein, and no agricultural grazing is allowed unless specifically permitted by Founders in accordance with this Agreement;

51. Livestock Production. Any establishment engaged in livestock production or slaughter, except for agricultural grazing permitted by Founders on undeveloped tracts within LENHARDT SQUARE;

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

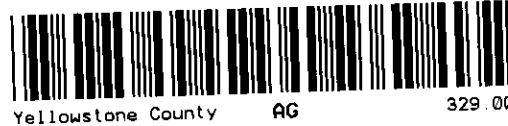
53. Machine and welding shops;



54. Manufactured Homes and Manufactured Home Parks. The sale, use, maintenance, rental, repair or storage of manufactured housing or mobile homes;
55. Manufacturing businesses;
56. Metal fabrication and manufacturing;
57. Mill work and cabinet shops;
58. Motorized sports vehicle repair, storage, and/or sales (including parts sales);
59. Mining and Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
60. Motocross tracks;
61. Motorcycle racing;
62. Nuisances. Any use that constitutes a nuisance under Article IV.J.3 of this Agreement.
63. Paper warehouses;
64. Pawn shops;
65. Power Poles and Overhead Power Lines. Installing new power poles and overhead power and utility lines; provided, however, this shall not prohibit existing power poles and lines and shall not prohibit adding new lines to the existing poles;
66. Product manufacturing unless the product is intended primarily for local consumption or use;
67. Propane sales;
68. Race tracks;
69. Recreational vehicles. The commercial sale, maintenance, rental, repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.
70. Recycling centers;
71. Rental car dealerships;
72. Vehicular, small engine and appliance repair shops;



73. Roller skating rinks;
74. Roping and rodeo arenas;
75. Sanitary dumps;
76. Scrap or waste material processing;
77. Septic systems;
78. Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations;
79. Repair shops. Shop facilities containing open or visible storage;
80. Stables;
81. Storage facilities other than garages associated with residential structures;
82. Super Stores. Retail sales uses (for goods and/or merchandise) by any person, firm, or entity that utilizes more than 40,000 square feet of any structure (nothing in this prohibition shall be interpreted to permit retail sales uses smaller than 40,000 square feet if otherwise prohibited in this Agreement);
83. Surplus store;
84. Taxidermists;
85. Tire sales, except as incidental to the operation of a general retail store;
86. Towers and Dishes. Freestanding communication and satellite towers and dishes greater than two (2) feet in diameter unless incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);
87. Trailer Parks and Campgrounds. Mobile home parks, trailer parks, recreational vehicle campgrounds, or any commercial establishment that permits over-night parking of recreational vehicles;
88. Truck Stop. Truck stop, as defined by Section 27-201 of the Unified Zoning Regulations;
89. Truck Terminals. Truck terminals, cartage operations, and similar uses;
90. Truck Wash. Truck wash as defined by Section 27-201 of the Unified Zoning Regulations;



91. Trucks. Sale, leasing, manufacture, rental or repair of trucks;
92. Trucking operation offices and warehouses;
93. Utility sub-stations and other utility installations other than utility lines, utility boxes, and other utility facilities used to service an individual Lot;
94. Warehouses;
95. Wholesale lumber and wholesale building materials;
96. Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock unless sold as domestic pets in a retail pet store;
97. Wholesale distribution and sales.

**J. Other Use Regulations**

1. **Continued Farming Operations.** Founders may, in their sole and unreviewable discretion permit farming operations (including livestock grazing) on undeveloped parcels within LENHARDT SQUARE on a case-by-case basis. No Unit may be farmed or flood-irrigated without the prior express written consent of Founders. Written consent to farm and to irrigate must be obtained on an annual basis. Livestock grazing, if permitted, will be limited to a reasonable carrying capacity that prevents overgrazing. Founders may prohibit farming and/or flood irrigation in LENHARDT SQUARE in the sole, exclusive and unreviewable discretion of Founders.

2. **Irrigation.** Founders, in their sole and unreviewable discretion, may elect to retain any shares in the irrigation district serving LENHARDT SQUARE, transfer such shares to the Master Association, or transfer such shares back to the irrigation district. Founders specifically reserve, and do not waive or abandon, irrigation and drainage easements for the conveyance of water and collection of waste water wherever irrigation or drainage ditches are currently located in LENHARDT SQUARE. Without limiting the foregoing, Founders currently believe that such ditches are currently located generally along the north and south boundaries of the property. All such easements shall continue as long as flood irrigation is conducted on any Tract of LENHARDT SQUARE or as long as any such easement is necessary to convey or drain water for the benefit of an adjacent property owner. In addition, Founders reserve a fifteen (15) foot easement along the east boundary of Tract 1A for purposes of installing and maintaining a new irrigation drainage ditch for so long as flood irrigation is conducted on any Tract within LENHARDT SQUARE.

3. **Nuisance.** No nuisance shall be permitted to exist or operate on any property in LENHARDT SQUARE so as to be offensive or detrimental to other property or occupants in LENHARDT SQUARE. A nuisance includes, but is not limited to, any operations or uses that create vibration, electro-magnetic disturbances, radiation, air or



water pollution, dust, emissions of odorous, toxic or nontoxic matter (including steam), and excessive noise; provided, however, that agricultural activities authorized by Founders shall not be considered a nuisance. No noxious, offensive, or hazardous activities shall be permitted upon any Unit in LENHARDT SQUARE, nor shall anything be done or placed upon any Unit that is or may become a nuisance to others. No light shall trespass onto another Unit unless approved by adjacent Unit owners or in conjunction with shared parking facilities, nor shall any light be produced from any Unit that is unreasonably bright or causes unreasonable glare. No sound shall be produced upon any Unit that is unreasonably loud or annoying, including but not limited to speakers, horns, whistles, bells, excessive barking, or other animal noises.

4. **The Shiloh Drain.** Any Unit Owner or Developer in LENHARDT SQUARE shall at all times conduct its use and activities in a manner that will preserve the integrity of the Shiloh Drain and the Shiloh Drain Easement Area, including preventing any degradation of water quality, any reduction in the flow of water, and any damage to the bed or banks of the Shiloh Drain. Certain portions of the Shiloh Drain Easement Area may require modifications during the course of development of LENHARDT SQUARE to accommodate storm drainage from within the property. No such modifications shall be made without first obtaining written permission from the City of Billings. The cost of these modifications shall be the responsibility of Developer or Unit Owner(s) requiring access for drainage to the Shiloh Drain. In addition to the foregoing, the owner of any Unit or Tract in LENHARDT SQUARE shall not conduct or permit the conduct of the following activities:

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

(b) Planting or dropping any non-native fish, animal, reptile, or plant into the Shiloh Drain area;

(c) The dumping of grass clippings or landscaping material or debris into the Shiloh Drain;

(d) Any activities that permit or encourage refuse dumping in the vicinity of the Shiloh Drain;

(e) Polluting water in the Shiloh Drain;

(f) The discharge of any Hazardous Materials. 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 that relate or deal with human health or the environment, all as may be amended from time to time.



5. **Domestic Pets Limitation.** Unit Owners must comply with all ordinances or laws applicable to pet ownership. In addition, any establishment, commercial building, or single family residence may not house more than two (2) dogs and no more than a total of four (4) domestic pets other than fish (for example two (2) dogs and two (2) cats). Any Dwelling Unit in a multi-family residence facility may not house more than two (2) domestic pets (excluding fish). Any pet or animal shall be leashed at any time it is outdoors unless it is being kept in a fenced yard area. No pets shall be raised or cared for on a commercial basis except in a retail pet store or as otherwise allowed in this Agreement. Pet owners shall retrieve excrement deposited by household pets on public or private property and dispose of such excrement in a manner so as not to create a nuisance.

6. **Inoperable and Junk Vehicles.** No inoperable or junk vehicle shall be permitted to park on any street within LENHARDT SQUARE for a period of more than two (2) days and shall not be stored for more than seven (7) days on any Lot unless enclosed within a structure.

7. **Recreational Vehicles.** Recreational vehicles, including but not limited to snowmobiles, all-terrain vehicles, or motorcycles not licensed to operate on city streets shall not be permitted to operate within the confines of LENHARDT SQUARE. Recreational vehicles may not be stored for more than seven (7) cumulative days in any thirty (30) day period on any Lot unless enclosed within a structure or completely screened from view by a solid privacy fence.

8. **Home Occupations.** Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by Developers or an Owners Association, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations (Sec. 27-606). Vehicle trips to a dwelling not located in Tract 4A or Tract 5A.2 where the occupant carries on a Home Occupation shall not exceed, on average, more than two (2) vehicle trips during any hour. A Home Occupation in Tract 4A or Tract 5A.2 is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

- (a) Hours of operation may extend from 7:30 A.M. to 9:00 P.M.;
- (b) The activity must constitute a permitted use in the mixed-use zone established in this Agreement;
- (c) The business may employ up to three persons, including the residents of the dwelling, who are present on the property at any given time or who visit the property at least once a day. The unit must meet any applicable building and fire codes; and
- (d) The business may employ sign advertising, but such advertising must be located on the Lot where the Home Occupation is located and shall comply with all applicable government regulations and private covenants or restrictions. In addition, any signage advertising a Home Occupation shall be



displayed in a lobby or other place inside the structure where the business is located or, if located on or outside of the structure, the sign shall not exceed two (2) square feet in size. Only one sign may be displayed for each Home Occupation. Section 27-606(f) and (g) of the Unified Zoning Regulations shall not apply to such a business to the extent those provisions are inconsistent with this subparagraph.

(e) Residents and Unit Owners are advised that carrying on certain Home Occupations, including those that include employees, may require compliance with special code requirements applicable to commercial establishment. All residents and Unit Owners are advised to consult with local building officials before establishing a Home Occupation. Residents and Unit Owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

9. **Scheduled Sporting Events and Related Facilities.** Parks and other Common Areas located in LENHARDT SQUARE are intended primarily for the benefit of residents of LENHARDT SQUARE and only secondarily for the benefit of other persons. Common Areas should be constructed to include attractive landscaping, benches, picnic and game tables, walkways, children’s play facilities, and other amenities that serve the immediate neighborhood and appeal to a diversity of users. Amenities that promote traffic and parking congestion should be avoided as much as possible. To that end no Common Area shall be used for, and no Common Area shall be constructed to include infrastructure that is specifically intended to be used for the organized play of football, baseball, soccer, track, or other similar sports by competing teams on a scheduled or regular basis. No permanent goal posts, field-striping, baseball diamonds, baseball pitching mounds, dugouts, or score boards shall be constructed in any Common Area. Nothing in this Agreement shall prohibit the construction of baseball backstops and outdoor basketball or tennis courts in the Common Areas

**ARTICLE V – INFRASTRUCTURE AND TRACT DEVELOPMENT STANDARDS**

A. **Infrastructure Development Standards.** The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute the Annexation Agreement that will prescribe additional standards for the dedication, construction and maintenance of public rights-of-way, streets, sidewalks, utilities, and other infrastructure in LENHARDT SQUARE. The standards described in the Annexation Agreement shall apply to all Tracts within LENHARDT SQUARE unless Developer applies for and obtains a variance from the City of Billings. All applications for variance must be approved in writing by Reviewer prior to submittal to the City. Reviewer may approve or disapprove the variance in its sole discretion.

B. **Tract Development Standards.** Tract development standards are provided to establish minimum guidelines for the development of facilities within LENHARDT SQUARE, including site work, buildings, accessory structures, parking, signage, lighting, fencing and landscaping. These standards establish the minimum construction requirements to be adopted by Developers within LENHARDT SQUARE. More detailed architectural and landscape design



guidelines (Master Design Guidelines) will be adopted by the Founders pursuant to the CCRs to govern the aesthetic and functional standards for public areas, streetscape, pedestrian areas, buildings and signage. Developers may, subject to approval by the Reviewer, adopt more (but not less) detailed and/or stringent site, building and landscape design criteria to govern construction within their respective Tracts. All construction within LENHARDT SQUARE shall comply with the Unified Zoning Regulations, International Building Code, or any other building codes or building regulations applicable under local, state, or federal law.

1. **Lot Size.** Developers shall be responsible for submitting plats for further subdivision of each Tract to the City of Billings for subdivision approval. Within these plats, Lots designated for single family construction shall comply with the minimum size requirements described in Exhibit B. In accordance with Exhibit B, Lot size for multi-family, commercial, and mixed-use structures may vary in size depending upon the number of dwelling units contained in the structure. There are no maximum Lot size requirements. All Lots must comply with the lot coverage and setback standards set forth in this Agreement.

2. **Lot Coverage.** Lot coverage requirements are set forth in the General Requirements in Exhibit B and are based upon a percentage of total square footage of the Lot. The total combined lot coverage for all structures on any Lot shall not exceed the maximum requirements established in Exhibit B.

3. **Setbacks.** Minimum setback requirements are set forth in the General Requirements in Exhibit B.

4. **Parking.**

(a) **Required Parking.** Adequate parking shall be provided by each Unit Owner for residents, visitors, customers, renters, and employees. Parking requirements may be satisfied by on-site parking, approved street parking, off-site parking facilities, or any combination thereof. The following requirements shall apply in each zone:

(i) **MF-4.** At least two enclosed parking spaces must be provided for each Dwelling Unit in the MF-4 zone.

(ii) **MF-R.** Minimum parking requirements for multi-family residential uses shall be 1.5 parking spaces times the number of Dwelling Units (rounded to the next highest number of spaces). Except as provided hereafter, the maximum number of parking spaces shall not exceed 1.75 times the number of Dwelling Units (rounded to the next highest number of spaces). Developer may construct more than 1.75 parking spaces per Dwelling Unit, but all spaces in excess of that number must be incorporated as part of a structure that includes multi-family Dwelling Units or in a separate underground or multi-level parking facility. At least one parking stall for each Dwelling Unit shall be provided in covered or enclosed parking facilities. In order to insure adequate parking, parking

spaces, including enclosed spaces, must be maintained in a manner that accommodates vehicle parking and may not be used primarily for non-vehicular storage.

(iii) **MU.** The minimum parking requirements for residential dwelling units within the MU district shall be determined as set forth in the attached Exhibit C. No more than ten percent (10%) of the area of any lot within Tract 4A or 5A.2 may be utilized for surface parking.

(b) **Joint Parking.** Joint parking agreements are encouraged. Unit Owners may enter into agreements with other Unit Owners located within a 600-foot radius to share parking spaces provided the agreement complies with the requirements set forth in Exhibit C. For uses not referenced in the joint use matrix found in Exhibit C, allowable joint use parking reductions requested by the Developer shall be determined by the City zoning coordinator with the consent of Reviewer up to, and not exceeding, a total reduction factor of 1.5.

(c) **Off-Site Parking.** Each off-site parking area shall be accessible by a public right-of-way. If space is leased in an off-site parking area to meet minimum parking requirements, the term of any lease while minimum parking requirements are in effect 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 such lease shall be subject to prior review by the City of Billings and shall provide that if the right to use the designated off-site parking is for any reason terminated or forfeited the City shall be immediately advised. In case of such termination or forfeiture, all uses and activities so served shall cease until adequate off-street parking meeting the requirements of this Agreement is again provided. All requirements for setbacks, landscaping, signage, and lighting established in this Agreement, the CCRs, and/or the Master Design Guidelines or other applicable standards shall apply to off-site parking facilities. All off-site and on-site parking facilities shall satisfy any applicable handicapped accessibility requirements. Off-site parking shall be located within six hundred (600) feet of the building or use for which it is required, 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.

(d) **Garages.** The incorporation of multi-level parking garages into principal building structures in the Mixed-Use and Multi-Family-Restricted zones is encouraged. Ground level parking garages shall be limited to 2,500 square feet and may accommodate no more than ten (10) vehicles unless approved by the Reviewer. Freestanding multi-level parking garages shall be considered a principal structure. A minimum of ten (10) feet, or the applicable IBC minimum standard, whichever is greater, shall be maintained between garages and other structures. Parking garages must conform to CCRs and Master Design Guidelines.



(e) **Landscaping.** Parking lots shall be landscaped in accordance with the CCRs and the Master Design Guidelines.

5. **Right-of-Way and Landscaped Green Belt Improvements Generally.**

A minimum 10-foot landscaped green belt, which may be incorporated into any required building setback, shall be landscaped and maintained along any property line that abuts the Shiloh Drain or a public or private right-of-way or street unless the same is bordered by a developed Pathway or Linear Parkway maintained by the Master Association, an Owners Association, or the City. Founders shall establish design standards for such landscaped green belt areas. Developers shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. Unless maintenance responsibilities are specifically accepted by the Master Association and/or City, Unit Owners shall maintain their yards as well as the space in the landscaped green belt area and any easement or right-of-way up to the back of the curb, the edge of paving of the street, or the midline of any easement not bordering a street, in conformance with the CCRs and Master Design Guidelines. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

6. **Average Density Limits.** The number of residential Dwelling Units shall not exceed the maximum density-per-acre limits set forth in Exhibit B. For purposes of determining compliance with this requirement, the total number of residential Dwelling Units in the subject Tract or parcel of the development shall be divided by the gross acres of the Tract or parcel excluding any open space/pathways set aside in such Tract or parcel pursuant to the Master Plan. Average density limits shall be measured by evaluating the average, overall per-acre density for each part of a Developer's project that is subject to a different density limitation. Density limits shall not be measured by evaluating the actual density for each individual acre. Actual per-acre densities in a particular part of a Developer's project area may be higher than the allowed limits if the average density for the Developer's property in each zone as a whole complies with the density limitations set out in Exhibit B.

7. **Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S 1400.** A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A, 4A and 5A adjoining King Avenue. A minimum fifteen (15) foot wide landscaped green belt shall be maintained inside the property line of the portion of Tract 1A adjoining C/S 2064 (Tracts 6B), C/S 3125 (Tract 4A), and C/S 1400 (Tract 1A). The Developers of Tracts 1A, 4A, and 5A shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. The landscaped green belts described in this paragraph shall be maintained in accordance with Article V.B.5. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

8. **Loading, Storage and Service Areas.** Loading and service areas shall not be permitted in the front of any Lot or in any side yard adjacent to and visible from a



street within LENHARDT SQUARE and shall be subject to design standards adopted by the Founders.

9. **Fence, Wall, Berms and Hedge Improvements.** Fences, walls, berms and hedges within LENHARDT SQUARE shall be constructed according to the following minimum standards:

- (a) All improvements shall comply with the City of Billings, Montana clear vision standards and the maximum height restrictions set forth in Exhibit B;
- (b) All improvements shall comply with the CCRs and Master Design Guidelines;
- (c) A permit shall be obtained from the City prior to constructing any fence over six (6) feet in height or any wall over four (4) feet in height.

10. **Accessory Structures.** Detached accessory structures other than garages shall be no larger than 300 square feet. A minimum of 5 feet, or the applicable Unified Zoning Regulations minimum standard, whichever is greater, shall be maintained between detached accessory structures other than garages and any other structure. All detached accessory structures must conform to the CCRs and Master Design Guidelines. Accessory structures in Tract 4A and Tract 5A.2 are subject to special review in accordance with Article V.G.1. above.

11. **Projections.** In Tracts other than Tract 4A and Tract 5A.2, awnings, stoops, open porches, balconies, bay windows, cantilevered decks, permitted signage, and similar projections may extend into fifty percent (50%) of the width of any required building setback provided the projection does not cause a hazard or interfere with any improved Linear Parkway located within the setback. In Tract 4A and Tract 5A.2 such projections may extend to, but not over, the boundary of the public right-of-way. The lowest point of any projection must be at least eight (8') feet beyond the surface of any sidewalk, pathway, driveway or other travel surface located below the projection.

