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**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST  
FUTURE SPECIAL IMPROVEMENT DISTRICTS  
ST. VINCENT HEALTHCARE SUBDIVISION  
SECOND FILING  
CITY OF BILLINGS  
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**SUBDIVISION IMPROVEMENTS AGREEMENT  
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ST. VINCENT HEALTHCARE SUBDIVISION  
SECOND FILING**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between **SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEMS INC**, whose address for the purpose of this Agreement is 500 Eldorado Blvd, Ste 4300, Broomfield, CO 80021 hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, at a meeting held by the Yellowstone County Board of Planning on the \_\_\_\_ day of \_\_\_\_\_, 2022, the Board recommended for approval, subject to certain conditions, an area known as St. Vincent Healthcare Subdivision, Second Filing; and

**WHEREAS**, at a regular meeting conducted on the \_\_\_\_ day of \_\_\_\_\_, 2022 the City Council conditionally approved a preliminary plat of St. Vincent Healthcare Subdivision, Second Filing; and

**WHEREAS**, a Subdivision Improvements Agreement is required by the City prior to approval of the final plat; and

**WHEREAS**, the real property affected by the proposed plat was previously subdivided and is known as St Vincent’s Healthcare Subdivision, as filed the 12th day of June, 2014, under Document No. 3707746; records of Yellowstone County; and,

**WHEREAS**, the real property affected by the proposed plat is covered by and subject to the terms and conditions of that certain Subdivision Improvements Agreement and Waiver between Sisters of Charity of Leavenworth Health System, Inc. as “Subdivider” and the City of Billings as “City,” dated the 27th day of May, 2014, and recorded the 12th day of June, 2014, under Document No. 3707749, for The Village Subdivision; and that certain Declaration of Restrictions on Transfers and Conveyances, dated the 1st day of April, 2014, and recorded the 12th day of June, 2014, under Document No. 3707750, all in records of Yellowstone County; and

**WHEREAS**, the real property affected by the proposed plat is covered by and subject to the terms and conditions of that certain Planned Development Agreement, recorded the 27th day of February, 2015, under Document No. 3732703, in the office of the Clerk and Recorder of Yellowstone County, Montana; and, that certain Declaration of Conditions, Covenants, and Restrictions, dated the 1st day of April, 2014, and recorded the 12th day of June, 2014, under Document No. 3707751, all in records of Yellowstone County; and

**WHEREAS**, the real property affected by the proposed plat is covered by and subject to the terms and conditions of that certain new Planned Development Agreement, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and recorded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, under Document No. \_\_\_\_\_, in the office of the Clerk and Recorder of Yellowstone County, Montana; and, that certain new Declaration of Conditions, Covenants, and Restrictions, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and recorded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, under Document No. \_\_\_\_\_, all in records of Yellowstone County, both new documents which supersede and replace the original Village Subdivision documents; and

**WHEREAS**, the provisions of this agreement shall be effective and applicable to St. Vincent Healthcare Subdivision upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana, and the original Village Subdivision Improvements Agreement as well as subsequent documents filed as part of amendments of property subject to this plat and related documents referenced above shall have no further force or effect. The subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

**THEREFORE, THE PARTIES TO THIS AGREEMENT**, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

**I. VARIANCES**

Subdivider has requested, and the City hereby grants, the following variance by the City Council from the strict interpretation of the City's Subdivision Regulations:

- A.** No Variances are being requested with this subdivision.

## **II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS**

- A.** Lot owners will be required to construct that segment of the required five-foot-wide boulevard-style sidewalk that fronts their property at the time of lot development. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.
- B.** Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- C.** Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the geotechnical investigation report for this property, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical investigation prior to construction. Assessment and mitigation, if any, of these conditions shall be the responsibility of the lot owner.
- D.** The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- E.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- F.** There is attached hereto a waiver waiving the right to protest the creation of the special improvement district, or districts, which, by this reference, is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner, or owners, of the developments described herein. Said waiver is effective upon filing and is

not conditioned on the completion of the conditions set forth in this agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.

- G. Lot owners should be aware that agricultural activities could be present on surrounding properties. Any impacts associated with agricultural activities, and any issue arising therefrom, is the responsibility of the lot owners.

### **III. TRANSPORTATION**

#### **A. Streets**

Marillac Street within the subdivision shall be public and shall be located within a 70-foot-wide right-of-way and have a street width of 44-feet back of curb to back of curb. This street shall be built in accordance with the City of Billings site development ordinance, Subdivision Regulations, and Uniform Building Code. The internal access roads shall be built to grade with a standard crown and a satisfactory subbase, base course, curb and gutter, and asphalt surface.

