

ORDINANCE 23-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THE PLANNED DEVELOPMENT ZONE AGREEMENT for St Vincent's Healthcare Subdivision generally located on the north west corner of the intersection of King Ave W and Shiloh Rd, legally described as Block 1, Lots 1, 2A, 3A-1, 4A, 4B, 5A, 6A1, 6A2, 6A3; Block 2, Lots 1 -12 and Lot 2A; Block 3, Lots 1, 1A, 2-12; and Block 4 Lots 1-4 and Lots 2A2 and 3A, of St Vincent Healthcare Subdivision, a 91.34-acre parcel of land, BE AMENDED**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:**

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.

**Section 2. DESCRIPTION.** St Vincent's Healthcare Subdivision generally located on the north west corner of the intersection of King Ave W and Shiloh Rd, legally described as Block 1, Lots 1, 2A, 3A-1, 4A, 4B, 5A, 6A1, 6A2, 6A3; Block 2, Lots 1 -12 and Lot 2A; Block 3, Lots 1, 1A, 2-12; and Block 4 Lots 1-4 and Lots 2A2 and 3A, of St Vincent Healthcare Subdivision, is presently zoned **Planned Development – Entryway Light Industrial with the Shiloh Corridor Overlay District**, and is shown on the official zoning map within this zone. The Planned Development agreement for this property was filed with the Clerk and Recorder under document **No. 3732703**.

**Section 3. ZONE DISTRICT AMENDMENT.** The official original **Planned Development Agreement known as St Vincent Healthcare Planned Development filed as document No. 3732703** is hereby **amended as shown in Exhibit A**. All sections of document No. 3732703 not amended by Exhibit A shall remain in full force and effect. Such amended Planned Development document will be executed and filed with the County Clerk and Recorder and shall be subject to all the rules and regulations pertaining to Planned Development Agreements as set out in the Billings, Montana City Code.

**Section 4. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 5. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 6. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 28<sup>th</sup> day of August, 2023.

PASSED, ADOPTED and APPROVED on second reading this 11th day of September, 2023.

CITY OF BILLINGS

BY: \_\_\_\_\_

William A. Cole, Mayor

Attest:

BY: \_\_\_\_\_

Denise R. Bohlman, City Clerk

Zone Change 1033 – St Vincent Healthcare Planned Development Agreement Amendment

EXHIBIT A

**After Recording, return to:**

SCL Health

500 Eldorado Blvd., Suite 4300

Broomfield, CO 80021

Attn: Legal Department

**THIRD AMENDMENT TO PLANNED DEVELOPMENT AGREEMENT FOR THE ST.  
VINCENT HEALTHCARE SUBDIVISION**

This Third Amendment to Planned Development Agreement (“**Amendment**”) for the St. Vincent Healthcare Subdivision is entered into this \_\_\_ day of \_\_\_\_\_, 2023, by and between the Sisters of Charity of Leavenworth Health System, Inc., a Kansas non-profit corporation, of 500 Eldorado Blvd., Ste. 4300, Broomfield, Colorado 80021 (“**SCL Health**”) and the City of Billings, a Montana municipality (the “**City**”) of 210 North 27<sup>th</sup> Street, Billings, Montana 59101.

WHEREAS, St. Vincent Healthcare Foundation, Inc., a Montana public benefit corporation, as agent for SCL Health, entered into that certain Planned Development Agreement (“**Original PDA**”) for the St. Vincent Healthcare Subdivision, dated June 23, 2011 and recorded on June 12, 2014, in the real property records of Yellowstone County, State of Montana, at document number 3707747, for the development of approximately 113 acres of real property on the west side of Billings, Montana, more commonly known as the St. Vincent Healthcare Subdivision (the “**Property**”);

WHEREAS, the Original PDA was amended by that certain Consent to Minor Modification of Planned Development Agreement for St. Vincent Healthcare Subdivision, dated June 23, 2011, and recorded on November 21, 2014, in the real property records of Yellowstone County, State of Montana, at document number 3724597 (“**First Amendment to PDA**”);

WHEREAS, the Original PDA and First Amendment to PDA were amended again by that certain Second Consent to Minor Modification of Planned Development Agreement for St. Vincent Healthcare Subdivision, dated January \_\_, 2015 and recorded on February 27, 2015, in the real property records of Yellowstone County, State of Montana, at document number 3732703 (“**Second Amendment to PDA**”);

WHEREAS, the Original PDA, First Amendment to PDA, and Second Amendment to PDA are collectively referred to herein as the “**PDA**.”

WHEREAS, until now, there has been not been a great amount of development in the Property, and some terms and requirements of the PDA are no longer relevant and need updating;

AND WHEREAS, the undersigned desires to update the PDA terms pursuant to this Amendment.

NOW, THEREFORE, in consideration of mutual covenants and conditions set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, it is agreed as follows:

1. **General.** This Amendment is intended to be, and shall be construed as, an amendment to the PDA. To the extent that the terms and conditions of this Amendment conflict with the terms and conditions of the PDA, the terms and conditions of this Amendment shall control. Capitalized terms used in this Amendment shall have the meaning ascribed to them in the Lease.