12. **Signage.** The signage requirements included in Article 27-700 of the Unified Zoning Regulations ("Sign Code") and any subsequent amendments thereto shall govern the regulation of signage in LENHARDT SQUARE so far as they are not inconsistent with this Agreement. To the extent that different Sign Code regulations apply depending upon the zoning category where the signage is located, for this purpose only Tracts 1A and 3A shall be deemed to be a residential professional zone; Tracts 4A and 5A.2 shall be deemed to be a commercial zone; and Tracts 5A.1 and 2A shall be deemed to be a residential zone. For purposes of regulating signage the mixed-used areas (Tract 4A and Tract 5A.2) shall be subject to the same regulations that govern the Central Business District, including Ordinance No. 07-5437 approved October 22, 2007 amending Section 27-705(c) of the Unified Zoning Regulations. In addition all signs shall comply with CCRs and Master Design Guidelines.



**13. Lighting.**

(a) All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than twenty (20) feet above grade;

(b) All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

(c) Canopy, marquee and “wall pack” lighting shall be fully shielded. No internally illuminated fascia shall be allowed.

(d) All lighting shall comply with CCRs and Master Design Guidelines.

**14. Design Standards.** Additional Design Standards may be included within the CCRs and/or Founders may adopt Master Design Guidelines for use in LENHARDT SQUARE. Such standards and guidelines shall govern building, landscape and Common Area construction. Developers may adopt more stringent standards or guidelines and/or additional compatible standards or guidelines for areas located within the Tract being developed, provided such standards or guidelines are compatible with the Master Design Guidelines and approved by the Reviewer. All construction within LENHARDT SQUARE shall comply with the International Building Code, the International Fire Code, and any other building codes or building regulations applicable under local, state, or federal law.

**ARTICLE VI – OPEN SPACE**

**A. Master Plan Common Areas Generally.** Founders hereby agree that certain portions of LENHARDT SQUARE will be permanently set aside for park and recreational uses sufficient to meet the needs of the residents of LENHARDT SQUARE. Founders further agree that they will cause an easement for pedestrian and bike travel by the general public to be dedicated in or near the Shiloh Drain Easement Area for inclusion in the Heritage Trail System. The lands set aside in accordance with this Article VI.A. will include the Master Common Areas shown on the Master Plan (Exhibit A) and may include, but are not limited to, open spaces, Green Roofs and other roof-top amenities, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. The total acreage set aside for park and recreational use as depicted on Exhibit A is approximately 15.35 acres. The general size, location, and design of Master Common Areas described in this Agreement and designated in the Master Plan are conceptual in nature and are subject to modification by Founders and future Developers through the platting process. Any such modifications must, however, be approved by the Reviewer, and the City of Billings must receive the consent of the Reviewer prior to approving any plat that modifies the size, location, or design of the Master Common Areas

described herein. The City of Billings shall be entitled to review and approve any material reduction in the size of the Master Common Areas or material change of the function of those areas if such reduction or change would entitle the City to withdraw its waiver of statutory and local park dedication requirements mandated under M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A. Nothing in this Agreement shall prohibit a Developer from establishing Developer Common Areas within its Tract, provided maintenance of such additional common areas shall be the responsibility of the Developer and/or any Owners Association created by the Developer, unless the Master Association agrees in writing to undertake such maintenance responsibilities. Developers may agree to assume maintenance responsibilities for Master Common Areas by entering into a written agreement with the Master Association.

**B. Annexation Agreement to Prescribe Standards for Common Areas.** The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute an annexation agreement that will prescribe standards for the designation, development, and maintenance of parks and other Common Areas in LENHARDT SQUARE. Although the particular terms of the annexation agreement will be determined later, it is currently anticipated that the agreement will address these and other issues: (1) waiver by the City of statutory and local regulatory park dedication requirements in accordance with M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A.; (2) maintenance obligations of the Master Association, Developers and the City; (3) construction standards for linear parkways; and (4) mutual easements for the construction and maintenance of Common Areas on private and public property.

**C. Roof-Top Amenity Areas.** The roof area of each building over forty feet (40”) in height (measured to the top of the enclosed structure and not including non-enclosed structures, towers, antennae, etc.) in a mixed-use zone (Tract 4A and Tract 5A.2) shall include roof-top amenities that comply with this Agreement. Such roof-top amenities may include, but are not limited to, one or more of the following: Green Roofs, gardens, pools, terraces, decks, balconies, porches, atriums, greenhouses, picnic areas, recreational facilities, or similar amenities. For purposes of this Article VI.C. “roof area” shall include both the roof structure immediately above the uppermost floor of the building and also any horizontal setback areas created when a floor of the building is recessed from the line of the façade of the floor below. One hundred percent of each roof area not necessary for the use, storage, or operation of mechanical equipment related to the function of the building shall be devoted to such roof-top amenities unless the Reviewer grants a partial exemption from this requirement after receiving a written request from the Developer. The Reviewer may exempt part of the roof area from this requirement if the Reviewer determines in its discretion that the portion proposed for exemption is too small, inaccessible, or otherwise unavailable for reasonable construction or maintenance as a roof-top amenity. All roof-top amenities shall be professionally designed and constructed and shall comply with all applicable building codes, ordinances, and laws. ~~Neither Reviewer nor the City~~ shall not be required to review any building design, specifications or drawings for compliance with such codes, ordinances, laws or other building standards and therefore shall not be responsible for any violation of the same or any negligence in the design or construction of any roof-top amenity or other element of any structure. All roof-top amenities shall be well constructed, according to any applicable building and safety codes, repaired, and maintained so that they provide a useful and attractive area for the private or semi-private use of tenants or owners in the subject building or adjacent mixed-use neighborhood in the Tract.

**ARTICLE VII - CROSS EASEMENTS FOR PEDESTRIANS AND VEHICLES**

At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the Common Areas of LENHARDT SQUARE (or the Tract) devoted to pedestrian walkways, bike paths, and private roadways intended for common use.. At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of LENHARDT SQUARE (or the Tract).

**ARTICLE VIII - ENFORCEMENT**

**A. Statement of Purpose.** The parties acknowledge that from time to time disputes may arise involving the City, Founders, Unit Owners, the Master Association, Owners Associations, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

**B. Right to Enforce by City.** The terms of this Agreement may be enforced by the City as provided for in Article 27-1600 of the City Code of Billings, Montana.

**C. Right to Enforce by Unit Owners and Master Association.** 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 owners of property within LENHARDT SQUARE and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as the Unit Owners within LENHARDT SQUARE. The parties further agree that the Master Association shall have standing to enforce the terms of this Agreement relative to the City or any Unit Owner or Owners Association regardless of whether the Master Association owns property in LENHARDT SQUARE. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

**ARTICLE IX -AMENDMENTS AND VARIANCES**

**A. Amendments or Changes.** Amendments or changes to this Planned Development Agreement shall be processed using the same procedures for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent above those approved pursuant to Exhibit B.
3. Create additional allowed uses;
4. Reduce open space greater than two (2) percent in any Tract; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

**B. Variance Procedures.** Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not listed within this Agreement or for uses prohibited within the Unified Zoning Regulations.

**C. Zone Change Procedures.** Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

**ARTICLE X - GENERAL PROVISIONS**

**A. Neutral Interpretation.** Founders 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.

**B. Coordination with Other Regulations.** In the event that there is any conflict between this Planned Development Agreement and other zoning regulations and/or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Planned Development Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of LENHARDT SQUARE either by its express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations and/or ordinances applicable to LENHARDT SQUARE are subsequently amended, the amended version of such regulations and/or ordinances shall likewise continue to be applicable to LENHARDT SQUARE to the extent they are not inconsistent with this Agreement.

**C. Streets.** Founders have provided a list of names for future streets in LENHARDT SQUARE. Developers may use any of these names without further approval of Founders. Proposed street names not contained on this list must be approved by Founders prior to adoption by the City. Both street names and addresses shall be determined in cooperation with the City and the City Fire Department.

**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 Founders or the City shall be given at the following addresses or such other addresses as Founders or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Founders: Lenhardt Property, LP  
4035 Cedarbrook Court  
Bellingham, WA 98229-5007

[and]

Lenhardt Enterprises, LLC  
c/o Allan R. Lenhardt  
240 East Drive  
Baton Rouge, LA 70806

[and]

Lenhardt Farm, LLC  
c/o Janice L. Rehberg  
4401 Highway 3  
Billings, MT 59106

With copies to: William A. Cole  
Cole Law Firm, PLLC  
3860 Avenue B, Suite C West  
Billings, MT 59102-7550

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

With Copies to: City-County Planning Department  
510 N. Broadway, 4<sup>th</sup> Floor Parmly Library  
Billings, MT 59101

City Attorney's Office  
P.O. Box 1178  
Billings, MT 59103-1178

**E. Waiver.** Unless expressly so provided in this Agreement, 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 that the non-defaulting party may otherwise have at law or in equity as a result of the default.

**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 Founders, the City, the Unit Owners, the Master Association, 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. Attorneys' Fees and Costs.** In the event either party shall file any proceeding, whether at law or in equity, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court costs, if any, from the other party.

**J. 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.

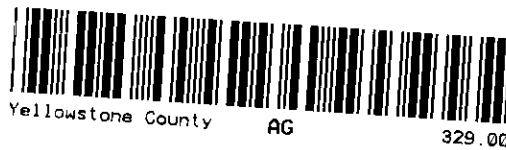
**K. No Partnership.** The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

**L. 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.

**M. 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.

**N. 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.

**O. 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.



P. **Recordation.** This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

**NOTICE**

**THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN LENHARDT SQUARE, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN LENHARDT SQUARE, 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.**

Q. **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 Founders, the City, Developers, Unit Owners, the Master Association, and their heirs, successors, and assigns.

R. **Contact Person.** The Founders hereby designate a contact person who may be contacted with respect to any questions, comments, or concerns. The contact person shall be Janice Rehberg, 4401 Highway 3, Billings, MT 59106.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

**FOUNDERS:**

LENHARDT PROPERTY, LP

By: Lorraine M Newman  
LORRAINE NEWMAN  
Its: Partner

LENHARDT FARM, LLC

By: Janice L Rehberg  
JANICE L. REHBERG  
Its: Managing Member

LENHARDT ENTERPRISES, LLC

By: Allan R. Lenhardt  
ALLAN R. LENHARDT  
Its: Member



CITY:



CITY OF BILLINGS

By: [Signature]  
Ron Tussing

Its: Mayor

By: [Signature]  
Cari Martin

Its: City Clerk

STATE OF Montana )  
 )ss.  
County of Yellowstone )

This instrument was acknowledged before me on the 7th day of May, 2008, by Lorraine M. Newman known to me to be a partner of Lenhardt Property, L.P.



[Signature]

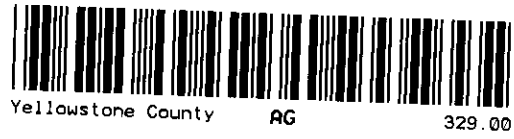
[signature]  
Barbara T. Powelson

[typed/printed name]

Notary Public for the State of Montana

Residing at: Billings, Montana

My Commission Expires: January 5, 2010



STATE OF Montana )  
 )ss.  
County of Yellowstone )

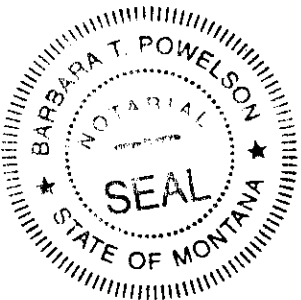
This instrument was acknowledged before me on the 7th day of May, 2008, by Janice L. Rehberg known to me to the Managing Member of Lenhardt Farm, LLC



Barbara T. Powelson  
[signature]  
Barbara T. Powelson  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Billings, Montana  
My Commission Expires: January 5, 2010

STATE OF MONTANA )  
 )ss.  
County of Yellowstone )

This instrument was acknowledged before me on the 7th day of May, 2008, by Allan R. Lenhardt known to me to ~~XXX~~ a member of Lenhardt Enterprises, LLC



Barbara T. Powelson  
[signature]  
Barbara T. Powelson  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Billings, Montana  
My Commission Expires: January 5, 2010

STATE OF MONTANA )  
 )ss.  
County of Yellowstone )

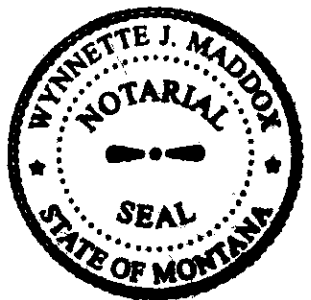
This instrument was acknowledged before me on the 9<sup>th</sup> day of May, 2008, by Ron Tussing, known by me to be the Mayor of the City of Billings.



Wynnette J Maddox  
[signature]  
Wynnette J Maddox  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Shepherd, Montana  
My Commission Expires: 9-16, 2010

STATE OF MONTANA )  
 )ss.  
County of Yellowstone )

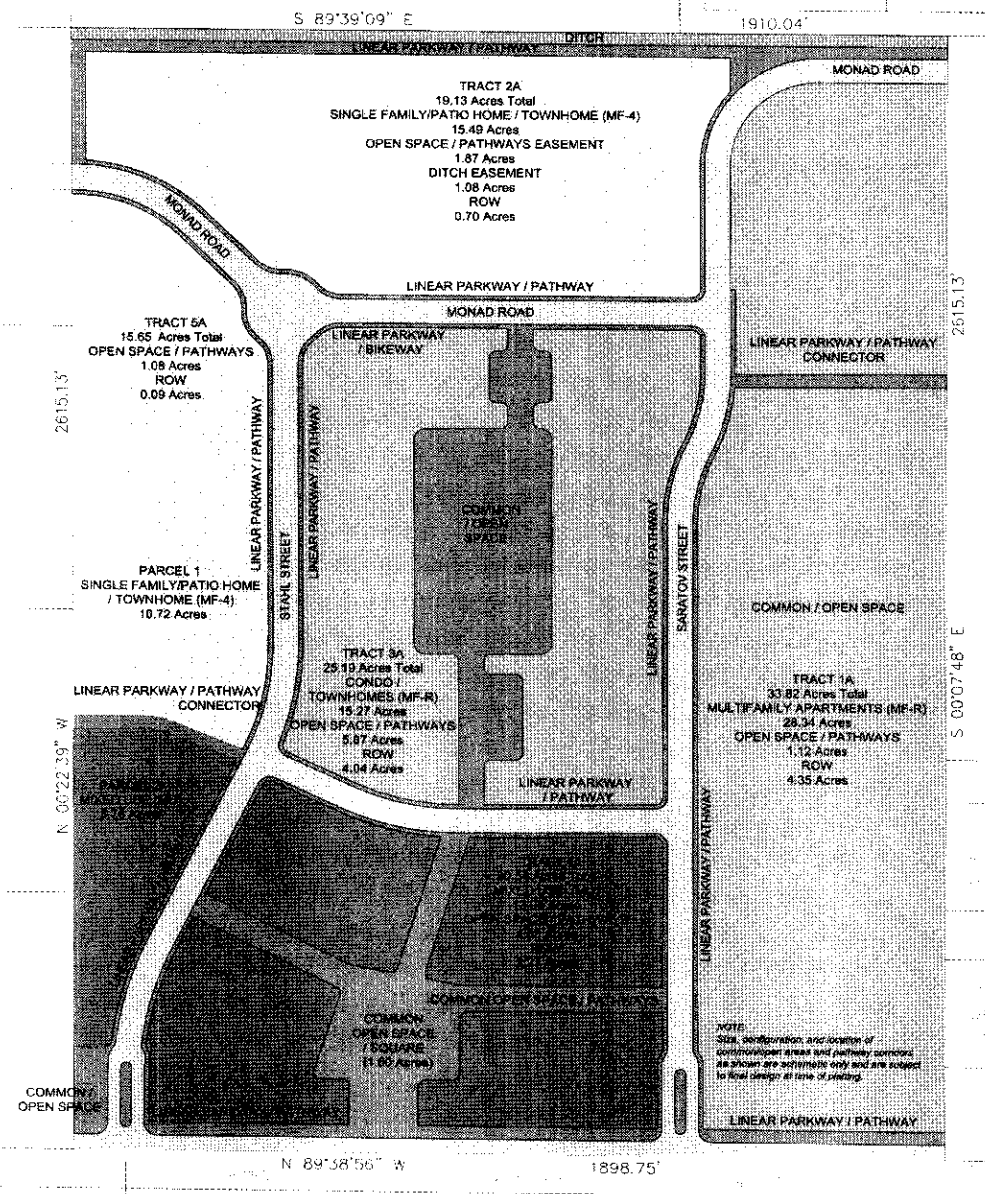
This instrument was acknowledged before me on the 9<sup>th</sup> day of May, 2008, by Cari Martin, known by me to be the City Clerk of the City of Billings.



Wynnette J Maddox  
[signature]  
Wynnette J Maddox  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Shepherd, Montana  
My Commission Expires: 9-16, 2010



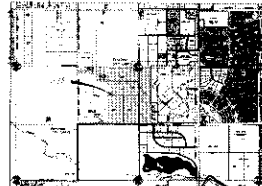
**EXHIBIT A**



**LENHARDT SQUARE**

CONCEPTUAL MASTER PLAN  
 January 22, 2008

Billings, Yellowstone County, Montana



\* Streets and area shown as right-of-way will be stricken and the area added to the developable area of each Tract for purposes of calculating average density limits under Article V.B.6.



**EXHIBIT B**  
**GENERAL REQUIREMENTS\***

<b>Minimum Lot Size Per Structure</b>	<b>MF-4**</b>	<b>MF-R**</b>	<b>MU**</b>
1 dwelling unit	6,000	6,000	
2 dwelling units	7,000	7,000	
3 dwelling units	8,500	8,500	
4 dwelling units	10,000	10,000	
5 dwelling units		11,000	
6 dwelling units		12,000	
7 dwelling units		13,000	
8 dwelling units		14,500	
9 dwelling units		16,000	
10 or more dwelling units			1,500 sq.ft. each additional dwelling unit
<b>Setback Requirements (in feet)</b>			
<b>Front:</b>			
From Linear Parkway	5 <sup>1</sup>	5	5
From streets (right-of-way)	20 <sup>2</sup>	20	0 <sup>3</sup>
<b>Sides:<sup>4</sup></b>			
1 Story	5	5	5
2 Story	8	8	8
3+ Story	9 + 1	9 + 1	0
Side Adjacent to Street	10	10	0
Rear <sup>4</sup>	20	15	0
Arterials	25	25	25
<b>Maximum Height (in feet)</b>	34	40	80 <sup>5</sup>
<b>Maximum Lot Coverage</b>	50%	50%	100%
<b>Maximum Average Densities</b>	10	20 (Tract 1A)	20 <sup>7</sup>
<b>(Dwelling Units/Acre)</b>		15 (Tract 3A)	
<b>Fence/Wall/Berm/Shrub Max. Height</b>			
Front Yard and Adjacent to Street	2	2	2
Rear and Side Yards not on Street	8	8	6

\* The limitations described in this table are subject to, and in no way supersede, all applicable building codes and regulations. Developers shall at all times comply with the International Building Code, the International Fire Code, and all other local, state, or federal building codes or regulations.

\*\* As of the date this Agreement was originally approved, these zones correspond to the following Tracts: MF-4 (Tract 2A, Tract 5A.1); MF-R (Tract 1A, Tract 3A); MU (Tract 4A, Tract 5A.2).

<sup>1</sup> If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway.