#### **B. Sidewalks & Multi-Use Paths**

City and the Subdivider agree that the developer will install accessibility ramps at time of private contract construction. Individual lot owners will be responsible for the construction of the five-foot wide boulevard sidewalks adjacent to their lot at the time of lot construction. The City reserves the right to construct any missing sidewalk and assess the property owners three years after construction of a phase.

Individual lot owners will be responsible for the construction of the multi-use paths adjacent to their lot at the time of initial construction. Each lot owner shall be responsible for building the ten (10) foot wide Multi-Use Paths (in the Easement Area reflected on the plat) in the Easement Area appurtenant to each owner's lot, as provided in the Planned Development Agreement for the Subdivision.

#### **C. Street Lighting**

City and Subdivider agree that streetlights will be installed in the boulevard area within the right-of-way along both sides of St. Mary Way, St. Vincent Way, Henry Chapple Street, Marillac Street, and Rocky Vista Way. Subdivider has created a City of Billings street light maintenance

district for construction, operation, and maintenance prior to the installation of the street lights.

City and Subdivider agree that the streetlights shall be designed to meet City of Billings' standards and that said design will be reviewed by the City Engineer. However, Subdivider reserves the right to choose fixture and pole types of the streetlights. City and Subdivider agree that fixture and pole types will be determined by mutual agreement between the two parties.

**D. Traffic Control Devices**

There has previously been completed a comprehensive area wide Traffic impact Study for this subdivision. As part of this re-platting, an executive summary update letter will be completed reviewing current conditions to those outlined in the original study.

The Subdivider shall furnish and install all necessary traffic control devices adjacent to the subdivision. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction. All traffic control devices shall be subject to review and approval by the City Engineering office.

Subdivider reserves the right to install traffic calming devices throughout the Subdivision in order to create and maintain a pedestrian friendly subdivision. Traffic calming devices in dedicated streets may only be installed with the cooperation and consent of the City and in accordance with approved plans and specifications submitted by the Subdivider.

**E. Access**

Access to this subdivision is provided by connecting Marillac Street to Rocky Vista Way at Marillac's north end and to Saint Mary Way and Henry Chapple Street at Marillac's south end. Lots fronting Henry Chapple Street will have access from Henry Chapple Street and from Saint Vincent Way to Monad Road, Saint Mary Way to King Avenue West and to Monad Road via Rocky Vista Way.

**F. Billings Area Bikeway and Trail Master Plan and On-Site Trails**

The Billings Area Bikeway and Trail Master Plan identifies the west side of Shiloh Road and the north side of Monad Road as routes for segments

of the multi-use trail. The Shiloh Road segment has been constructed as part of the Shiloh Road reconstruction project (Shiloh Road Federal-Urban Project Number STPU 103(2) CN 4666) and no further trail or sidewalk improvements on Shiloh Road are anticipated at this time.

The trail adjacent to Rocky Vista Way will be 10-feet wide and will meet Billings Area Bikeway and Trail Master Plan and On-Site Trails standards. City and Subdivider agree that the trail adjacent to Rocky Vista Way will be constructed by Subdivider in connection with the final completion and paving of Rocky Vista Way.

As part of the King Avenue West widening project constructed in 2009, a new 10-foot-wide multi-use path has been installed along the north side of King Avenue West adjacent to the subdivision. No further trail or sidewalk improvements on King Avenue West are anticipated at this time.

City and Subdivider agree that construction of trail improvements on the lots shall be constructed by lot owners at the time of lot development. Provisions for planning, development, and maintenance of said trails shall be as described in the planned development agreement for this subdivision.

#### **G. Public Transit**

Internal street circulation and multi-use path interconnectivity is provided in this subdivision plan. This will, in turn, provide sidewalks for pedestrians to access public transit routes. There is a planned transit stop within the subdivision, but it has been subject to relocation at the direction of the City and in agreement with the Subdivider. It is anticipated that the new transit stop will be constructed in the vicinity of and with the development of Lot 2, Block 3. No other specific public transit provisions are proposed at this time.

#### **IV. EMERGENCY SERVICE**

Emergency services will be provided by the City of Billings. Access to this subdivision is provided at three locations along Shiloh Road and two locations along King Avenue West.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e., lumber, plywood, wood trusses,

etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply

## V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, an updated stormwater management plan shall be submitted to and approved by the Engineering Division, which shall be in accordance with the recommendations of the approved storm drain study previously submitted to the Engineering Division by the Subdivider in addition to addressing the more recent revisions to the stormwater regulations. Stormwater will be handled on site through surface flow on the streets; collection through a network of catch basins, inlets, and piping; and discharge following appropriate treatment to the existing storm drain in King Avenue West and to the Shiloh Drain.

Individual lot owners shall be responsible for their on-site stormwater storage as required by the provisions of the *Stormwater Management Manual*.