2. **Amended Plat.** The City approved an amended plat of the Subdivision, Plat of Amended St. Vincent Healthcare Subdivision, which was recorded on December 21, 2022 in the real property records of Yellowstone County, State of Montana, at reception number 4037363 (“**Amended Plat**”). The Amended Plat is attached hereto as **Exhibit A-1**. Based upon this Amended Plat, the following amendments are necessary to the PDA.

A. **Plat.** All references to the Plat in the PDA are amended and restated as the Amended Plat and all references to Exhibit A in the PDA are amended and restated as **Exhibit A-1**.

B. **Signs Easements.** The Sign Easements shown on Exhibits A & B in the PDA are amended and shown on **Exhibit A-1**.

C. **Campus.** The term “**Campus**,” as defined in the PDA, shall be amended based on the Amended Plat to mean:

- i. Block 2, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 2A, 11 and 12.
- ii. Block 3, Lots 1A, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12.
- iii. Block 4: Lots 2, 3, 2A-2, and 3A.

D. **The Commercial Neighborhood.** The term “**Commercial Neighborhood**,” as defined in the PDA, shall be amended based on the Amended Plat to mean:

- i. Block 1: Lots 2A, 3A-1, 4A, 4B, 5A, 6A-1, 6A-2, and 6A-2.

E. **St. Vincent Park.** The term “**St. Vincent Park**,” as defined in the PDA, shall be amended based on the Amended Plat to mean approximately 2.771 acres located in Lot 7, Block 3, as depicted on the Amended Plat.

F. **Shiloh Overlay District.** All references to the Shiloh Corridor Overlay District are replaced with the CMU-2 Zoning District established in Chapter 27 of the City Code of Billings. Notwithstanding the foregoing, and solely as it relates to Block 2, Lots 1, 2, 3, 4, 5, 6,

7, and 8, in addition to CMU-2, the requirements and standards of an NX2 Zoning District shall also apply.

3. **Prohibited Uses.** The following shall be added to the list of prohibited uses in Article IV.C of the PDA:

34. **Marijuana.** The sale, growing or manufacturing of any product or by-product of the marijuana plant.

35. **Body Painting or body piercing salons.**

36. **Dry cleaning plants or public Laundromats** (provided this shall not apply to nominal supportive facilities for on-site service-oriented pickup and delivery by the ultimate consumer and other incidental non-dry cleaning services that are not self-service).

37. **Manufactured housing.**

38. **Chain Link Fencing** (provided this shall not apply to temporary or mobile chain link fencing used (a) during any construction activities or (b) for outdoor events, where the public needs to be separated from an event).

4. **Notices.** Any notices or demands required to be given under the PDA, as amended, shall be provided to SCL Health, as provided for in Section IX.E, at the following address:

If to SCL Health: 500 Eldorado Blvd., Ste. 4300  
Broomfield, Colorado 80021  
Attn: Legal Department

With copy to: St. Vincent Healthcare  
Attn: Business Development  
1106 North 30<sup>th</sup> Street  
Billings, MT, 59107-5200

5. **Miscellaneous.**

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

B. **Neutral Interpretation.** SCL Health and the City hereby stipulate and agree that the PDA, as amended, shall be construed using neutral interpretation and that this Agreement shall not be construed in favor of any party or against any party.

C. **The PDA Governs.** If there is any conflict between the PDA, as amended and other zoning regulations and/or ordinances, the terms and conditions of the PDA, as amended, shall govern.

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

E. **Waiver.** Failure of one party to notify the other party of a default in the manner provided in the PDA, as amended, shall not be deemed a waiver of any rights which the non-defaulting party may otherwise have at law or in equity.

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

G. **Limitation on Enforcement.** The PDA, as amended, is for the benefit of SCL Health, the City, the other owners within Property, 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. **Severability.** Should any provision of this Amendment be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Amendment, 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.

I. **No Partnership.** The provisions of the PDA, as amended, 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.

J. **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 Amendment.

K. **Entire Agreement.** The PDA, as amended, contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

L. **Construction.** In construing the provisions of the PDA, as amended, 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.

M. **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.

N. **Conflict.** It is the intent of the parties to implement Chapter 27 of the City Code of Billings. throughout The Subdivision. In the event of any conflict between the express terms of this PDA and Chapter 27 of the City Code of Billings, the express terms and conditions of the PDA, as amended, shall govern.

O. **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 SCL Health, the City, the owners of the Lots in the Property, and their heirs, successors, and assigns.

[signature pages follow]

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

SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.,  
a Kansas non-profit corporation

By: \_\_\_\_\_  
Name:  
Its:

STATE OF COLORADO )  
 )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Sisters of Charity of Leavenworth Health System, Inc., a Kansas non-profit corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**CITY OF BILLINGS.**  
a municipality

By: \_\_\_\_\_  
Name: William A. Cole  
Its: Mayor

STATE OF MONTANA )  
 )  
COUNTY OF YELLOWSTONE )

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of the City of Billings, a municipality.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