<sup>2</sup> Staggered building facades and angled placement of structures relative to the front lot line are encouraged in all zones. The minimum setback requirement in the MF-4 zone is also a maximum setback or "build-to" requirement. In that zone at least 20% of the façade must be at the setback line (from the street right-of-way and Linear Parkway) if the structure is oriented parallel to the street. If the structure is oriented at an angle to the street, at least one structural corner of the structure must be located at the setback line.

<sup>3</sup> At 40 feet or 3 stories visible from street, remainder of floors must be set back at least 30% of the depth of the lot.

<sup>4</sup> Zero lot lines allowed pursuant to 27-617 Unified Zoning Regulations and for accessory structures and garages.



Yellowstone County

AG

329.00

**3464966**

Page: 46 of 47  
05/09/2008 04:49P

<sup>5</sup>Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

**EXHIBIT C**

**PART 1**  
**PARKING REQUIREMENTS – MIXED-USE ZONE**

<b>TYPE OF USE</b>	<b>REQUIRED PARKING (spaces / dwelling unit)</b>
Residential	1.0/dwelling unit
Lodging	1.0/bedroom
Office	2.0/1,000 square feet
Retail	3.0/1,000 square feet
Other Uses	To be determined by Zoning Coordinator upon request of Developer and consent of Reviewer

**PART 2**  
**JOINT PARKING FACTORS REDUCTION MATRIX**

Joint use parking agreements may result in a reduction of the combined parking requirements for the Units entering into the agreement. Allowable reductions shall be determined using the following joint parking reduction matrix by dividing the sum of the required parking minimums for each use as specified in Exhibit C, Part 1 by the joint parking reduction factor set forth in the following matrix.

	RESIDENTIAL	LODGING	OFFICE	RETAIL
RESIDENTIAL	1	1.1	1.4	1.2
LODGING	1.1	1	1.7	1.3
OFFICE	1.4	1.7	1	1.3
RETAIL	1.2	1.3	1.2	1

Example: A residential building with ten units requires 10 parking spaces and a neighboring 2,000 square feet office building requires 4 parking spaces. The adjusted minimum parking requirement for the two buildings is 10. ( $10 + 4 = 14 \div 1.4 = 10$ ). Similarly the adjusted minimum parking requirement for a ten unit residential unit and a 3,000 square foot retail store would be 16. ( $16 + 9 = 19 \div 1.2 = 15.83$ ). (Any remainder shall be rounded up.)

Return to: City of Billings  
Cari Martin, City Clerk  
210 N. 27<sup>th</sup> Street  
Billings, MT 59101



**3505105**  
Page: 1 of 7  
04/29/2009 04:25P

## **CONSENT TO MINOR MODIFICATION OF PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE**

In accordance with Unified Zoning Code Section 27-1310, the parties to the Planned Development Agreement for Lenhardt Square ("Agreement") recorded on May 9, 2008 as Document No. 3464966 and relating to the following real property:

Tracts 1A, 2A, 3A, 4A, 5A of Certificate of Survey 2063, Amended according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana as Document Number 3460596.

desire to make a minor modification to the Agreement by substituting the attached "Exhibit B (First Amended)/General Requirements" in the place of "Exhibit B/General Requirements" (page 45 and 46 of the original Agreement). The parties to the Agreement consent to this modification, said parties being the CITY OF BILLINGS, a Montana municipality ("the City"), of 210 North 27th Street, Billings, Montana 59101, and LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively "Founders"). In addition, M & K BLUE ONE, LLC, as equitable owner and successor in interest of Founders under a contract for deed involving the sale of Tract 1A of LENHARDT SQUARE (as such tract is described by Certificate of Survey 2063, Amended, filed in the office of the Clerk and Recorder of Yellowstone County, Montana as Document No. 3460596), also consents to this modification.

IN AGREEMENT WITH THE FOREGOING, the authorized representatives of the foregoing parties have executed this document on the date or dates appearing below. The parties agree that this document may be signed in counterparts using separate signature pages.

Consent to Minor Modification of Planned Development Agreement for Lenhardt Square



CITY OF BILLINGS

By: Nicole Cromwell  
NICOLE CROMWELL  
Zoning Coordinator, Planner II

STATE OF MONTANA )  
County of Yellowstone )ss.  
)

This instrument was acknowledged before me on the 29<sup>th</sup> day of April, 2009, by Nicole Cromwell, known by me to be the Zoning Coordinator of the City of Billings.



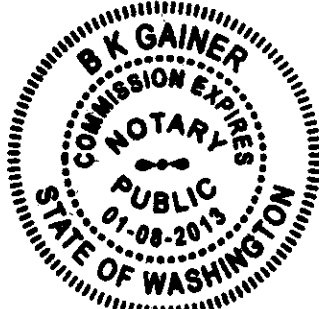
Barbara T. Powelson  
[signature]  
Barbara T. Powelson  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Billings, Montana  
My Commission Expires: January 5, 2010

LENHARDT PROPERTY, LP

By: Lorraine Newman  
LORRAINE NEWMAN  
Its: General Partner

STATE OF Washington )  
County of Whatcom )ss.  
)

This instrument was acknowledged before me on the 24<sup>th</sup> day of March, 2009, by Lorraine Newman, known to me to be the general partner of Lenhardt Property, L.P.



B.K. Gainer  
[signature]  
B.K. Gainer  
[typed/printed name]  
Notary Public for the State of Washington  
Residing at: 336 34th St. Bellingham  
My Commission Expires: Jan. 08, 2013

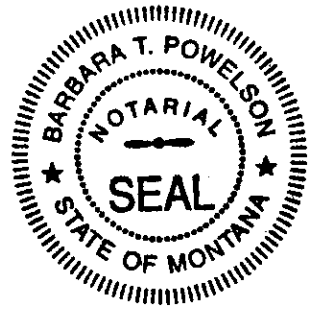


**LENHARDT FARM, LLC**

By: *Janice L. Rehberg*  
JANICE L. REHBERG  
Its: Authorized member

STATE OF Montana )  
County of Yellowstone )ss.

This instrument was acknowledged before me on the 14<sup>th</sup> day of April, 2009, by Janice L. Rehberg known to me to the authorized member of Lenhardt Farm, LLC.



*Barbara T. Powelson*  
[signature]  
Barbara T. Powelson  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Billings, Montana  
My Commission Expires: January 5, 2010

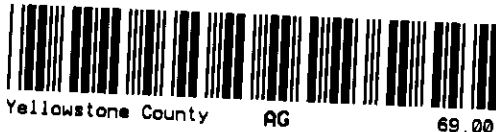
**LENHARDT ENTERPRISES, LLC**

By: \_\_\_\_\_  
ALLAN R. LENHARDT  
Its: Authorized member

STATE OF MONTANA )  
County of Yellowstone )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2009, by Allan R. Lenhardt known to me to the \_\_\_\_\_ of Lenhardt Enterprises, LLC

\_\_\_\_\_  
[signature]  
\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_, 20\_\_



3505105

Page: 4 of 7  
04/29/2009 04:25P

**LENHARDT FARM, LLC**

By: \_\_\_\_\_  
JANICE L. REHBERG  
Its: Authorized member

STATE OF \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2009, by Janice L. Rehberg known to me to the authorized member of Lenhardt Farm, LLC.

\_\_\_\_\_  
[signature]  
\_\_\_\_\_  
[typed/printed name]  
Notary Public for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_,  
My Commission Expires: \_\_\_\_\_, 20\_\_

**LENHARDT ENTERPRISES, LLC**

By: *Allan R. Lenhardt*  
ALLAN R. LENHARDT  
Its: Authorized member

*Louisiana*  
STATE OF MONTANA )  
*Parish of East Baton Rouge* )ss.  
County of Yellowstone )

This instrument was acknowledged before me on the 9<sup>th</sup> day of April, 2009, by Allan R. Lenhardt known to me to the managing member of Lenhardt Enterprises, LLC

*Leah W. Thibaut*  
\_\_\_\_\_  
[signature] Leah W Thibaut  
\_\_\_\_\_  
[typed/printed name] Notary # 61601  
Notary Public for the State of *Louisiana* ~~Montana~~  
Residing at: *Louisiana*, ~~Montana~~  
My Commission Expires: for life, 20\_\_



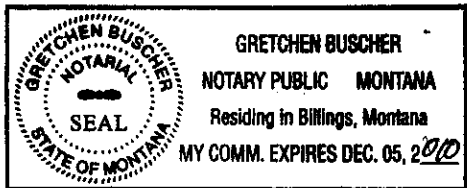
Consent to Minor Modification of Planned Development Agreement for Lenhardt Square



M & K BLUE ONE, LLC  
By: [Signature]  
CAL KUNKEL  
Its: Authorized Member

STATE OF MONTANA )  
County of Yellowstone )ss.  
)

This instrument was acknowledged before me on the 20<sup>th</sup> day of April, 2009, by Cal Kunkel known to me to an authorized member of M & K Blue One, LLC



[Signature]  
[signature] Gretchen Buscher  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Billings, Montana  
My Commission Expires: 12/5, 2010

Note: This Exhibit B (First Amended) is a minor modification of the Planned Development Agreement for Lenhardt Square, Exhibit B (pages 45-46), recorded on May 9, 2008 as Document No. 3464966.



**EXHIBIT B (First Amended)**  
**GENERAL REQUIREMENTS\***

<b>Minimum Lot Size Per Structure</b>	<b>MF-4**</b>	<b>MF-R**</b>	<b>MU**</b>
1 dwelling unit	6,000	6,000	
2 dwelling units	7,000	7,000	
3 dwelling units	8,500	8,500	
4 dwelling units	10,000	10,000	
5 dwelling units		11,000	
6 dwelling units		12,000	
7 dwelling units		13,000	
8 dwelling units		14,500	
9 dwelling units		16,000	
10 or more dwelling units		1,500 sq.ft. each additional dwelling unit	
 <b>Minimum Setback Requirements (in feet from property line unless otherwise specified)</b>			
<b>Front:</b>			
From Linear Parkway <sup>1</sup>	5	5	5
From back of curb	20 <sup>2</sup>	20	0 <sup>3</sup>
<b>Sides:<sup>4</sup></b>			
1 Story	5	5	5
2 Story	8	8	8
3+ Story	9 + 1/story	9 + 1/story	0
Side Adjacent to Street	10	10	0
<b>Rear<sup>4</sup></b>			
Arterials	20	15	0
	25	25	25
<b>Maximum Height (in feet)</b>	34	40	80 <sup>5</sup>
<b>Maximum Lot Coverage</b>	50%	50%	100%
<b>Maximum Average Densities (Dwelling Units/Acre)</b>	10	20 (Tract 1A) 15 (Tract 3A)	20
<b>Fence/Wall/Berm/Shrub Max. Height</b>			
Front Yard and Adjacent to Street	2	2	2
Rear and Side Yards not on Street	8	8	6

\* The limitations described in this table are subject to, and in no way supersede, all applicable building codes and regulations. Developers shall at all times comply with the International Building Code, the International Fire Code, and all other local, state, or federal building codes or regulations.

\*\* As of the date this Agreement was originally approved, these zones generally correspond to the following Tracts: MF-4 (Tract 2A, Tract 5A.1); MF-R (Tract 1A, Tract 3A); MU (Tract 4A, Tract 5A.2).



<sup>1</sup> If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway. This setback does not apply from the Linear Parkway on the north side of King Avenue.

<sup>2</sup> Staggered building facades and angled placement of structures relative to the front lot line are encouraged in all zones. The minimum setback requirement in the MF-4 zone is also a maximum setback or "build-to" requirement. In that zone at least 20% of the façade must be at the applicable minimum setback line (measured from either the curb or the Linear Parkway) if the structure is oriented parallel to the street. If the structure is oriented at an angle to the street, at least one structural corner of the structure must be located at the setback line.

<sup>3</sup> At 40 feet or 3 stories visible from street, remainder of floors must be set back at least 30% of the depth of the lot.

<sup>4</sup> The zero lot line on one side of a shared property line allowed pursuant to 27-617 Unified Zoning Regulations for adjacent single family dwellings shall also be permitted in all zones and for accessory structures and garages.

<sup>5</sup> Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

City Clerk  
Attn: Ceri Martin

AG

3676656

07/25/2013 11:29 AM Pages: 1 of 5 Fees: 45.00  
Jeff Martin Clerk & Recorder, Yellowstone MT



AMENDED PLANNED DEVELOPMENT AGREEMENT  
LENHARDT SQUARE  
For Tract 3A, C/S 2063  
in the City of Billings, Yellowstone County, Montana

THIS AGREEMENT, made and entered into this 10th day of June, 2013, by and between STOCK LAND PROPERTIES, Inc., a Montana corporation (hereinafter referred to as "Owner"), and the City of Billings (hereinafter referred to as "City").

WITNESSETH

WHEREAS, the undersigned is the Owner of all of Tract 3A, C/S 2063 within the Lenhardt Square Planned Development, according to a Document No. 3460596 on file with County Clerk and Recorder;

WHEREAS, Tract 3A, C/S 2063 is currently governed by a planned development agreement on file with Clerk and Recorder as Document No. 3464966 and as amended by Document No. 3501505 and as outlined within the City Zoning Ordinance;

WHEREAS, the aforesaid Owner applied for a change of the development density allowed as shown in Exhibit B (First Amended) – General Requirements for the above-described real property from 15 dwelling units per acre to 20 dwelling units per acre;

WHEREAS, the City has approved the change to Exhibit B (First Amended) – General Requirements after due and proper administrative review, notice and public hearing, all in accordance with City Ordinances and requirements;

NOW, THEREFORE, in consideration of the premises, the Owner and the City hereby establish and declare that Exhibit B (First Amended) – General Requirements of the Lenhardt Square Planned Development Agreement is hereby amended to allow a development density of 20 units per acre on Tract 3A, C/S 2063, effective immediately.

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT.

All persons, corporations or other entities, who now have or shall hereafter acquire any interest in and to the above-described real property shall be taken and held to agree to the zoning of the above-described real property as Planned Development and as described in the foregoing documents and as amended by this agreement.







Note: This Exhibit B (Second Amended) is a modification of the Planned Development Agreement for Lenhardt Square, Exhibit B (First Amended) (pages 6 and 7), recorded on April 29, 2009 as Document No. 3505105.

**EXHIBIT B (Second Amended)**  
**GENERAL REQUIREMENTS**

Minimum Lot Size Per Structure	MF-4**	MF-R**	MU**
1 dwelling unit	6,000	6,000	
2 dwelling units	7,000	7,000	
3 dwelling units	8,500	8,500	
4 dwelling units	10,000	10,000	
5 dwelling units		11,000	
6 dwelling units		12,000	
7 dwelling units		13,000	
8 dwelling units		14,500	
9 dwelling units		16,000	
10 or more dwelling units		1,500 sq.ft. each additional dwelling unit	
 Minimum Setback Requirements (in feet from property line unless otherwise specified)			
Front:			
From Linear Parkway <sup>1</sup>	5	5	5
From back of curb	20 <sup>2</sup>	20	0 <sup>3</sup>
Sides: <sup>4</sup>			
1 Story	5	5	5
2 Story	8	8	8
3+ Story	9 + 1/story	9 + 1/story	0
Side Adjacent to Street	10	10	0
Rear: <sup>4</sup>			
Arterials	20	15	0
	25	25	25
Maximum Height (in feet)	34	40	80 <sup>5</sup>
Maximum Lot Coverage	50%	50%	100%
Maximum Average Densities (Dwelling Units/Acre)	10	20 (Tract 1A & 3A) 15 (Tract 3A)	20
Fence/Wall/Berm/Shrub Max. Height			
Front Yard and Adjacent to Street	2	2	2
Rear and Side Yards not on Street	8	8	6



\* The limitations described in this table are subject to, and in no way supersede, all applicable building codes and regulations. Developers shall at all times comply with the International Building Code, the International Fire Code, and all other local, state, or federal building codes or regulations.

\*\* As of the date this Agreement was originally approved, these zones generally correspond to the following Tracts: MF-4 (Tract 2A, Tract 5A.1); MF-R (Tract 1A, Tract 3A); MU (Tract 4A, Tract 5A.2).

<sup>1</sup> If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway. This setback does not apply from the Linear Parkway on the north side of King Avenue.

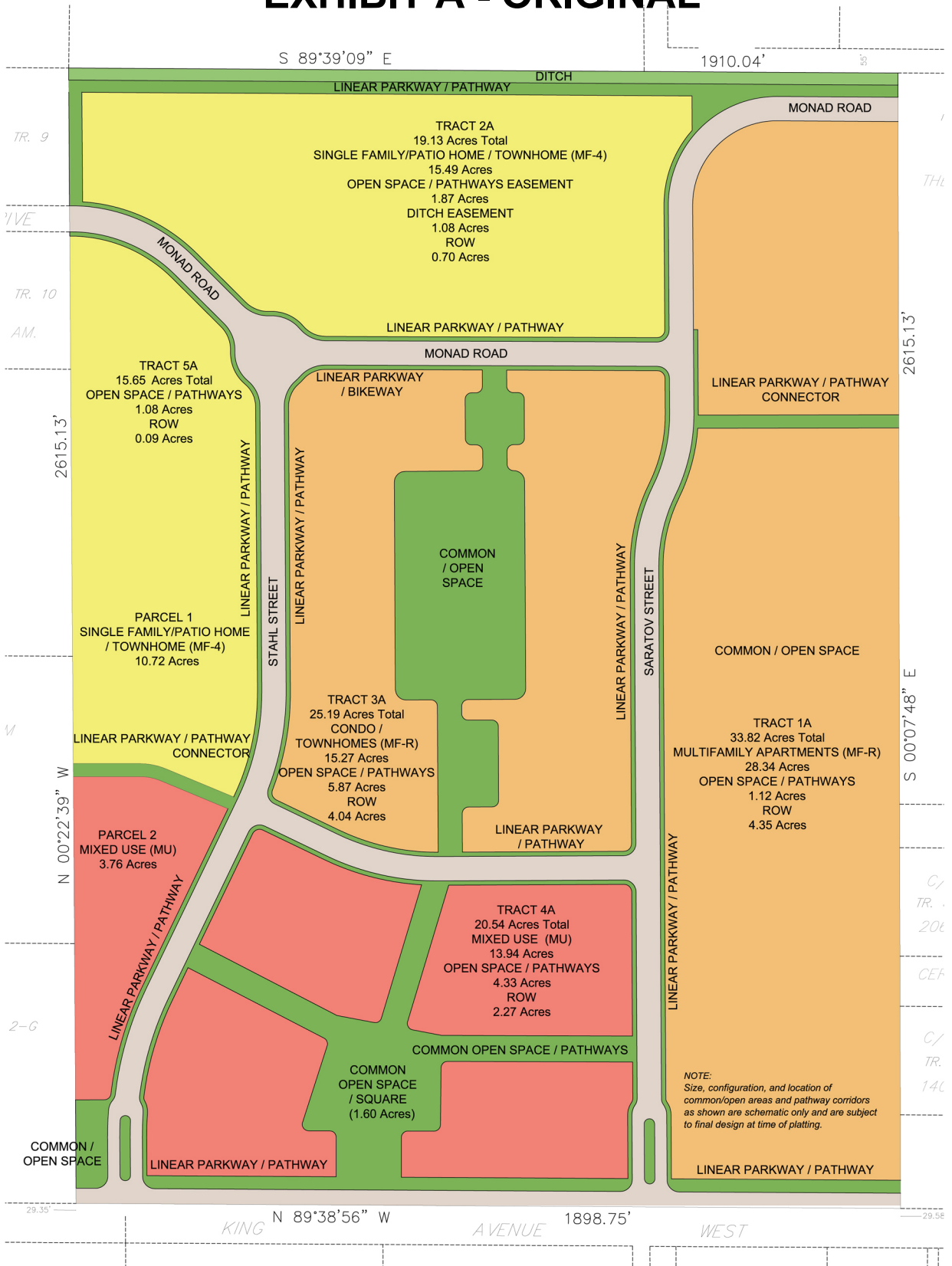
<sup>2</sup> Staggered building facades and angled placement of structures relative to the front lot line are encouraged in all zones. The minimum setback requirement in the MF-4 zone is also a maximum setback or "build-to" requirement. In that zone at least 20% of the façade must be at the applicable minimum setback line (measured from either the curb or the Linear Parkway) if the structure is oriented parallel to the street. If the structure is oriented at an angle to the street, at least one structural corner of the structure must be located at the setback line.

