

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 27th 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:

(The following sections of the current PDA will remain in full force and effect except as modified below: Article I. Purposes; Article II. Definitions; Article III – Binding Effect; Article IV – Regulation of Uses; Article V – Parks and Green Spaces; Article VI – Site Development, Architecture and Design; Article VII – Signs; Article VIII – Enforcement; Article IX -General Provisions; and Article X - Notice)

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: *(modifies Article II.E of the current PDA)*

- 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: *(modifies Article II. F of the current PDA)*

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. *(modifies Article II.J of the current PDA)*

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. *(modifies Article IV.A 2 and 3 of the current PDA as well as other Articles that contain references to the Shiloh Corridor Overlay including Articles VI.A, VI.D, and IX.P)*

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.** *(this use is already prohibited by Article IV.C.13 in the current PDA)*

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.** *(modifies Article IV.C of the current PDA)* 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 30th Street
Billings, MT, 59107-5200

5. **Miscellaneous.**

A. *(modifies Article X of the current PDA)* 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.

(all numerical items below modifies existin Article IX of the existing PDA – primarily by updating the name of the Party to SCL Health)

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. *(this language excluded that exists in the current PDA: "The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.")*

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: _____

Exhibit A-1
Amended Plat

BASIS OF BEARING: THE BASIS OF BEARINGS FOR THIS SURVEY HAS BEEN DERIVED FROM GPS OBSERVATIONS AND IS BASED ON A NAD 83 LAMBERT CONFORMAL CONIC SINGLE MERIDIAN, LOW ELEVATION PROJECTION FOR THE CITY OF BILLINGS, HAVING A POINT OF ORIGIN AT 404700N EASTING AND 5000000M NORTHING WITH A SCALE FACTOR OF 1.000015. THE GRID TO GROUND CORRECTION SCALE FACTOR AT THE NW CORNER OF BLOCK 2 (JOB #1) IS 0.999985. THE CONVERSION ERROR IS APPROXIMATELY EQUAL TO SIGHTING DISTANCE. FOR THIS SURVEY, GRID DISTANCE IS ESSENTIALLY EQUAL TO SIGHTING DISTANCE.

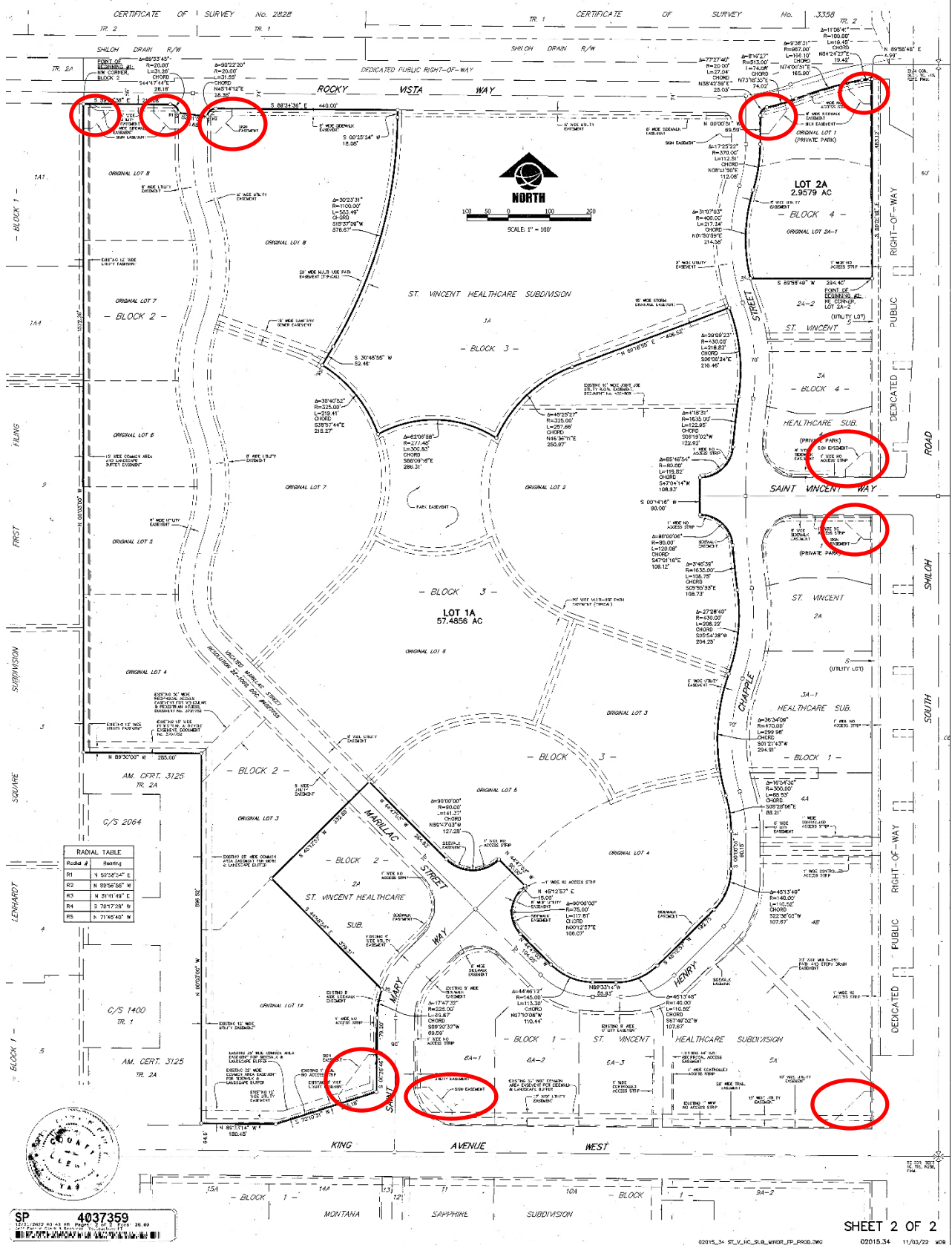
○ FOUND SURVEY MONUMENT, BEAR WITH YELLOW CAP MARKED "SANDERSON STEWART", OR AS NOTED

NOTE: ALL CURVES ARE TANGENT AND ALL PROPERTY LINES INTERSECTING CURVES ARE RADIAL UNLESS OTHERWISE NOTED.

PLAT OF
AMENDED ST. VINCENT HEALTHCARE SUBDIVISION
BEING A VACATION OF LOTS 1A & 3-8 OF BLOCK 2, LOTS 2-8 OF BLOCK 3, LOTS 1 & 2A1 OF BLOCK 4, AND A PORTION OF VACATED MARILLAC STREET RIGHT-OF-WAY (PER RESOLUTION 22-1060, DOC. #4027755), ALL WITHIN ST. VINCENT HEALTHCARE SUBDIVISION, SITUATED IN THE SE 1/4 OF SECTION 10, T. 1 S., R. 25 E., P.M.M., IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: SCL HEALTH-MONTANA
PREPARED BY: SANDERSON STEWART

OCTOBER, 2022
BILLINGS, MONTANA



SP 4037359
11/13/22 10:43 AM
SCL HEALTH-MONTANA

SHEET 2 OF 2
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