## VI. UTILITIES

Water and sanitary sewer lines shall be sized and installed in conformance with the City design standards and specifications and the rules and regulations of the City of Billings.

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property

owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department, Distribution and Collection Division. The extension/connection of/to water mains and sanitary sewers are subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications. The appropriate water and wastewater fees in effect shall be submitted with the applications.

The developer/owner acknowledges that the subdivision shall be subject to the applicable system development fees in effect at the time new water and sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.), shall be in accordance with design standards, specifications, rules and regulations of, and as approved by the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

**A. Water**

A 12-inch water main shall be connected to the existing stub in Marillac Street just north of the intersection of Saint Mary Way and Henry Chapple Street and will be connected to the existing watermain in Rocky Vista Way. Lots fronting Henry Chapple Street shall continue to be served by the existing main in that street. Fire hydrants will be provided at all appropriate locations and will be subject to approval by the City of Billings Fire Department. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. Each lot shall be provided with its own separate water service. All water construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department, Distribution, and Collection Division.

**B. Sanitary Sewer**

The subdivision will be served by the extension of lateral sanitary sewer stub in Marillac Street and from the existing main in Henry Chapple Street. All sanitary sewer construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of

Environmental Quality, and will be approved by the Public Works Department, Distribution, and Collection Division.

**C. Power, Telephone, Gas, and Cable Television**

All telephone, gas, electrical power, and cable television lines shall be placed in designated easements outside of the right-of-way, where possible, and shall be installed underground prior to surface improvements. The location of all such facilities shall be subject to approval of the City Engineer.

**VII. PARKS/OPEN SPACE**

This is a replat of existing subdivided land. No additional lands are being included and none of the uses anticipated within the platted area are considered residential in nature. As such, there are no park contributions anticipated in this re-platting and only reconfiguration of existing open spaces that were created in the original platting.

**VIII. IRRIGATION**

Various lateral irrigation supply and waste ditches traverse the property. These ditches are serving the agricultural needs of this and other upstream property and will be continued in service as development progresses.

The Sisters of Charity of Leavenworth Health System, Inc. will retain its shares in the irrigation district serving St. Vincent Healthcare Subdivision for continued agricultural purposes and for future landscaping irrigation and watercourse recharge needs.

**IX. SOILS/GEOTECHNICAL STUDY**

The Subdivider has performed a preliminary geotechnical analysis for this property in accordance with City Subdivision Regulations and there are several area geotechnical reports that have been completed in the earlier phases of the development.

It is recommended that owners, purchasers, realtors, builders, or developers fully familiarize themselves with the information contained in this report prior to any design or construction.

**X. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install, and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

**XI. LEGAL PROVISIONS APPLYING TO SUBDIVIDER**

- A. The Subdivider agrees to guarantee all public improvements for a period of two years from the date of final acceptance by the City of Billings.
- B. The owners of the properties involved in this proposed subdivision, by signature subscribed herein below, agree, consent, and shall be bound by the provision of the agreement.
- C. The covenants, agreements, and all statements in this agreement run with the land and apply to, and shall be binding, on the heirs, personal representatives, successors, assigns and transferees of the respective parties.
- D. In the event it becomes necessary for either party to this agreement to retain an attorney to enforce any of the terms or conditions of this agreement, or to give any notice required herein, then the prevailing party giving notice shall be entitled to reasonable attorney fees and costs.
- E. Any amendments or modifications of this agreement, or any provisions herein, shall be made in writing and executed in the same manner as this original document, and shall, after execution, become a part of this agreement.
- F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. The Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

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

“SUBDIVIDER”

**SISTERS OF CHARITY OF LEAVENWORTH  
HEALTH SYSTEM, INC.**

By: \_\_\_\_\_

It's: \_\_\_\_\_

STATE OF MONTANA        )  
  : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument as \_\_\_\_\_ of the **SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.**, and who acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed name: \_\_\_\_\_  
Residing in: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**WAIVER OF RIGHT TO PROTEST  
FUTURE SPECIAL IMPROVEMENT DISTRICTS**

**FOR VALUABLE CONSIDERATION**, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

The Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned is a party and shall run with the land and shall be binding upon the undersigned, its successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows, to-wit:

All of St. Vincent Healthcare Subdivision, Second Filing, according to the plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana

**WAIVER** signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

‘SUBDIVIDER’

**SISTERS OF CHARITY OF LEAVENWORTH  
HEALTH SYSTEM, INC.**

By: \_\_\_\_\_

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

STATE OF MONTANA            )  
  : ss  
County of Yellowstone        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument as \_\_\_\_\_ of the **SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.**, and who acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed name: \_\_\_\_\_  
Residing in: \_\_\_\_\_  
My commission expires: \_\_\_\_\_