<sup>3</sup> At 40 feet or 3 stories visible from street, remainder of floors must be set back at least 30% of the depth of the lot.

<sup>4</sup> The zero lot line on one side of a shared property line allowed pursuant to 27-617 Unified Zoning Regulations for adjacent single family dwellings shall also be permitted in all zones and for accessory structures and garages.

<sup>5</sup> Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

# EXHIBIT A - ORIGINAL



## LENHARDT SQUARE

CONCEPTUAL MASTER PLAN

Billings, Yellowstone County, Montana

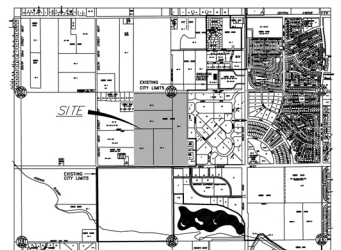
January 22, 2008



Land Planning / Landscape Architecture / Design  
1601 S. Rainbow Blvd. Suite 250  
Las Vegas, Nevada 89146  
T: 702.396.1044  
F: 702.255.0466  
www.studiovbm.com



**ENGINEERING, INC.**  
Consulting Engineers and Land Surveyors  
BILLINGS • BOZEMAN • SHERIDAN



**AMENDED**  
**PLANNED DEVELOPMENT AGREEMENT FOR**  
**LENHARDT SQUARE**

This AMENDED PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE (“Agreement” or “PDA”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between, the LENHARDT SQUARE MASTER ASSOCIATION, INC., a Montana corporation (“LSMA”) and the CITY OF BILLINGS, a Montana municipality (“the City”) of 210 North 27<sup>th</sup> Street, Billings, Montana 59101.

RECITALS

NOW WHEREAS:

1. The Lenhardt Square Master Association is an association of the owners of the property in Lenhardt Square established under the Covenants, Conditions, Restrictions and Easements for Lenhardt Square.
2. The Lenhardt Square Planned Development agreement was entered into between the Founders and the City of Billings 13 years ago and in the interceding years, there have been significant changes in the Billings housing market, infrastructure constraints and funding, surrounding development and the general economics of construction.
3. Since the original PDA was adopted, a portion of the Lenhardt Square property has been sold and developed and in that process variances from the PDA have been requested and granted.
4. The Founders and Developers of Lenhardt Square desire to update the PDA to allow for continued development within Lenhardt Square in a manner that better meets the needs of the housing market, the Developers, and the City.

NOW THEREFORE, the undersigned hereby establish and declare that the following amendments to the Lenhardt Square Planned Development Agreement shall apply to all of the real estate in Lenhardt Square and shall bind all of the present and future property owners of such real estate and shall run with the land.

This PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE (“Agreement” or “PDA”) is made and entered into this 28<sup>th</sup> day of April, 2008, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively “Founders”), and the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 North 27<sup>th</sup> Street, Billings, Montana 59101.

## RECITALS

NOW WHEREAS:

1. Founders own as tenants in common approximately 114 acres of real property in Billings, Montana, more particularly described as:

Tracts 1A, 2A, 3A, 4A, 5A of Certificate of Survey 2063, Amended according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana as Document Number 3460596.

The foregoing property, which has been owned and farmed by the Lenhardt family for many decades, shall hereafter be known collectively as “LENHARDT SQUARE.” The five individual parcels that make up the Lenhardt farm shall hereafter be known as the “Tracts” or, if referred to individually, as a “Tract.”

2. In furtherance of their plan to liquidate the property and terminate their co-tenancy relationship, the Founders desire to place certain building and use restrictions on the property within LENHARDT SQUARE, specify certain land use and design regulations for LENHARDT SQUARE, and establish a pattern of development that is consistent with Lenhardt family values and that protects the value of the investment property being liquidated.

3. In 2001 the City of Billings and Yellowstone County adopted a neighborhood plan titled the “West Billings Plan.” The purpose of the plan was to establish development guidelines in West Billings “to meet the community’s shared vision for the future of West Billings, enabling it to thrive on growth and change through innovative, aesthetic land use and responsible development” (page 1). The West Billings Plan established these policy goals, among others, for future development in the West Billings area:

- Recognition that it is not desirable for West Billings to develop with a low-density, rural character (p. 14);
- More compact development patterns are desirable because they make full use of urban services, offer cost-effective infrastructure, and hold down costs to the taxpayer (p. 15);
- Concentrate multi-family, office, and non-retail uses between commercial nodes along arterial streets (p. 17);
- Provide opportunities for a mix of housing types and mixed-use development by encouraging planned unit developments (pp. 22, 24);
- Increase residential densities and promote medium and high-density residential development within walking distance to commercial centers, medical facilities, and recreational amenities (pp. 21, 23);
- Link pedestrian-friendly residential, commercial, mixed-use, and park areas through a linear open space network, subdivision entryways, and special arterial treatments (p. 38);
- Create commercial developments with unique, identifiable focal points such as parks and linear open space (p. 38).

4. The City of Billings is growing to the west, adding more commercial and professional businesses. By providing convenient, nearby living opportunities for employees, our community can reduce the cost of constructing roads, sewers, and other infrastructure and consume fewer scarce natural resources.

5. The Shiloh Interchange and Shiloh Road have created a major new entryway into Billings that provides convenient access for commuters and visitors coming from Montana communities to the west and Wyoming communities to the south, leading to increased commercial growth along the King Avenue and Shiloh Road corridors.

6. LENHARDT SQUARE is located near what will likely become the most important new commercial area in Billings. In 2001 the City approved Montana Sapphire Subdivision, a 65-acre commercial development located on the southwest corner of the King Avenue/Shiloh Road intersection and southeast of LENHARDT SQUARE. In 2004 the City approved the Planned Development Agreement for The Village, a planned unit development managed by St. Vincent Healthcare Foundation, Inc. located on the northwest corner of the King Avenue/Shiloh Road intersection and directly to the east and adjacent to LENHARDT SQUARE. The Village will be a quality, mixed-use development with commercial, clinical, medical, and residential uses. In July 2007 the City approved a petition to annex the 164 acre Western Sky Subdivision located on the south side of King Avenue immediately south of LENHARDT SQUARE. This subdivision is being re-platted as King Meadows Subdivision and will consist of small single family lots and also provide for multi-family development. Lastly, the City is currently in the process of reviewing an application for approval of Shiloh Crossing Subdivision, which, if approved, will be a 74-acre commercial development on the southeast corner of the King Avenue and Shiloh Road intersection that is intended to house a large retail mall.

7. The increasing cost of residential lot development and single family housing construction makes quality single family housing cost-prohibitive for many young professionals, working families and retired seniors, many of whom will be working in the emerging commercial districts along King Avenue and Shiloh Road and/or seeking convenient access to medical services provided in The Village.

8. Founders desire to provide an opportunity for future development consistent with the West Billings Plan that will accommodate a variety of residential living opportunities and necessary services to support the increased commercial development occurring on the west end of Billings; encourage pedestrian and non-motorized interconnectivity; promote densities that economically support the extension of city services; and utilize economies of scale to increase the affordability of residential housing in West Billings.

9. Founders enter into this Agreement with the City to ensure that LENHARDT SQUARE will be developed and maintained in a manner that is complementary to the neighborhood and other planned developments in the area, including The Village, and that will protect the value of any property of Founders that remains undeveloped.

10. Founders seek the City's approval of the LENHARDT SQUARE planned development zoning district described in this Agreement in accordance with Unified Zoning Regulations Sec.

27-1301 through 27-1310.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for LENHARDT SQUARE, including such restrictions and protective covenants as set forth herein that shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners of such real estate, and shall run with the land.

## AGREEMENT

### ARTICLE I – PURPOSES

**A. Neighborhood Compatibility and Complementary Features.** The planned development zoning district described in this Agreement is intended to provide an opportunity for future development that will create an attractive and functional neighborhood with a variety of living opportunities in close proximity to the growing commercial development on the west end of Billings. It will include planned circulation patterns to encourage pedestrian access and reduce vehicular congestion and pedestrian/vehicular conflicts. LENHARDT SQUARE will create livable residential areas with necessary services and businesses within walking distance of each other and adjacent residential and commercial areas. It will provide connectivity to other adjacent neighborhoods of West Billings as they develop, and complement the existing planned developments in the area.

**B. Flexibility for Future Development.** This Agreement and the development it describes shall permit flexibility to meet the demands of the residential, commercial, and health care markets as they change over time. In accordance with that goal, this Agreement is designed and intended to afford the future Developer of each Tract within LENHARDT SQUARE latitude to design and construct future development in a way that meets the needs and desires of the time while still ensuring sound development for the benefit of the Founders' remaining Tracts and the neighborhood generally.

**C. Specific Goals for Tract Development.** The parties enter into this Agreement to accomplish the purposes set forth herein and further the following additional objectives of LENHARDT SQUARE:

1. To provide for an appealing architectural arrangement of buildings and spaces through the use of a wide variety of living opportunities, architectural sizing, and residential services;
2. To provide for ample but not excessive off-street parking that is well screened and landscaped and that incorporates multilevel parking where feasible;
3. To provide for well-configured squares, plazas, walkways, bikeways, greens/commons, landscaped streets and parks that are woven into the pattern of the entire development and dedicated to collective social activity, recreation, and visual enjoyment;
4. To require attractive landscaping beneficial to residents and the community;

5. To provide for a pedestrian-friendly and bicycle-friendly environment;
6. To facilitate and foster complementary uses serving the needs of the residential, commercial, professional and medical community in the area;
7. To promote a unique, attractive, and distinctive mixed-use development;
8. To promote and assist in the orderly development of LENHARDT SQUARE and the west end of Billings;
9. To encourage creativity in design, quality, and character of new development; and
10. To minimize adverse aesthetic impacts associated with excessive lighting, signage, parking and other design features.

**D. Consistency with Overall Community Goals.** The parties understand, acknowledge and agree that this plan for LENHARDT SQUARE includes and promotes consideration of the following:

1. Creating a planned development zone that permits single family, small and large scale multi-family, and residential-commercial mixed-use development uses in proximity to one another, while protecting and respecting the character and quality of adjacent uses;
2. Increasing urban densities to utilize land use efficiencies and economies to slow suburban sprawl;
3. Encouraging flexibility in design and use of mixed-use and residential zones to allow for economy, convenience, variety, and amenity;
4. Enhancing the aesthetics of the increasingly commercialized King Avenue and Shiloh Road corridors;
5. Ensuring adequate provision of public services such as water, sewer, public safety, public parks, open space, storm water control, and vehicular and pedestrian-bicycle circulation; and
6. Reducing traffic congestion and degradation of the existing air quality.

## **ARTICLE II – DEFINITIONS**

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein either expressly or by implication. The following definitions shall apply to this PDA:

**A. Annexation Agreement.** “Annexation Agreement” refers to the Annexation Agreement for Lenhardt Square executed by Founders and the City in conjunction with this Agreement.

**B. Common Areas.** “Common Areas” means any property or facility that the Master Association or an Owners Association owns or in which it otherwise holds possessory or use rights or owes maintenance obligations for the common use or benefit of more than one Unit in LENHARDT SQUARE. Common Areas may include but are not limited to open spaces, green roofs, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. Common Areas may include both public or private parks, sidewalks, and other facilities. Common Areas do not include prohibited competitive sporting facilities described in Article IV.J.9.

1. **“Master Common Areas”** means those Common Areas established in the Master Plan for LENHARDT SQUARE that are owned by, or the possessory or use rights are held or maintenance obligation are owed by, the Master Association. Master Common Areas have been defined by approximate size, general location, and intended purpose. Actual size, location, size, improvements and purpose shall be established by Developers during the platting process for each Tract, subject to the approval and consent of the Reviewer.

2. **“Developer Common Areas”** means those Common Areas that are owned by, or the possessory or use rights are held or maintenance obligations are owed by, an Owners Association.

**C. Conditions, Covenants, and Restrictions.** The “Conditions, Covenants, and Restrictions” (also referred to as the “CCRs”) means those conditions, covenants, and restrictions recorded against all or any part of the real property in LENHARDT SQUARE by Founders as the Declarant.

**D. Developer.** “Developer” means any person or entity who purchases a Tract or any portion of a Tract within LENHARDT SQUARE from Founders or their successors in interest for further subdivision, development, or resale in the ordinary course of business or for investment purposes.

**E. Dwelling Unit.** “Dwelling Unit” means one (1) or more rooms designed for or occupied by one (1) family for living or sleeping purposes and may contain kitchen and/or bathroom facilities for use solely by one (1) family. All rooms comprising a Dwelling Unit shall have access through an interior door to other parts of the Dwelling Unit. A studio/efficiency apartment constitutes a Dwelling Unit.

**F. Founders.** “Founders” means Lenhardt Property, L.P., Lenhardt Farm, L.L.C., and Lenhardt Enterprises, L.L.C., co-tenants and co-owners of LENHARDT SQUARE. Any rights inuring to Founders under this Agreement shall be exercised by Founders jointly, and if any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

**G. Green Roof.** “Green Roof” means an engineered roofing system that allows for the propagation of rooftop vegetation and the retention or detention of storm water while maintaining the integrity of the roof structure and membrane. A Green Roof may be intended for exclusively decorative and environmental purposes with a shallow planting medium and a substrate depth ranging between approximately two inches and six inches and weighing between approximately 165 pounds and 375 pounds per square yard, designed to accommodate hardy, low height, drought resistant plant species. Alternatively, a Green Roof may be designed to accommodate deeper planting media, irrigation systems, complex landscaping features, and a broad range of plant species, and may be designed to support human occupant loads.

**H. Home Occupation.** “Home Occupation” shall have the same meaning as that phrase has in the Unified Zoning Regulations (Sec. 27-606) and shall be subject to the same restrictions described therein except as provided in Article IV.J.8.

**I. Linear Parkways.** “Linear Parkways” means those Master Common Areas depicted on Exhibit A (First Amended) that are linear open spaces containing developed bikeways, pathways, or pedestrian trails that are intended to provide alternative means of non-motorized transportation within LENHARDT SQUARE and connections to adjacent properties.

**J. Lot.** “Lot” means a portion of LENHARDT SQUARE depicted as a separately identified parcel of land on a recorded subdivision plat or survey other than a Tract owned by Founders that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Common Areas, as defined above, or property dedicated to the public.

**K. Master Association.** “Master Association” means the association established by Founders to own, operate and/or maintain the various Master Common Areas and improvements and to administer and enforce the CCRs and other governing documents pertaining to LENHARDT SQUARE.

**L. Master Design Guidelines.** “Master Design Guidelines “ means the design standards and architectural and aesthetic guidelines adopted pursuant to the CCRs, as they may be amended, which govern construction, modification, and maintenance of Common Areas and Units, including structures, landscaping, and other improvements.

**M. Master Plan.** “Master Plan” means a concept plan and drawing showing existing Tracts and zoning as well as proposed streets, access points, Common Areas and other site improvements intended for LENHARDT SQUARE. The details depicted in the Master Plan are conceptual in nature and may be further refined by subsequent platting or amendment of this Agreement. The current Master Plan of LENHARDT SQUARE is attached to this Agreement and marked “Exhibit A.” The Amended Master Plan is attached as “ Exhibit A(First Amended)”

**N. Mixed-Use.** “Mixed-use” refers to the mixing of different land uses – residential, retail, employment, entertainment, lodging, civic, cultural, etc. – in one relatively discrete area

featuring stacked uses in low to mid-rise buildings, arranged along streets and around public squares or other open spaces. Mixed-used developments have these additional characteristics:

1. The development promotes synergy of uses and a sense of place featuring an integrated, interactive community with its own recognizable identity, focused on one or more central community features or land uses and dedicated to collective social activity and common, but diverse, business interests;

2. The development includes within the mixed-use area three or more different, significant uses such as retail, entertainment, office, medical, residential, hotel, civic, cultural, and/or recreational that are complementary and together promote a sense of community, but at least one of which is residential; and

3. The development includes uninterrupted pedestrian connections and other physical and functional components that promote integration of community businesses, residential and civic elements to create a mutually supportive community and efficient and intensive use of land.

**O. Owners Association.** “Owners Association” means an association of owners of property within a portion of LENHARDT SQUARE, other than the Master Association, established by a Developer to administer additional covenants applicable to that particular area, and/or to own, operate and/or maintain any Developer Common Areas within the area, including but not limited to associations of owners of Units, business properties, condominiums, townhomes, or single family homes.

**P. Pocket Park.** “Pocket Park” means a small park that is approximately one-half (1/2) of an acre or smaller.

**Q. The Reviewer.** “The Reviewer” means that person, entity, or committee appointed by Founders that shall have all of the rights, duties and responsibilities assigned to the Reviewer in this Agreement and the CCRs, including but not limited to the review and approval or denial of the design and planning elements of all subsequent development of Tracts and subdivision plats filed for property within LENHARDT SQUARE.

**R. Shiloh Drain.** “Shiloh Drain” means the lateral drainage ditch that lies within the boundaries of the Shiloh Drain Easement Area shown on Exhibit A (First Amended).

**S. Shiloh Drain Easement Area.** The “Shiloh Drain Easement Area” means the easement within which the Shiloh Drain is located on the north property line of LENHARDT SQUARE as depicted on Exhibit A (First Amended) hereto.

**T. Small In Scale.** “Small in scale” means a retail, professional or other commercial space not exceeding 8,000 square feet in total floor space on all levels.

**U. Special Review Approval.** “Special Review Approval” means approval by the City of Billings pursuant to the Special Review Approval process established in Sections 27-613 and 27-1503 of the Unified Zoning Regulations and as modified by this Agreement, including approval by the Reviewer in its discretion.

V. **Tract.** “Tract(s)” means one or more of Tracts 1A through 5A of C.O.S. 2063, Amended. Platting, subdivision and property line adjustments have been implemented in Lenhardt Square resulting in new descriptions and adjusted boundaries. The Amended Master Plan reflects these changes. For reference purposes, the Amended Agreement shall refer to the original Tract designations which now appear on the Master Plan as follows:

- Tract 1A – Lots 1-5 Block 1, First Filing
- Tract 2A – Tract 2A
- Tract 3A – Lot 1 & 2 Block 1, Third Filing
- Tract 4A – Lots 1 & 2A, Block 1, 2<sup>nd</sup> Filing
- Tract 5A – Tract 5A-1

If the exterior boundaries of Tract 5A is changed for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, any reference herein to a particular Tract shall be deemed to instead apply to that successor Tract that most closely approximates the boundaries, location, size and character of the Tract originally referenced in this Agreement and depicted on the Master Plan attached hereto. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract or parcel.

W. **Unified Zoning Regulations.** “Unified Zoning Regulations” means the Unified Zoning Regulations of the City of Billings, Yellowstone County Jurisdictional Area.

X. **Unit.** “Unit” means a portion of LENHARDT SQUARE depicted as a separately identified Lot, parcel or condominium on a recorded subdivision plat or survey that may be independently owned and conveyed. The term “Unit” refers to the land, if any, that is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a structure containing multiple dwellings that may be independently owned and conveyed, each such dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit. The term does not include Common Areas, as defined above, or property dedicated to the public.

Y. **Unit Owner.** “Unit Owner” means the owner of a Unit within one of the Tracts in LENHARDT SQUARE.

### **ARTICLE III – BINDING EFFECT**

A. **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 real property within LENHARDT SQUARE shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement.

**B. Founders.** Any obligations of Founders arising under this Agreement shall be binding upon all of the Founders jointly, and all rights inuring to Founders under this Agreement shall be exercised by Founders jointly. If any action is permitted or required by Founders hereunder said action shall only be effective if all Founders join in and none dissent from the subject action.

#### **ARTICLE IV – USE RESTRICTIONS**

**A. Land Use Restrictions Generally.** Tracts in LENHARDT SQUARE shall be located and classified by zone as described below. In the event that the external boundaries of any Tract changes for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, the zoning classification and other Tract-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area has the same zoning classification and restrictions as the successor Tract of which the area becomes a part. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract.

**1. Tracts 1A, 2A 3A and 5A – Residential Multi-Family-Restricted (MF-R).** Tracts 1A, 2A, 3A and 5A are located, respectively, along the east border, the north border, the center and the west border of LENHARDT SQUARE as shown on Exhibit A (First Amended hereto). The use of the Lots in Tracts 1A, 2A, 3A and 5A are contemplated to be multi-family residential in scale and character. These tracts are intended primarily to accommodate apartments, townhomes, condominiums, and other multi-family and attached single-family complexes and uses permitted in the Residential Multi-Family-Restricted Zoning District as defined in the Unified Zoning Regulations; however, single family residences are permitted. Additional requirements for multi-family Units in Tracts 1A, 2A, 3A and 5A are set forth in Exhibit B (Second Amended).

**2. Tract 4A– Mixed-Use (MU).** Tract 4A is located on the southern border of LENHARDT SQUARE near King Avenue West as shown on Exhibit A (Second Amended). Tract 4A is designed for residential and complementary commercial uses as further described in the definition of “mixed-use” found in Article II, including, but not limited to, in-home and small-scale professional and retail space. These tracts may be developed as a combination residential-commercial-cultural center with retail activities conducted in a unified development designed to serve the residential Dwelling Units in the Tract and surrounding neighborhood with shopping facilities consisting of convenience, retail and personal service establishments that secure their principal trade by supplying the daily needs of the neighboring population. Multi-family residential uses are also permitted.

**B. Procedure for Obtaining Reviewer Approval; Mixed-Use Requirements.** Any Developer of property in LENHARDT SQUARE shall obtain the written approval of the Reviewer prior to submitting any application for subdivision, zone change, building permit, or

design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the Developer first presents written evidence of the Reviewer's approval. Neither the Reviewer nor the City shall approve the Developer's application unless the proposed development complies with the requirements of this Agreement. Any development proposed for Tract 4A shall be mixed-use in character as described in this Agreement. In making this determination the Reviewer and the City shall examine the plan for development of all property proposed for development by the Developer in the two tracts. An individual structure or Lot may be devoted to a single use that is not mixed-use as long as the Reviewer determines in its discretion that the Developer's project as a whole satisfies the mixed-use requirements of this Agreement and:

1. There is or will be sufficient residential, commercial, professional, or other non-residential uses included in the subject structure or on other nearby Lots that are part of the Developer's project to preserve and promote the mixed-use character of the project and Tract 4A intended by this Agreement; and
2. The Developer's project will otherwise comply with all other requirements of this Agreement.

**C. Permitted and Prohibited Uses – Generally.** Lots in each of the Tracts identified below may be used for any of the uses specifically permitted below. Lots in each of the Tracts identified below may not be used for any of the uses specifically prohibited. If a use is neither specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by the Reviewer.

**D. Permitted Uses – Tracts 1A, 2A, 3A and 5A (MF-R).** Units in Tracts 1A, 2A, 3A and 5A, unless otherwise prohibited herein, may be used for any of the following uses:

1. Accessory uses and detached structures (other than garages) less than 300 square feet in size that are associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement.
2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community center;
6. Community residential facility as defined by Unified Zoning Regulations;
7. Garages, subject to size limitations described in Article V.B.4.(d);
8. Health clubs, spas, gymnasiums, and other recreational facilities if part of a

residential building or multi-family residential complex;

9. Home occupations;
10. Family day care home serving up to 6 children or adults;
11. Multi-family or attached dwellings including apartments, residential suites, condominiums, townhomes and other multiplex housing units;
12. Single family residential uses;
13. Any use that is permitted in a residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

**E. Permitted Uses – Tract 4A (Mixed-Use).** Units in Tract 4A , unless otherwise prohibited herein, may be used for any of the following uses, provided that nonresidential permitted uses shall be restricted to spaces not exceeding 8,000 square feet of gross floor area except upon special review:

1. Animal grooming facilities;
2. Art galleries;
3. Assisted living facilities serving any number of persons;
4. Bakeries;
5. Banks, credit unions, and savings and loan offices;
6. Barber and beauty shops;
7. Bicycle sales, rental, and repair shops;
8. Boarding, lodging, and bed and breakfast houses;
9. Bookstores;
10. Building supply stores and hardware stores (but not lumber yards);
11. Bus stops;
12. Camera, hobby, toy, and gift stores;
13. Ceramics and pottery shops;
14. Charitable, religious, educational or nonprofit institutions;

15. Clothing and apparel stores;
16. Common Areas;
17. Community centers;
18. Community residential facility as defined by Unified Zoning Regulations serving up to 8 persons on a 24-hour-a-day basis;
19. Convalescent, nursing, and retirement homes;
20. Convenience and specialty food stores (but no gasoline sales);
21. Cultural, educational, and instructional facilities;
22. Day care center (as defined in Unified Zoning Regulations Sec. 27-201);
23. Denturists;
24. Department stores;
25. Drug stores - prescription and pharmacy;
26. Dry cleaning or laundry drop-off and pick-up store;
27. Eating and drinking establishments that do not sell alcohol for on-site consumption;
28. Education facilities, including elementary and secondary schools, colleges, universities, professional schools, and junior colleges;
29. Family day care home (as defined in Unified Zoning Regulations Sec. 27-201) serving up to six children or adults;
30. Finance and loan companies;
31. Florists;
32. Food and grocery stores;
33. Furniture - retail only;
34. Flower shops and nurseries (provided that there is no outside storage);
35. Garages, subject to size limitations described in Article V.B.4.(d);

36. Group day care home services (as defined in Unified Zoning Regulations Sec. 27-201) for 7 to 12 children or adults;
37. Hardware and appliance – retail only;
38. Health clubs, spas, and gymnasiums;
39. Health and fitness related businesses;
40. Home occupations (mixed-use area)
41. Hotels and motels;
42. Jewelry stores;
43. Libraries, museums, and art galleries;
44. Liquor stores
45. Medical and dental offices;
46. Membership organization offices;
47. Multifamily residential uses consistent with a mixed-use development, including apartments, residential suites, condominiums and townhomes;
48. Offices, including real estate, financial, counseling, professional, medical, and dental;
49. Office supply and equipment, copying and mail services stores – retail only;
50. Open spaces, park areas, gardens, squares, athletic fields, bike trails, playgrounds, and walking paths, and other Common Areas;
51. Parking facilities, including above or below ground parking garages;
52. Parks, playgrounds, pools, sport courts;
53. Pet stores;
54. Photo studios, shops, and processing - retail only;
55. Physical therapy facilities;
56. Postal service facilities;
57. Public administration facilities, including government facilities, except

correctional institutions;

58. Publicly-owned or government operated buildings and uses;

59. Retail stores;

60. Satellite dishes up to 2 feet in diameter if not otherwise restricted by applicable design criteria or other restrictions;

61. Senior and assisted living residential facility;

62. Sports medicine and rehabilitation facilities;

63. Theaters;

64. Veterinary clinic, outpatient only;

65. Wine store;

66. Any use permitted in a residential multi-family, residential multi-family restricted, residential professional, neighborhood commercial or community commercial zoning district pursuant to the Unified Zoning, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

**G. Permitted Uses Subject to Special Review – All Tracts.** Uses identified below and designated with an asterisk (\*) are permitted in Tract 4A without special review under Article IV.E. above. The following uses are permissible in other Tracts only upon consent of the Reviewer and the approval of the City of Billings through the special review process and may be subject to appropriate conditions. For purposes of this provision, the special review procedures contained in the Unified Zoning Regulations shall apply subject to any additional requirements contained in this Agreement, including the requirement of Reviewer consent. The following special review uses may be permitted in Tracts 1A, 2A, 3A, 4A, and 5A unless specifically restricted to particular Tracts:

1. Accessory structures in Tract 4A (other than garages) associated with a permitted principal structure and subject to the additional allowances and requirements of Article V.B.9 of this Agreement;

2. Animal boarding facilities (allowed in Tract 4A only);

3. Assisted living facilities serving more than 8 persons;\*

4. Bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption (allowed on Tract 4A only). However, bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption are exempt from Sec. 27-612(a)(1).

5. Cell, communication and satellite towers and satellite dishes greater than 2 feet in diameter provided such towers are incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A only);
6. Convalescent, nursing and retirement homes;\*
7. Day care centers serving more than 12 children or adults;\*
8. Churches, synagogues, and places of worship;
9. Emergency services, including fire stations and ambulance services;
10. Funeral homes and mortuaries;
11. Group day care home serving 7 to 12 children or adults;\*
12. Health and fitness related businesses not associated with a residential facility;\*
13. Hospitals and hospital related services (allowed in Tract 4A only);
14. Medical, dental and health-related clinics (allowed in Tract 4A only);
15. Medical, dental, and other professional offices;\*
16. Medical laboratories (allowed in Tract 4A only);
17. Modular homes;
18. Offices and small-scale retail;\*
19. Pharmacies (allowed in Tract 4A only);
20. Physical therapy facilities;\*
21. Research and testing facilities (allowed in Tract 4A and Tract 5A.2 only);
22. Non-residential permitted uses requiring more than 8,000 square feet of floor space (allowed in Tract 4A only);
23. Retirement facilities larger than eight (8) persons per Unit;
24. Sports and rehabilitative commercial facilities;\*

25. Veterinary clinic with boarding facilities (allowed in Tract 4A only).

**H. Permitted Uses Subject to Special Review – Factors to be Considered.** The City of Billings may authorize the preceding special review uses through the Special Review Approval process if the proposed use conforms to the following standards and criteria. To make this determination the City shall conduct a public hearing and make findings of fact to determine whether:

1. The proposed use is consistent with the terms, intent and objectives of this Agreement;
2. The proposed use is compatible with surrounding uses;
3. The proposed use is not detrimental to other property in LENHARDT SQUARE;
4. The proposed use complies with other provisions of law and ordinances of the City of Billings;
5. Reviewer has given its written consent to the special use (Reviewer may, in its discretion, withhold its consent, and no special review shall be granted for any use in LENHARDT SQUARE without the express written consent of Reviewer);
6. The proposed use will not attract large volumes of vehicular traffic or create traffic congestion that cannot be properly managed and regulated with traffic control equipment or strategies;
7. The proposed use is of a similar architectural scale to existing development in the neighborhood, or will use an existing building for its purposes;
8. Minimum visual and functional conflict will be created between the proposed use and nearby uses;
9. Anticipated noise and congestion created by the proposed use will be comparable to the levels created by other uses permitted on that Unit.

**I. Prohibited Uses.** The following operations and uses shall not be permitted on any property in LENHARDT SQUARE, regardless of where the property is located:

1. Amusement park services or facilities;
2. Animal shelters, public or private;
3. Apparel fabrication;
4. Arcades, including but not limited to video arcades;

5. Auction houses or auction yards;
6. Auto body and collision repair;
7. Automobile repair shops;
8. Automotive Sales and Service. Any establishment engaged in automotive sales, leasing, repair, service, salvage, rental, or storage;
9. Auto parts supply;
10. Competitive sporting facilities as described in Article IV.J.9.
11. Beverage bottling plant or wholesaling operations;
12. Billboard signs;
13. Body Alteration Salons. Any establishment engaged in body painting, body piercing, or tattooing;
14. Brewery (except as incidental to a restaurant, such as a brew pub);
15. Broadcasting (radio and television) stations, studios and antenna support structures;
16. Building fabrication, except construction of buildings for use on-site;
17. Building construction operations other than for temporary, on-site construction by general contractors or subcontractors unless office-only without outside equipment or materials storage;
18. Bus terminal and maintenance facilities, except for shuttle bus storage facilities intended to service shuttle buses that operate solely within LENHARDT SQUARE or the immediately surrounding neighborhood;
19. Campground;
20. Car wash;
21. Casinos and gambling or gambling activity, as defined in M.C.A. 23-5-112, unless permitted with legally enforceable restrictions described in the CCRs;
22. Chain link fencing;
23. Crematoriums;

24. Dumping concrete, cement residue, refuse, dirt, garbage, or fill materials without authorization of property owner;
25. Drugs or drug paraphernalia. Using, promoting, or facilitating the use of illegal drugs or any business engaged in selling so-called drug paraphernalia;
26. Dry cleaning, laundry plant or public laundromat, but this prohibition shall not be applicable to facilities for pickup and delivery by the ultimate consumer;
27. Electronic component manufacturing;
28. Equipment rental shop;
29. Excavation. Businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;
30. Exotic dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;
31. Extractive industries. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals unless such sale or storage is an ancillary part of a hardware, home-improvement, or similar retail store;
32. Fire sale or bankruptcy sale;
33. Fireworks. Fireworks manufacture and/or sales;
34. Flea markets;
35. Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations;
36. Foundries and factory operations;
37. Furniture fabrication;
38. Garbage handling.. Any dumping, disposing, incineration or reduction of garbage, but this prohibition shall not prohibit garbage compactors located near the rear of any building or small-scale recycling containers intended to collect recyclable materials as a convenience for neighborhood residents;
39. Gas or diesel stations;
40. Go-cart tracks;
41. Greenhouses for commercial or retail purposes;

42. Gun or archery range unless located within a structure and not visible or audible from outside the structure;
43. Guns and Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;
44. Heavy equipment sales and service;
45. Ice manufacturing for resale of ice not intended for use on-site ;
46. Illegal Drugs. The sale, manufacture, or possession of illegal drugs;
47. Industrial production or manufacturing facilities;
48. Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities, except public facilities if permitted by Section 76-2-411, Montana Code Annotated;
49. Junk shops, second-hand stores, and antique stores;
50. Livestock and Wild Animals. No swine, poultry, goats, horses, cows, or other livestock or domestic or wild animals shall be kept on the property within LENHARDT SQUARE except for domestic pets and other animals specifically permitted under this Agreement and, which shall be subject to any applicable restrictions contained herein, and no agricultural grazing is allowed unless specifically permitted by Founders in accordance with this Agreement;
51. Livestock Production. Any establishment engaged in livestock production or slaughter, except for agricultural grazing permitted by Founders on undeveloped tracts within LENHARDT SQUARE;
52. Livestock and Farm Equipment. Any establishment engaged in the sale of livestock, ranch, or farm equipment;
53. Machine and welding shops;
54. Manufactured Homes and Manufactured Home Parks. The sale, use, maintenance, rental, repair or storage of manufactured housing or mobile homes;
55. Manufacturing businesses;
56. Metal fabrication and manufacturing;
57. Mill work and cabinet shops;
58. Motorized sports vehicle repair, storage, and/or sales (including parts sales);

59. Mining and Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
60. Motocross tracks;
61. Motorcycle racing;
62. Nuisances. Any use that constitutes a nuisance under Article IV.J.3 of this Agreement.
63. Paper warehouses;
64. Pawn shops;
65. Power Poles and Overhead Power Lines. Installing new power poles and overhead power and utility lines; provided, however, this shall not prohibit existing power poles and lines and shall not prohibit adding new lines to the existing poles;
66. Product manufacturing unless the product is intended primarily for local consumption or use;
67. Propane sales;
68. Race tracks;
69. Recreational vehicles. The commercial sale, maintenance, rental, repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.
70. Recycling centers;
71. Rental car dealerships;
72. Vehicular, small engine and appliance repair shops;
73. Roller skating rinks;
74. Roping and rodeo arenas;
75. Sanitary dumps;
76. Scrap or waste material processing;
77. Septic systems;
78. Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations;

79. Repair shops. Shop facilities containing open or visible storage;
80. Stables;
81. Storage facilities other than garages associated with residential structures;
82. Super Stores. Retail sales uses (for goods and/or merchandise) by any person, firm, or entity that utilizes more than 40,000 square feet of any structure (nothing in this prohibition shall be interpreted to permit retail sales uses smaller than 40,000 square feet if otherwise prohibited in this Agreement);
83. Surplus store;
84. Taxidermists;
85. Tire sales, except as incidental to the operation of a general retail store;
86. Towers and Dishes. Freestanding communication and satellite towers and dishes greater than two (2) feet in diameter unless incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A only);
87. Trailer Parks and Campgrounds. Mobile home parks, trailer parks, recreational vehicle campgrounds, or any commercial establishment that permits over-night parking of recreational vehicles;
88. Truck Stop. Truck stop, as defined by Section 27-201 of the Unified Zoning Regulations;
89. Truck Terminals. Truck terminals, cartage operations, and similar uses;
90. Truck Wash. Truck wash as defined by Section 27-201 of the Unified Zoning Regulations;
91. Trucks. Sale, leasing, manufacture, rental or repair of trucks;
92. Trucking operation offices and warehouses;
93. Utility sub-stations and other utility installations other than utility lines, utility boxes, and other utility facilities used to service an individual Lot;
94. Warehouses;
95. Wholesale lumber and wholesale building materials;
96. Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock unless sold as domestic pets in a

retail pet store;

97. Wholesale distribution and sales.

**J. Other Use Regulations**

**1. Continued Farming Operations.** Founders may, in their sole and unreviewable discretion permit farming operations (including livestock grazing) on undeveloped parcels within LENHARDT SQUARE on a case-by-case basis. No Unit may be farmed or flood-irrigated without the prior express written consent of Founders. Written consent to farm and to irrigate must be obtained on an annual basis. Livestock grazing, if permitted, will be limited to a reasonable carrying capacity that prevents overgrazing. Founders may prohibit farming and/or flood irrigation in LENHARDT SQUARE in the sole, exclusive and unreviewable discretion of Founders.

**2. Irrigation.** Founders, in their sole and unreviewable discretion, may elect to retain any shares in the irrigation district serving LENHARDT SQUARE, transfer such shares to the Master Association, or transfer such shares back to the irrigation district. Founders specifically reserve, and do not waive or abandon, irrigation and drainage easements for the conveyance of water and collection of waste water wherever irrigation or drainage ditches are currently located in LENHARDT SQUARE. Without limiting the foregoing, Founders currently believe that such ditches are currently located generally along the north and south boundaries of the property. All such easements shall continue as long as flood irrigation is conducted on any Tract of LENHARDT SQUARE or as long as any such easement is necessary to convey or drain water for the benefit of an adjacent property owner. In addition, Founders reserve a fifteen (15) foot easement along the east boundary of Tract 1A for purposes of installing and maintaining a new irrigation drainage ditch for so long as flood irrigation is conducted on any Tract within LENHARDT SQUARE.

**3. Nuisance.** No nuisance shall be permitted to exist or operate on any property in LENHARDT SQUARE so as to be offensive or detrimental to other property or occupants in LENHARDT SQUARE. A nuisance includes, but is not limited to, any operations or uses that create vibration, electro-magnetic disturbances, radiation, air or water pollution, dust, emissions of odorous, toxic or nontoxic matter (including steam), and excessive noise; provided, however, that agricultural activities authorized by Founders shall not be considered a nuisance. No noxious, offensive, or hazardous activities shall be permitted upon any Unit in LENHARDT SQUARE, nor shall anything be done or placed upon any Unit that is or may become a nuisance to others. No light shall trespass onto another Unit unless approved by adjacent Unit owners or in conjunction with shared parking facilities, nor shall any light be produced from any Unit that is unreasonably bright or causes unreasonable glare. No sound shall be produced upon any Unit that is unreasonably loud or annoying, including but not limited to speakers, horns, whistles, bells, excessive barking, or other animal noises.

**4. The Shiloh Drain.** Any Unit Owner or Developer in LENHARDT SQUARE shall at all times conduct its use and activities in a manner that will preserve the integrity of the Shiloh Drain and the Shiloh Drain Easement Area, including preventing any degradation of water quality, any reduction in the flow of water, and any damage to the bed or banks of the

Shiloh Drain. Certain portions of the Shiloh Drain Easement Area may require modifications during the course of development of LENHARDT SQUARE to accommodate storm drainage from within the property. No such modifications shall be made without first obtaining written permission from the City of Billings. The cost of these modifications shall be the responsibility of Developer or Unit Owner(s) requiring access for drainage to the Shiloh Drain. In addition to the foregoing, the owner of any Unit or Tract in LENHARDT SQUARE shall not conduct or permit the conduct of the following activities:

- (a) The discharge of any liquid (except storm water runoff as directed by an approved, engineered storm drainage management plan), solid, or gas into the Shiloh Drain;
- (b) Planting or dropping any non-native fish, animal, reptile, or plant into the Shiloh Drain area;
- (c) The dumping of grass clippings or landscaping material or debris into the Shiloh Drain;
- (d) Any activities that permit or encourage refuse dumping in the vicinity of the Shiloh Drain;
- (e) Polluting water in the Shiloh Drain;
- (f) The discharge of any Hazardous Materials. 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 that relate or deal with human health or the environment, all as may be amended from time to time.

**5. Domestic Pets Limitation.** Unit Owners must comply with all ordinances or laws applicable to pet ownership. In addition, any establishment, commercial building, or single family residence may not house more than two (2) dogs and no more than a total of four (4) domestic pets other than fish (for example two (2) dogs and two (2) cats). Any Dwelling Unit in a multi-family residence facility may not house more than two (2) domestic pets (excluding fish). Any pet or animal shall be leashed at any time it is outdoors unless it is being kept in a fenced yard area. No pets shall be raised or cared for on a commercial basis except in a retail pet store or as otherwise allowed in this Agreement. Pet owners shall retrieve excrement deposited by household pets on public or private property and dispose of such excrement in a manner so as not to create a nuisance.

**6. Inoperable and Junk Vehicles.** No inoperable or junk vehicle shall be permitted to park on any street within LENHARDT SQUARE for a period of more than two (2) days and shall not be stored for more than seven (7) days on any Lot unless enclosed within a structure.

**7. Recreational Vehicles.** Recreational vehicles, including but not limited to

snowmobiles, all-terrain vehicles, or motorcycles not licensed to operate on city streets shall not be permitted to operate within the confines of LENHARDT SQUARE. Recreational vehicles may not be stored for more than seven (7) cumulative days in any thirty (30) day period on any Lot unless enclosed within a structure or completely screened from view by a solid privacy fence.

**8. Home Occupations.** Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by Developers or an Owners Association, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations (Sec. 27-606). Vehicle trips to a dwelling not located in Tract 4A where the occupant carries on a Home Occupation shall not exceed, on average, more than two (2) vehicle trips during any hour. A Home Occupation in Tract 4A is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

(a) Hours of operation may extend from 7:30 A.M. to 9:00 P.M.;

(b) The activity must constitute a permitted use in the mixed-use zone established in this Agreement;

(c) The business may employ up to three persons, including the residents of the dwelling, who are present on the property at any given time or who visit the property at least once a day. The unit must meet any applicable building and fire codes; and

(d) The business may employ sign advertising, but such advertising must be located on the Lot where the Home Occupation is located and shall comply with all applicable government regulations and private covenants or restrictions. In addition, any signage advertising a Home Occupation shall be displayed in a lobby or other place inside the structure where the business is located or, if located on or outside of the structure, the sign shall not exceed two (2) square feet in size. Only one sign may be displayed for each Home Occupation. Section 27-606(f) and (g) of the Unified Zoning Regulations shall not apply to such a business to the extent those provisions are inconsistent with this subparagraph.

(e) Residents and Unit Owners are advised that carrying on certain Home Occupations, including those that include employees, may require compliance with special code requirements applicable to commercial establishment. All residents and Unit Owners are advised to consult with local building officials before establishing a Home Occupation. Residents and Unit Owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

**9. Scheduled Sporting Events and Related Facilities.** Parks and other Common Areas located in LENHARDT SQUARE are intended primarily for the benefit of residents of LENHARDT SQUARE and only secondarily for the benefit of other persons. Common Areas should be constructed to include attractive landscaping, benches, picnic and game tables, walkways, children's play facilities, and other amenities that serve the immediate neighborhood and appeal to a diversity of users. Amenities that promote traffic and parking congestion should be avoided as much as possible. To that end no Common Area shall be used for, and no

Common Area shall be constructed to include infrastructure that is specifically intended to be used for the organized play of football, baseball, soccer, track, or other similar sports by competing teams on a scheduled or regular basis. No permanent goal posts, field-striping, baseball diamonds, baseball pitching mounds, dugouts, or score boards shall be constructed in any Common Area. Nothing in this Agreement shall prohibit the construction of baseball backstops and outdoor basketball or tennis courts in the Common Areas.

## **ARTICLE V – INFRASTRUCTURE AND TRACT DEVELOPMENT STANDARDS**

**A. Infrastructure Development Standards.** The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute the Annexation Agreement that will prescribe additional standards for the dedication, construction and maintenance of public rights-of-way, streets, sidewalks, utilities, and other infrastructure in LENHARDT SQUARE. The standards described in the Annexation Agreement shall apply to all Tracts within LENHARDT SQUARE unless Developer applies for and obtains a variance from the City of Billings. All applications for variance must be approved in writing by Reviewer prior to submittal to the City. Reviewer may approve or disapprove the variance in its sole discretion.

**B. Tract Development Standards.** Tract development standards are provided to establish minimum guidelines for the development of facilities within LENHARDT SQUARE, including site work, buildings, accessory structures, parking, signage, lighting, fencing and landscaping. These standards establish the minimum construction requirements to be adopted by Developers within LENHARDT SQUARE. More detailed architectural and landscape design guidelines (Master Design Guidelines) will be adopted by the Founders pursuant to the CCRs to govern the aesthetic and functional standards for public areas, streetscape, pedestrian areas, buildings and signage. Developers may, subject to approval by the Reviewer, adopt more (but not less) detailed and/or stringent site, building and landscape design criteria to govern construction within their respective Tracts. All construction within LENHARDT SQUARE shall comply with the Unified Zoning Regulations, International Building Code, or any other building codes or building regulations applicable under local, state, or federal law.

1. **Lot Size.** Developers shall be responsible for submitting plats for further subdivision of each Tract to the City of Billings for subdivision approval. Within these plats, Lots designated for single family construction shall comply with the minimum size requirements described in Exhibit B (Second Amended). In accordance with Exhibit B (Second Amended), Lot size for multi-family, commercial, and mixed-use structures may vary in size depending upon the number of dwelling units contained in the structure. There are no maximum Lot size requirements. All Lots must comply with the lot coverage and setback standards set forth in this Agreement.

2. **Lot Coverage.** Lot coverage requirements are set forth in the General Requirements in Exhibit B (Second Amended) and are based upon a percentage of total square footage of the Lot. The total combined lot coverage for all structures on any Lot shall not exceed the maximum requirements established in Exhibit B (Second Amended).

3. **Setbacks.** Minimum setback requirements are set forth in the General Requirements in Exhibit B.

4. **Parking.**

(a) **Required Parking.** Adequate parking shall be provided by each Unit Owner for residents, visitors, customers, renters, and employees. Parking requirements may be satisfied by on-site parking, approved street parking, off-site parking facilities, or any combination thereof. The following requirements shall apply in each zone:

(ii) **MF-R.** Minimum parking requirements for multi-family residential uses shall be 1.5 parking spaces times the number of Dwelling Units (rounded to the next highest number of spaces). Except as provided hereafter, the maximum number of parking spaces shall not exceed 1.75 times the number of Dwelling Units (rounded to the next highest number of spaces). Developer may construct more than 1.75 parking spaces per Dwelling Unit, but all spaces in excess of that number must be incorporated as part of a structure that includes multi-family Dwelling Units or in a separate underground or multi-level parking facility. Covered or enclosed parking facilities shall be provided at a rate of .70 parking spaces per Dwelling Unit. In order to insure adequate parking, parking spaces, including enclosed spaces, must be maintained in a manner that accommodates vehicle parking and may not be used primarily for non-vehicular storage.

(iii) **MU.** The minimum parking requirements for residential dwelling units within the MU district shall be determined as set forth in the attached Exhibit C. No more than ten percent (10%) of the area of any lot within Tract 4A may be utilized for surface parking.

(b) **Joint Parking.** Joint parking agreements are encouraged. Unit Owners may enter into agreements with other Unit Owners located within a 600-foot radius to share parking spaces provided the agreement complies with the requirements set forth in Exhibit C. For uses not referenced in the joint use matrix found in Exhibit C, allowable joint use parking reductions requested by the Developer shall be determined by the City zoning coordinator with the consent of Reviewer up to, and not exceeding, a total reduction factor of 1.5.

(c) **Off-Site Parking.** Each off-site parking area shall be accessible by a public right-of-way. If space is leased in an off-site parking area to meet minimum parking requirements, the term of any lease while minimum parking requirements are in effect 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 such lease shall be subject to prior review by the City of Billings and shall provide that if the right to use the designated off-site parking is for any reason terminated or forfeited the City shall be immediately advised. In case of such termination or forfeiture, all uses and activities so

served shall cease until adequate off-street parking meeting the requirements of this Agreement is again provided. All requirements for setbacks, landscaping, signage, and lighting established in this Agreement, the CCRs, and/or the Master Design Guidelines or other applicable standards shall apply to off-site parking facilities. All off-site and on-site parking facilities shall satisfy any applicable handicapped accessibility requirements. Off-site parking shall be located within six hundred (600) feet of the building or use for which it is required, 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.

(d) **Garages.** The incorporation of multi-level parking garages into principal building structures in the Mixed-Use and Multi-Family-Restricted zones is encouraged. Ground level parking garages shall be limited to 10500 square feet and may accommodate no more than fifty-two (52) vehicles unless approved by the Reviewer. Freestanding multi-level parking garages shall be considered a principal structure. A minimum of ten (10) feet, or the applicable IBC minimum standard, whichever is greater, shall be maintained between garages and other structures. Parking garages must conform to CCRs and Master Design Guidelines.

(e) **Landscaping.** Parking lots shall be landscaped in accordance with the CCRs and the Master Design Guidelines.

**5. Right-of-Way and Landscaped Green Belt Improvements Generally.** A minimum 10-foot landscaped green belt, which may be incorporated into any required building setback, shall be landscaped and maintained along any property line that abuts the Shiloh Drain or a public or private right-of-way or street unless the same is bordered by a developed Pathway or Linear Parkway maintained by the Master Association, an Owners Association, or the City. Founders shall establish design standards for such landscaped green belt areas. Developers shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. Unless maintenance responsibilities are specifically accepted by the Master Association and/or City, Unit Owners shall maintain their yards as well as the space in the landscaped green belt area and any easement or right-of-way up to the back of the curb, the edge of paving of the street, or the midline of any easement not bordering a street, in conformance with the CCRs and Master Design Guidelines. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

**6. Average Density Limits.** The number of residential Dwelling Units shall not exceed the maximum density-per-acre limits set forth in Exhibit B (Second Amended). For purposes of determining compliance with this requirement, the total number of residential Dwelling Units in the subject Tract or parcel of the development shall be divided by the gross acres of the Tract or parcel excluding any open space/pathways set aside in such Tract or parcel pursuant to the Master Plan. Average density limits shall be measured by evaluating the average, overall per-acre density for each part of a Developer's project that is subject to a different density limitation. Density limits shall not be measured by evaluating the actual density for each individual acre. Actual per-acre densities in a particular part of a Developer's project area may be higher than the allowed limits if the average density for the Developer's property in each zone as a whole complies with the density limitations set out in Exhibit B (Second Amended).

**7. Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S 1400.** A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A, 4A and 5A adjoining King Avenue. A minimum fifteen (15) foot wide landscaped green belt shall be maintained inside the property line of the portion of Tract 1A adjoining C/S 2064 (Tracts 6B), C/S 3125 (Tract 4A), and C/S 1400 (Tract 1A). The Developers of Tracts 1A, 4A, and 5A shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. The landscaped green belts described in this paragraph shall be maintained in accordance with Article V.B.5. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

**8. Loading, Storage and Service Areas.** Loading and service areas shall not be permitted in the front of any Lot or in any side yard adjacent to and visible from a street within LENHARDT SQUARE and shall be subject to design standards adopted by the Founders.

**9. Fence, Wall, Berms and Hedge Improvements.** Fences, walls, berms and hedges within LENHARDT SQUARE shall be constructed according to the following minimum standards:

- (a) All improvements shall comply with the City of Billings, Montana clear vision standards and the maximum height restrictions set forth in Exhibit B;
- (b) All improvements shall comply with the CCRs and Master Design Guidelines;
- (c) A permit shall be obtained from the City prior to constructing any fence over six (6) feet in height or any wall over four (4) feet in height.

**10. Accessory Structures.** Detached accessory structures other than garages shall be no larger than 300 square feet. A minimum of 5 feet, or the applicable Unified Zoning Regulations minimum standard, whichever is greater, shall be maintained between detached accessory structures other than garages and any other structure. All detached accessory structures must conform to the CCRs and Master Design Guidelines. Accessory structures in Tract 4A are subject to special review in accordance with Article V.G.1. above.

**11. Projections.** In Tracts other than Tract 4A, awnings, stoops, open porches, balconies, bay windows, cantilevered decks, permitted signage, and similar projections may extend into fifty percent (50%) of the width of any required building setback provided the projection does not cause a hazard or interfere with any improved Linear Parkway located within the setback. In Tract 4A such projections may extend to, but not over, the boundary of the public right-of-way. The lowest point of any projection must be at least eight (8') feet beyond the surface of any sidewalk, pathway, driveway or other travel surface located below the projection.

**12. Signage.** The signage requirements included in Article 27-700 of the Unified Zoning Regulations ("Sign Code") and any subsequent amendments thereto shall govern the regulation of signage in LENHARDT SQUARE so far as they are not inconsistent with this

Agreement. To the extent that different Sign Code regulations apply depending upon the zoning category where the signage is located, for this purpose Tracts 1A, 2A, 3A and 5A shall be deemed to be a residential professional zone and Tract 4A shall be deemed to be a commercial zone. For purposes of regulating signage Tract 4A shall be subject to the same regulations that govern the Central Business District, including Ordinance No. 07-5437 approved October 22, 2007 amending Section 27-705(c) of the Unified Zoning Regulations. In addition all signs shall comply with CCRs and Master Design Guidelines.

**13. Lighting.**

(a) All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than twenty (20) feet above grade;

(b) All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

(c) Canopy, marquee and “wall pack” lighting shall be fully shielded. No internally illuminated fascia shall be allowed.

(d) All lighting shall comply with CCRs and Master Design Guidelines.

**14. Design Standards.** Additional Design Standards may be included within the CCRs and/or Founders may adopt Master Design Guidelines for use in LENHARDT SQUARE. Such standards and guidelines shall govern building, landscape and Common Area construction. Developers may adopt more stringent standards or guidelines and/or additional compatible standards or guidelines for areas located within the Tract being developed, provided such standards or guidelines are compatible with the Master Design Guidelines and approved by the Reviewer. All construction within LENHARDT SQUARE shall comply with the International Building Code, the International Fire Code, and any other building codes or building regulations applicable under local, state, or federal law.

**ARTICLE VI – OPEN SPACE**

**A. Master Plan Common Areas Generally.** Founders hereby agree that certain portions of LENHARDT SQUARE will be permanently set aside for park and recreational uses sufficient to meet the needs of the residents of LENHARDT SQUARE. Founders further agree that they will cause an easement for pedestrian and bike travel by the general public to be dedicated in or near the Shiloh Drain Easement Area for inclusion in the Heritage Trail System. The lands set aside in accordance with this Article VI.A. will include the Master Common Areas shown on the Master Plan (Exhibit A (First Amended)) and may include, but are not limited to, open spaces, Green Roofs and other roof-top amenities, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. The total acreage set aside for park and recreational use as depicted on Exhibit A (First Amended) is approximately 15.35 acres.

The general size, location, and design of Master Common Areas described in this Agreement and designated in the Master Plan are conceptual in nature and are subject to modification by Founders and future Developers through the platting process. Any such modifications must, however, be approved by the Reviewer, and the City of Billings must receive the consent of the Reviewer prior to approving any plat that modifies the size, location, or design of the Master Common Areas described herein. The City of Billings shall be entitled to review and approve any material reduction in the size of the Master Common Areas or material change of the function of those areas if such reduction or change would entitle the City to withdraw its waiver of statutory and local park dedication requirements mandated under M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A. Nothing in this Agreement shall prohibit a Developer from establishing Developer Common Areas within its Tract, provided maintenance of such additional common areas shall be the responsibility of the Developer and/or any Owners Association created by the Developer, unless the Master Association agrees in writing to undertake such maintenance responsibilities. Developers may agree to assume maintenance responsibilities for Master Common Areas by entering into a written agreement with the Master Association.

**B. Annexation Agreement to Prescribe Standards for Common Areas.** The parties agree that promptly after or in conjunction with the execution of this Agreement they shall negotiate and execute an annexation agreement that will prescribe standards for the designation, development, and maintenance of parks and other Common Areas in LENHARDT SQUARE. Although the particular terms of the annexation agreement will be determined later, it is currently anticipated that the agreement will address these and other issues: (1) waiver by the City of statutory and local regulatory park dedication requirements in accordance with M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A.; (2) maintenance obligations of the Master Association, Developers and the City; (3) construction standards for linear parkways; and (4) mutual easements for the construction and maintenance of Common Areas on private and public property.

**C. Roof-Top Amenity Areas.** The roof area of each building over forty feet (40”) in height (measured to the top of the enclosed structure and not including non-enclosed structures, towers, antennae, etc.) in a mixed-use zone (Tract 4A) shall include roof-top amenities that comply with this Agreement. Such roof-top amenities may include, but are not limited to, one or more of the following: Green Roofs, gardens, pools, terraces, decks, balconies, porches, atriums, greenhouses, picnic areas, recreational facilities, or similar amenities. For purposes of this Article VI.C. “roof area” shall include both the roof structure immediately above the uppermost floor of the building and also any horizontal setback areas created when a floor of the building is recessed from the line of the façade of the floor below. One hundred percent of each roof area not necessary for the use, storage, or operation of mechanical equipment related to the function of the building shall be devoted to such roof-top amenities unless the Reviewer grants a partial exemption from this requirement after receiving a written request from the Developer. The Reviewer may exempt part of the roof area from this requirement if the Reviewer determines in its discretion that the portion proposed for exemption is too small, inaccessible, or otherwise unavailable for reasonable construction or maintenance as a roof-top amenity. All roof-top amenities shall be professionally designed and constructed and shall comply with all applicable building codes, ordinances, and laws. Reviewer shall not be required to review any building design, specifications or drawings for compliance with such codes, ordinances, laws or other building standards and therefore shall not be responsible for any violation of the same or any

negligence in the design or construction of any roof-top amenity or other element of any structure. All roof-top amenities shall be well constructed, according to any applicable building and safety codes, repaired, and maintained so that they provide a useful and attractive area for the private or semi-private use of tenants or owners in the subject building or adjacent mixed-use neighborhood in the Tract.

## **ARTICLE VII - CROSS EASEMENTS FOR PEDESTRIANS AND VEHICLES**

At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the Common Areas of LENHARDT SQUARE (or the Tract) devoted to pedestrian walkways, bike paths, and private roadways intended for common use.. At the time each Tract is developed, or at such earlier time as may be determined by Founders or the Developer of the Tract, Founders or the Developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all Developers and Unit Owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of LENHARDT SQUARE (or the Tract).

## **ARTICLE VIII - ENFORCEMENT**

**A. Statement of Purpose.** The parties acknowledge that from time to time disputes may arise involving the City, Founders, Unit Owners, the Master Association, Owners Associations, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

**B. Right to Enforce by City.** The terms of this Agreement may be enforced by the City as provided for in Article 27-1600 of the City Code of Billings, Montana.

**C. Right to Enforce by Unit Owners and Master Association.** 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 owners of property within LENHARDT SQUARE and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as the Unit Owners within LENHARDT SQUARE. The parties further agree that the Master Association shall have standing to enforce the terms of this Agreement relative to the City or any Unit Owner or Owners Association regardless of whether the Master Association owns property in LENHARDT SQUARE. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

## ARTICLE IX – AMENDMENTS AND VARIANCES

**A. Amendments or Changes.** Amendments or changes to this Planned Development Agreement shall be processed using the same procedures for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent above those approved pursuant to Exhibit B (Second Amended).
3. Create additional allowed uses;
4. Reduce open space greater than two (2) percent in any Tract; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

**B. Variance Procedures.** Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not listed within this Agreement or for uses prohibited within the Unified Zoning Regulations.

**C. Zone Change Procedures.** Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

## ARTICLE X - GENERAL PROVISIONS

**A. Neutral Interpretation.** Founders 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.

**B. Coordination with Other Regulations.** In the event that there is any conflict between this Planned Development Agreement and other zoning regulations and/or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Planned Development Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of LENHARDT SQUARE either by its express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations and/or ordinances applicable to LENHARDT SQUARE are subsequently amended, the amended version of such regulations and/or ordinances shall likewise continue to be applicable to LENHARDT SQUARE to the extent they are not inconsistent with this Agreement.

**C. Streets.** Founders have provided a list of names for future streets in LENHARDT SQUARE. Developers may use any of these names without further approval of Founders. Proposed street names not contained on this list must be approved by Founders prior to adoption by the City. Both street names and addresses shall be determined in cooperation with the City and the City Fire Department.

**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 Founders, LSMA or the City shall be given at the following addresses or such other addresses as Founders or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Founders: Lenhardt Property, LP  
4035 Cedarbrook Court  
Bellingham, WA 98229-5007

[and]

Lenhardt Enterprises, LLC  
c/o Allan R. Lenhardt  
240 East Drive  
Baton Rouge, LA 70806

[and]

Lenhardt Farm, LLC  
c/o Janice L. Rehberg  
4401 Highway 3  
Billings, MT 59106

If to the LSMA: Lenhardt Square Master Association  
c/o Lorraine M. Newman  
4035 Cedarbrook Court  
Bellingham, WA 98229-5007

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

With Copies to: City-County Planning Department  
Billings, MT 59101

[and]

City Attorney's Office  
P.O. Box 1178  
Billings, MT 59103-1178

**E. Waiver.** Unless expressly so provided in this Agreement, 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 that the non-defaulting party may otherwise have at law or in equity as a result of the default.

**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 Founders, the City, the Unit Owners, the Master Association, 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. Attorneys' Fees and Costs.** In the event either party shall file any proceeding, whether at law or in equity, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court costs, if any, from the other party.

**J. 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.

**K. 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.

**L. 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.

**M. 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.

**N. 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.

**O. 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.

**P. Recordation.** This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Yellowstone, State of Montana.

### NOTICE

**THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN LENHARDT SQUARE, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN LENHARDT SQUARE, 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.**

**Q. 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 Founders, the City, Developers, Unit Owners, the Master Association, and their heirs, successors, and assigns.

**R. Contact Person.** The Founders hereby designate a contact person who may be contacted with respect to any questions, comments, or concerns. The contact person shall be Janice Rehberg, 4401 Highway 3, Billings, MT 59106.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

#### **FOUNDERS:**

LENHARDT PROPERTY, LP

By: \_\_\_\_\_  
LORRAINE NEWMAN

Its: \_\_\_\_\_

LENHARDT FARM, LLC

By: \_\_\_\_\_ JANICE L. REHBERG

Its: \_\_\_\_\_

LENHARDT ENTERPRISES, LLC

By: \_\_\_\_\_ ALLAN R. LENHARDT

Its: \_\_\_\_\_

**CITY:**

CITY OF BILLINGS

By: \_\_\_\_\_  
William A. Cole

Its: Mayor

By: \_\_\_\_\_  
Cari Martin

Its: City Clerk

STATE OF \_\_\_\_\_ )  
)ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_  
\_\_\_\_\_ known to me to be a partner of Lenhardt Property, L.P.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]

Notary Public for the State of \_\_\_\_\_

Residing at: \_\_\_\_\_, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF \_\_\_\_\_ )

)ss.

County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by Janice L. Rehberg known to me to the \_\_\_\_\_ of Lenhardt Farm, LLC

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]

Notary Public for the State of \_\_\_\_\_

Residing at: \_\_\_\_\_, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF MONTANA )

)ss.

County of Yellowstone )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by Allan R. Lenhardt known to me to the \_\_\_\_\_ of Lenhardt Enterprises, LLC

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]

Notary Public for the State of Montana

Residing at: \_\_\_\_\_, Montana

My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF MONTANA )

)ss.

County of Yellowstone )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by William A. Cole known by me to be the Mayor of the City of Billings.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]

Notary Public for the State of Montana

Residing at: \_\_\_\_\_, Montana

My Commission Expires: \_\_\_\_\_, 20\_\_

STATE OF MONTANA )

)ss.

County of Yellowstone )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008, by Cari Martin, known by me to be the City Clerk of the City of Billings.

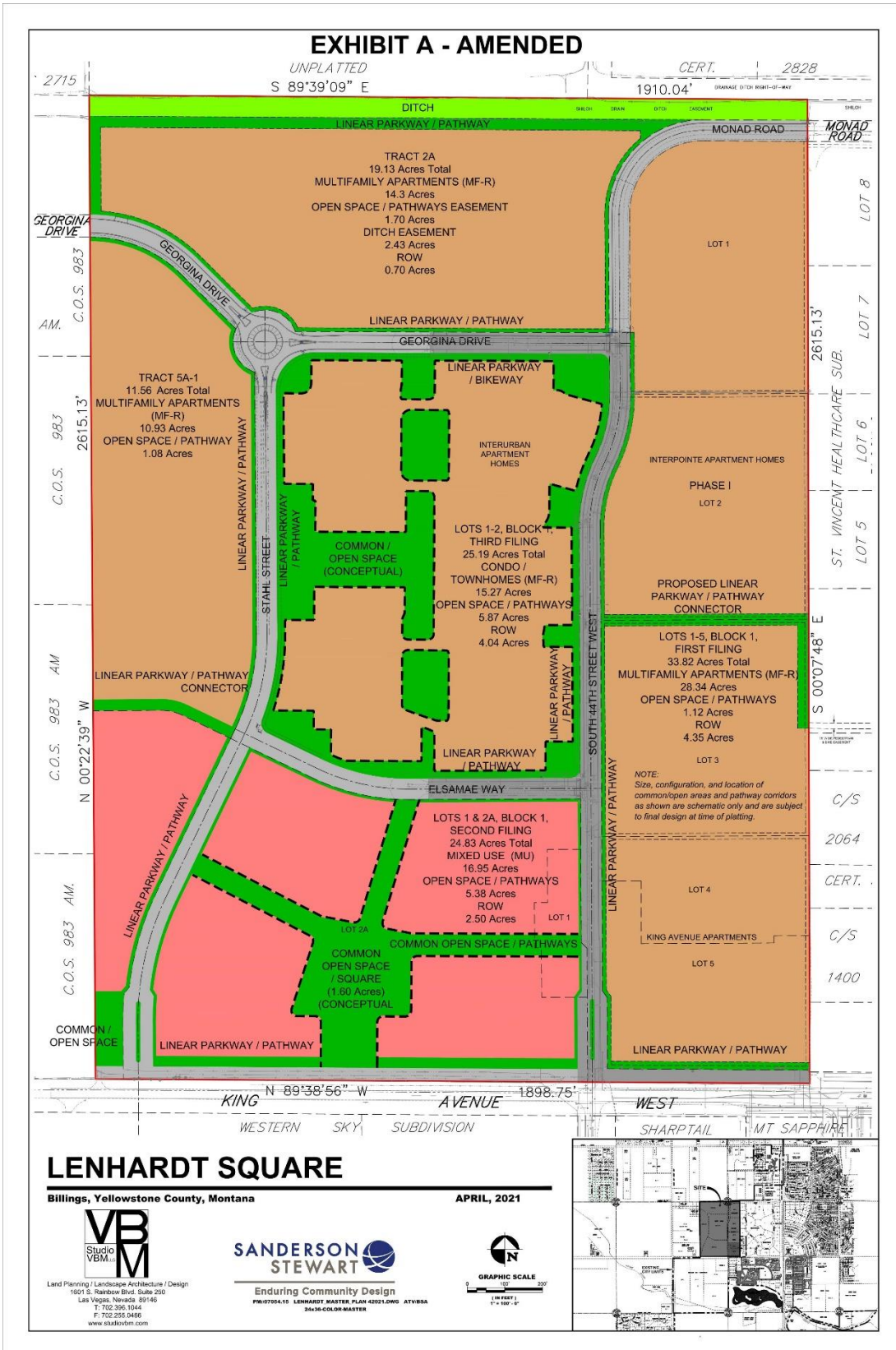
\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed/printed name]

Notary Public for the State of Montana

Residing at: \_\_\_\_\_, Montana

My Commission Expires: \_\_\_\_\_, 20\_\_



\* Streets and area shown as right-of-way will be stricken and the area added to the developable area of each Tract for purposes of calculating average density limits under Article V.B.6.

**EXHIBIT B (Second Amend)**  
**GENERAL REQUIREMENTS\***

<b>Minimum Lot Size Per Structure</b>	<b>MF-R**</b>	<b>MU**</b>
1 dwelling unit	6,000	850 sq.ft
2 dwelling units	7,000	For each
3 dwelling units	8,500	Dwelling
4 dwelling units	10,000	Unit
5 dwelling units	11,000	
6 dwelling units	12,000	
7 dwelling units	13,000	
8 dwelling units	14,500	
9 dwelling units	16,000	
10 or more dwelling units	1,500 sq.ft. each additional dwelling unit	
<b>Setback Requirements (in feet)<sup>‡</sup></b>		
<b>Front:<sup>‡</sup></b>		
From Linear Parkway	5 <sup>1</sup>	5
From streets (right-of-way)	20 <sup>2</sup>	0
<b>Sides:<sup>4</sup></b>		
1 Story	5	5
2 Story	8	8
3+ Story	9 + 1	0
Side Adjacent to Street	10	0
<b>Rear<sup>4</sup></b>		
Arterials	15	0
	25	25
<b>Maximum Height (in stories)</b>	4	7 <sup>4</sup>
<b>Maximum Lot Coverage</b>	50%	100%
<b>Maximum Average Densities (Dwelling Units/Acre)</b>	21	35 <sup>7</sup>
<b>Fence/Wall/Berm/Shrub Max. Height</b>		
Front Yard and Adjacent to Street	2	2
Rear and Side Yards not on Street	8	6

\* The limitations described in this table are subject to, and in no way supersede, all applicable building codes and regulations. Developers shall at all times comply with the International Building Code, the International Fire Code, and all other local, state, or federal building codes or regulations.

\*\* As of the date this Amended Agreement was originally approved, these zones correspond to the following Tracts: ; MF-R (Tract 1A, Tract 2A, Tract 3A and Tract 5A); MU (Tract 4A, ).

<sup>1</sup> If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway. This setback does not apply from the Linear parkway on the northside of King Avenue.

<sup>2</sup> Staggered building facades and angled placement of structures relative to the front lot line are encouraged in all zones. The minimum setback requirement in the MF-R zone is also a maximum setback or “build-to” requirement. In that zone at least 20% of the façade must be at the setback line (from the street right-of-way and Linear Parkway) if the structure is oriented parallel to the street. If the structure is oriented at an angle to the street, at least one structural corner of the structure must be located at the setback line.

<sup>3</sup> The zero lot line on one side of a shared property line allowed pursuant to 27-617 Unified Zoning Regulations and for adjacent single family dwellings shall also be permitted in all zones and for accessory structures and garages.  
<sup>4</sup>Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

**EXHIBIT C**

**PART 1**  
**PARKING REQUIREMENTS – MIXED-USE ZONE**

<b>TYPE OF USE</b>	<b>REQUIRED PARKING (spaces / dwelling unit)</b>
Residential	1.0/dwelling unit
Lodging	1.0/bedroom
Office	2.0/1,000 square feet
Retail	3.0/1,000 square feet
Other Uses	To be determined by Zoning Coordinator upon request of Developer and consent of Reviewer

**PART 2**  
**JOINT PARKING FACTORS REDUCTION MATRIX**

Joint use parking agreements may result in a reduction of the combined parking requirements for the Units entering into the agreement. Allowable reductions shall be determined using the following joint parking reduction matrix by dividing the sum of the required parking minimums for each use as specified in Exhibit C, Part 1 by the joint parking reduction factor set forth in the following matrix.

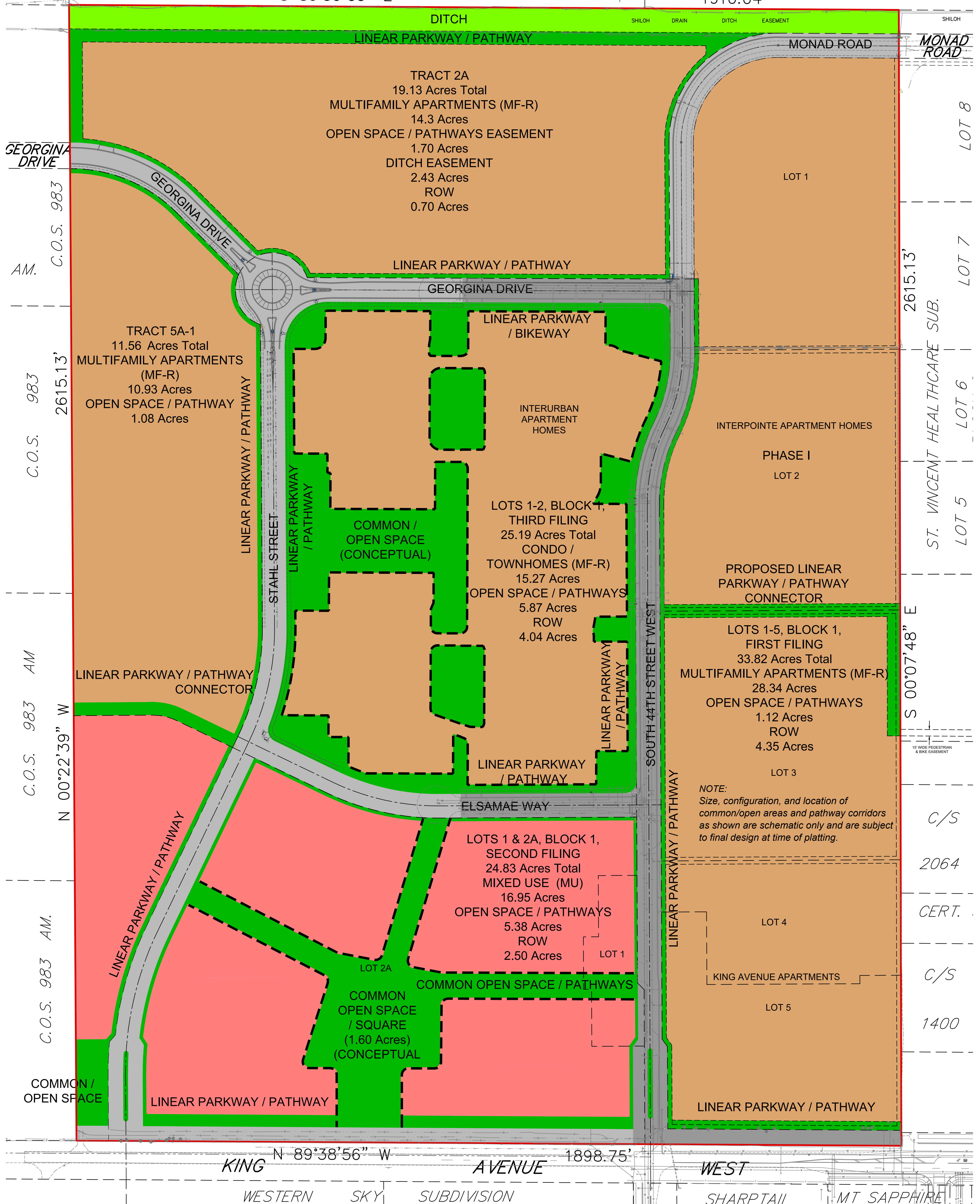
	RESIDENTIAL	LODGING	OFFICE	RETAIL
RESIDENTIAL	1	1.1	1.4	1.2
LODGING	1.1	1	1.7	1.3
OFFICE	1.4	1.7	1	1.3
RETAIL	1.2	1.3	1.2	1

Example: A residential building with ten units requires 10 parking spaces and a neighboring 2,000 square feet office building requires 4 parking spaces. The adjusted minimum parking requirement for the two buildings is 10. ( $10 + 4 = 14 \div 1.4 = 10$ ). Similarly the adjusted minimum parking requirement for a ten unit residential unit and a 3,000 square foot retail store would be 16. ( $16 + 9 = 19 \div 1.2 = 15.83$ ). (Any remainder shall be rounded up.)

# EXHIBIT A - AMENDED

UNPLATTED  
S 89°39'09" E

CERT. 2828  
1910.04' DRAINAGE DITCH RIGHT-OF-WAY



## LENHARDT SQUARE

Billings, Yellowstone County, Montana

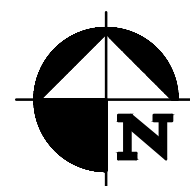
APRIL, 2021



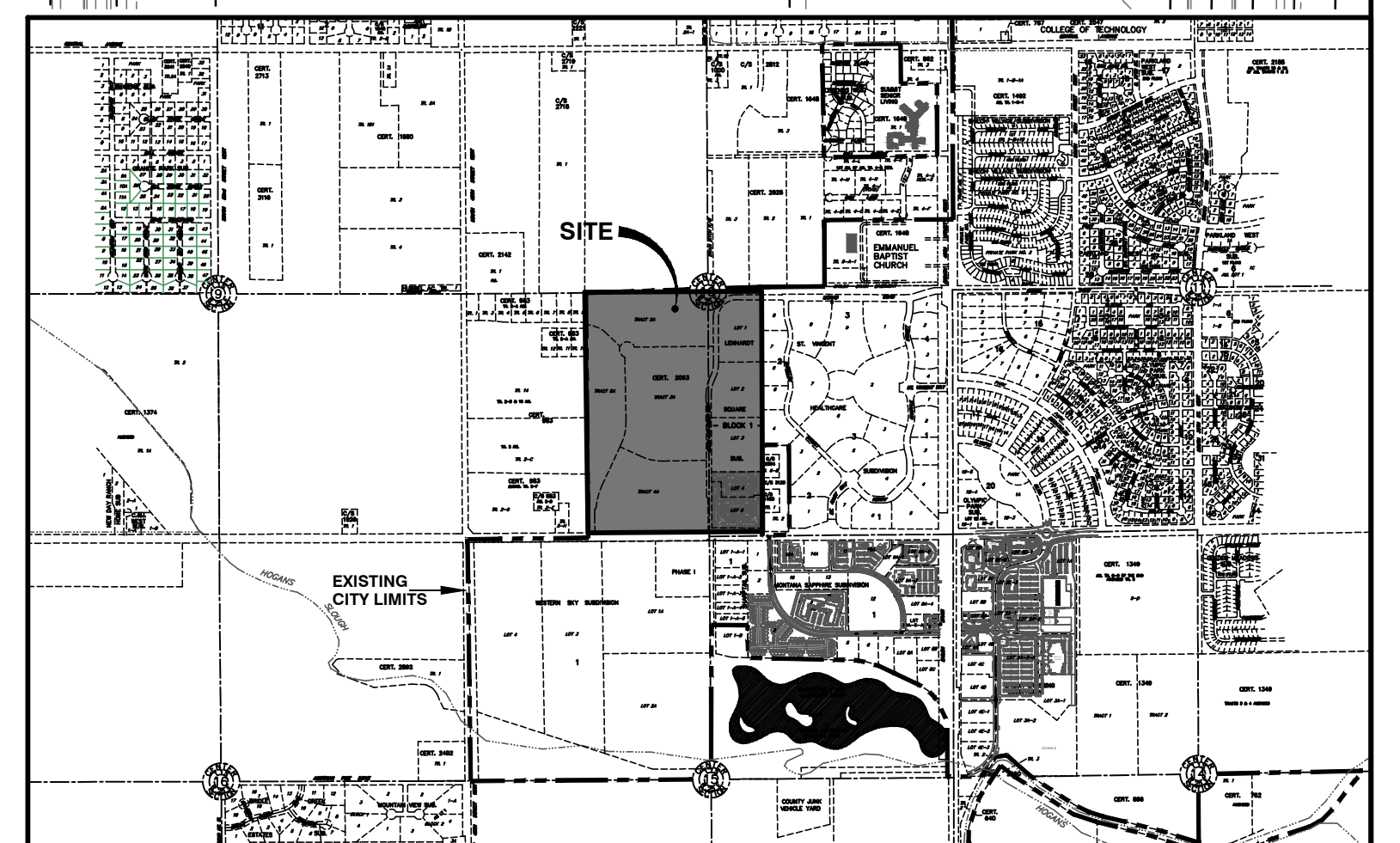
Land Planning / Landscape Architecture / Design  
1601 S. Rainbow Blvd. Suite 250  
Las Vegas, Nevada 89146  
T: 702.396.1044  
F: 702.255.0466  
www.studiovbm.com



Enduring Community Design  
PM:107054.15 LENHARDT MASTER PLAN 42021.DWG ATV/BSA  
24x36-COLOR-MASTER



GRAPHIC SCALE  
0 100' 200'  
(IN FEET)  
1" = 100' - 0"



## **Pre-Application Statement of Owner(s) or Agent(s)**

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a completed zone change application packet, including any required fees, for a zone change to be processed by the Planning Division.

1. **Present Zoning:** Planned Development Agreement - PD
2. **Written description of the Zone Change Plan** including existing and proposed new zoning:  
Planned Development Agreement – PD Amended
3. **Subject Property Map:** please attach to this form
4. **Legal Description of Property:**  
All of Lenhardt Square (Per attached property and ownership document)
5. **Neighborhood Task Force Area:** Yes /// No. If Yes, Name of Task Force and mailing address of Chairperson:  
Billings West End Task Force, Howard Holz at billingswetf@gmail.com
6. **Roster of persons who attended the pre-application neighborhood meeting:** please see attached minutes with attendees list
7. **A copy of the meeting notice.** Please attach to this form
8. **A brief synopsis of the meeting results including any written minutes or audio recording.** please attach to this form
9. **The undersigned affirm the following:**
  - 1) The pre-application neighborhood meeting was held on the 29th, day of March, 2021.
  - 2) The zone change application is based on materials presented at the meeting.

**Owner (s):** **See attached property and ownership document**

Telephone: 225-223-3121

Address: 3860 Ave B, Ste C West Email: allan@lenhardtenterprises.com  
Billings, MT 59102

**Agent (s):** Sanderson Stewart c/o Rick Leuthold

Telephone: 406-698-6910

Address: 1300 N. Transtech Way Email: rlleuthold @ Sandersonstewart.com  
Billings, MT 59102

## MEETING MINUTES

<b>PROJECT: Proposed Zone Change / Planned Development Update – Lenhardt Square</b>			
Project No: 07054.37			
Meeting Location: Microsoft Teams		Meeting Date: 3/29/21 5:30 P.M.	
Meeting Subject: Neighborhood Mtg		Prepared by: Bryan Alexander	
Attending:	See listing at end of minutes		
Date of Issue: 3/29/21			

Minutes:

- Rick providing information on process for Neighborhood meeting and future public meeting
  - Can provide comment in writing, via phone, or email to City in addition to attending the public hearing
- Rick presented original Master Plan exhibit from 2008
- Rick explained the PD agreement (Planned Development) is a zoning document that is more restrictive than typical zoning
  - Property has three existing zones: MF-R, MF-4, and MU
- Proposed PD update eliminates MF-4 zone to replace it with MF-R and reconfigures open space to match site plans
- Updating map and PDA as changes in the market has increased demand for multi-family housing
  - Increasing density, near retail centers
  - Seeing empty nesters, wanting flexibility
  - Young professionals, wanting amenities
  - Mobile individuals, not tied to mortgage or home

- Scheduled to go into City April 5th and formal documents will be available to public after they are finalized
- Only Lots on north and west (2A and 5A1) are changing from MF-4 to MF-R
- Current MF-R density is 20 units/acre, request is for 21 units/acre
  - Important for planning perspective for walkability in community
- Height adjustment is to allow for 3 story building with a peaked roof: proposing max height change from 40 feet to 50 feet
- Proposing covered parking requirement (no change to overall parking requirement). Proposing reducing to approximately 0.75 covered parking spaces per unit instead of 1.0 covered spaces per unit.
  - Adjusting ground-level footprint of parking structures to be larger and allow for more vehicles in actual garages
- 850 sf/dwelling unit density added to MU zoning district (35 units/acre)
- Jan Rehberg – new zone change ordinance speaks in terms of stories, so may change to 4 stories instead of height limit; allows flexibility to developers by allowing 4 stories. On covered parking, proposing change to covered parking to make it in a better configuration. The exact figure is not yet determined, and they are working with the City on this to assure it aligns with the new Recode document
- 294-6500 Al McCormick – Would like to see final draft going into planning; access to Shiloh Road is a concern
  - Rick – there are some new projects in area where Monad Road will be extended to Shiloh Road. Discussed Georgina in an easement to the west, so we acknowledge that through access will need to be addressed at a later date, probably by the City and existing owners. Georgina on Lenhardt Square was placed per direction of City during platting
- 690-7271 Dan Dyk – No comments at this time
- Bill Hanser – No comments at this time
- Gordon Olson – n/a
- Joy Culver – n/a
- Lorna Dyk – No mechanism for single-family or duplex homes? Question related to transition between existing homes on the west to the multi-family.
  - Rick – there is a listing in original PD that has various land uses and unit counts. Update will still allow (MF-R zone) to have

single family, duplex, etc. but would be allowed an increased density. Some proposed developments have a mix of smaller multi-family homes with apartment buildings.

- Any commercial projects currently contemplated along King? Rick, not that he is aware of.
- Aileen Kindsfather – No comments at this time.
- Pat Schindele – Happy to see Monad completed out to Shiloh Road, which will direct a lot of traffic out of area. It will make a big difference to what they are seeing at King. Happy to hear about more housing in Billings as market needs it.
  - Rick clarified that zone change will not impact Monad construction, but it will be built alongside one of these next coming developments
- Steve Zeier – No comments at this time.
- Rick re-iterated the intent to submit on Monday and will have the finalized documentation available for viewing.

## Attendees

Rick Leuthold  
Bryan Alexander  
Jan Rehberg  
Allan Lenhardt  
Lorraine Newman  
Al McCormick  
Dan Dyk  
Bill Hanser  
Cam  
Gordon Olson  
Joy Culver  
Lorna Dyk  
Mike and Aileen Kindsfater  
Pat Schindele  
Steve Zeier  
Sarah Creeden  
Ted Cross

# LENHARDT SQUARE

## PLANNED DEVELOPMENT AGREEMENT ZONE CHANGE AMENDMENT MODIFYING CERTAIN LAND USES, AND UPDATING AND CLARIFYING CERTAIN DEVELOPMENT STANDARDS

### Statement of Proposal

Lenhardt Square Master Association, the Representative of the owners of Lenhardt Square, is seeking a zone change amendment for all of Lenhardt Square, generally located to the north of S. 44th Street West and King Ave West. The property is approximately 114 acres in size.

### Responses to Questions in Zoning Application

**In what ways is your proposal consistent with the statutory criteria, guidelines and policies of the adopted Growth Policy?**

#### The Growth Policy states:

**In the next 20 years, Billings will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists or can be extended within a fiscally constrained budget and with consideration given to increased tax revenue from development. The City will prosper with strong neighborhoods with their own unique character that are clean, safe and provide a choice of housing and transportation options.**

#### The 10 Zone Change Criteria

**1. Whether the new zoning is designed in accordance with the Growth Policy?**

Yes. Lenhardt Square was originally conceived with the sentiments of the Growth Policy statement above and the changes, updates and clarifications proposed within this amendment do not alter that compliance.

**2. Whether the new zoning is designed to secure from fire and other dangers?**

Lenhardt Square is serviced by City fire and police services and is designed in accordance with City of Billings rules and regulations thus assuring protection from common dangers.

**3. Whether the new zoning will promote public health, public safety and general welfare?**

Lenhardt Square was designed to be a walkable community in close proximity to retail services and those offered by the developing SCL medical property to the east and is designed in accordance with City of Billings rules and regulations assuring compliance to this criterion.

**4. Whether the new zoning will facilitate the adequate provision of transportation, water sewerage, schools, parks and other public requirements?**

The changes proposed in this amendment insure an area that is desirable for developers and the current demographic trends they face. By continuing with this process, new roads and connections such as Monad Road to Shiloh Road will be completed easing transportation connections. In addition, by allowing slightly higher densities, the area comes

closer to achieving the City's required densities for bus service. The development is already serviced by City water and sewer. Lenhardt Square was designed with ample open green space as indicated on Exhibit A and is also near the proposed City Lakes project.

**5. Whether the new zoning will provide adequate light and air?**

Lenhardt square was originally conceived with this in mind and nothing herein will modify or impact that consideration.

**6. Whether the new zoning will effect motorized and nonmotorized transportation?**

The amendment items will continue to support growth and additional connections to the local street network while concentrating housing near commercial and recreational opportunities that can be reached on nonmotorized vehicles.

**7. Whether the new zoning will promote compatible urban growth?**

The amendment is intended to continue promotion of urban level densities and growth compatible with that which is developing in the area.

**8. Whether the new zoning considers the character of the district and the peculiar suitability of the property for the particular use?**

Because the property is in close proximity to commercial, recreational and health-oriented developments as well as being fairly flat which allows for efficient use of the building sites, the land use and its conditions fit the site very well.

**9. Whether the new zoning will conserve the value of buildings?**

Lenhardt Square was conceived of with an eye on promoting mixed uses that would enhance both its value and the value of developments in its proximity.

**10. Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings?**

As the City has grown, this area has proven to be in the path of appreciation. It borders one corner of the fastest growing commercial triangles in the State of Montana. A triangle bounded by the West Billings Interchange, the Zoo Drive Interchange and the corner of Shiloh Road and King Avenue West. Lenhardt Square and its multifamily, mixed use vision is ideally suited for this location in the continued growth of the City of Billings.

**Essential Investments (Relating Public and Private Expenditures to Public Values)**

- ***Landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors***

New development on the noted lots will be subject to the City of Billings requirements for site development, including landscaping. This will ensure the visual appeal of the project development.

- ***Infill development and development near existing City infrastructure may be the most cost effective***

This property is annexed and has existing City infrastructure adjacent to and within the site. This zone change amendment will allow for efficient use of City infrastructure improvements and assure that it is secure from fire and other dangers.

- ***Neighborhoods that are safe and attractive and provide essential services are much desired***

There will be no adverse impact to the public health, safety and welfare from the proposed land uses or setbacks to the City or other adjacent developments as most of the area is developing as retail, residential and mixed use.

### **Place Making (Enhance, Maintain, Preserve, and Improve Existing Public Places)**

- ***Enhancements and maintenance of public spaces and buildings through City stewardship is integral to a vibrant community***

The proposed uses help to accommodate an important service sector in this west end area. The development area has adequate transportation, water, sewerage, schools, parks and public lands planned in and around it and will promote a better sense of community to the ever-growing neighborhood by allowing staff to find work where they live.

- ***The history and heritage of Billings are cornerstones of our community***

Billings has always adapted to the changes in economic drivers and been welcoming of businesses and services that allow the community to continue to grow and prosper. This amendment will follow in that light.

### **Community Fabric (Attractive, Aesthetically Pleasing, Uniquely Billings)**

- ***Cost-effective landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors***

The nature of the mixed use land uses proposed herein call for a much more harmonious placement among the retail, commercial and office types. These uses will be subject to all City zoning and building regulations within the development and as such will continue to promote adequate light, air and aesthetically pleasing facilities in and along our commercial rights of way.

### **Strong Neighborhoods (Livable, Safe, Social and Resilient Neighborhoods)**

- ***Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, good will and social interaction***

By allowing the amended uses to the Planned Development Agreement, the development can capitalize on the unique character of the area allowing for staff who live nearby to drive and/or walk to their place of employment fostering better uses of urban growth areas such as this.

- ***Neighborhoods that are safe and attractive and provide essential services are much desired***

By allowing for the proposed uses in the existing Planned Development Agreement, certain residential types of development can better be provided for in Billings. This in turn will provide a safer and more attractive focus for area community development and cohesion.

- ***Implementation of the Infill Policy is important to encourage development of underutilized properties***

The property considered under this amendment is annexed and services exist to and within it. By allowing these proposed uses, the community is promoting use of existing parcels and services as opposed to forcing such uses to potentially relocate to county parcels further to the west.

### **Prosperity (Promoting Equal Opportunity and Economic Advancement)**

- ***Successful businesses that provide local jobs benefit the community***

There are developers that are actively building in this area and looking to continue meeting the needs of their clients in this area. This will help to promote local jobs that bring benefit to the overall community while protecting the integrity and value of the localized development area.

- ***Retaining and supporting existing businesses helps sustain a healthy economy***

By supporting this zone change amendment, existing businesses that help sustain and build a healthy economy will be retained and supported and choice of housing types that are affordable and available to all will be provided.

Lenhardt Square and these amendments will help Billings manage its growth by encouraging development within and adjacent to the existing City limits, giving preference to areas where City infrastructure exists helping to maintain fiscal responsibility for the City. This development and the amendment will allow the City to increase tax revenue and the City will prosper by further developing strong neighborhoods with their own unique character that are clean, safe and provide a choice of housing and transportation options.

**From:** Sharon Wetsch <sharonwetsch@yahoo.com>  
**Sent:** Tuesday, April 20, 2021 7:49 AM  
**To:** Cromwell, Nicole <CromwellN@billingsmt.gov>  
**Subject:** [EXTERNAL] project number PZ-21-00084

**ATTENTION:** This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

I am very opposed to your zone change for this area. We purchased our forever home right in the middle of this proposed project last year, with no idea that anyone was planning on putting 3 or 4 story buildings surrounding us. This is not acceptable .... It is a perfect area for single family homes, which at this time is very much in demand. Look at the housing demand in Billings... there is no inventory of single family homes. There are a lot of apartments for rent that are not currently being rented. We bought our home because of the closeness of the city and the businesses out there. We have no desire to be annexed into the city and be surrounded by huge apartments. This city needs low income apartments and not in this area. Please reconsider this whole plan. I can see single family homes or duplexes but not huge apartment buildings.

I do wish to be notified of all meetings and I wish I would have been notified of the meeting held March 29th, 2021.

I would have expressed my views at that time also..

My info is as follows:

Sharon Wetsch  
[sharonwetsch@yahoo.com](mailto:sharonwetsch@yahoo.com)  
406-351-1409

mailing address is  
Sharon Wetsch  
PO Box 1309  
Forsyth, Mt 59327

<b>SUBJECT PROPERTY</b>	<b>Zone Change #</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
	<b>City ZC 829</b>	4/28/2008	A-1 to Planned Development	Yes	Initial denial of Annexation Reversed & Conditioned
	<b>City ZC 909</b>	6/10/2013	Amend PD	Yes	Amended PD to allow 20/du/acre on Tract 3A C/S 2063
	<b>City SR 917</b>	7/28/2014	Allow Assisted Living	Yes	Not developed
	<b>City Variance 1324</b>	1/6/2021	Allow up to 17.2/du/acre	No	Tract 2A C/S 2063
<b>SURROUNDING PROPERTY</b>	<b>Zone Change #</b>	<b>DATE</b>	<b>FOR</b>	<b>APPROVED (Y/N)</b>	<b>ADDITIONAL DATA</b>
Western Sky Sub	City ZC 977	July 13, 2020	Adjust Zone District Boundaries	Y	
Western Sky Sub	City ZC 975	Jan 27, 2020	Underlying zoning amendment	Y	
Western Sky Sub	City ZC 802	May 17, 2007	A-1 to CC, RMF-R, R-50, R-70, R-96 & Public	Y	Included entire NW section of 160 acres
Western Sky Sub	City ZC 957	Sept 11, 2017	CC, RMF-R, R-50, R-70, R-96 & Public to Planned Development	Y	Underlying zones CC, NC RMF & RMH
Hoop Dreams – Apartments	City ZC 900	Aug 13, 2012	R-50 to RMF-R	Y	Apartment Developments at 44 <sup>th</sup> St W and King Ave W
Hoop Dreams – Apartments	City ZC 912	July 8, 2013	Public & R-50 to RMF-R	Y	Additional apartments
St. Vincent Healthcare Shiloh Rd & King Ave W	City ZC 722	May 24, 2004	A-1 to Planned Development	Y	PD for healthcare & ancillary commercial uses
St. Vincent Healthcare Shiloh Rd & King Ave W	City ZC 870	Jan 24, 2011	PD Amendment	Y	Adjustment to allow flexibility
Montana Sapphire Sub	City ZC 673	July 9, 2001	A-1 to Entryway Light Industrial (ELI)	Y	New industrial park
Montana Sapphire Sub	City ZC 903	Sept 24, 2012	ELI to HC	Y	Affinity of Billings Fuel Fitness Divide Bar & Grill
Montana Sapphire Sub Long Beach Apts	City ZC 878	Aug 22, 2011	ELI to HC	Y	New apartments
3815 Hesper Road	City ZC 907	March 25, 2013	A-1 to CI	Y	New FedEx Ground Terminal