

ORDINANCE 21-5759

**AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THE
PLANNED DEVELOPMENT ZONE FOR LENHARDT SQUARE
INCLUDING ALL LOTS AND BLOCKS WITHIN LENHARDT SQUARE
SUBDIVISIONS (FIRST, SECOND AND THIRD FILINGS), AND C/S
2063, TRACTS 2A1 AND 5A1, A TOTAL OF APPROXIMATELY 114
ACRES OF LAND GENERALLY LOCATED NORTH OF KING AVENUE
WEST NEAR THE INTERSECTION OF S. 44TH ST. WEST, 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. **ALL LOTS AND BLOCKS WITHIN LENHARDT SQUARE SUBDIVISIONS (FIRST, SECOND AND THIRD FILINGS), AND C/S 2063, TRACTS 2A1 AND 5A1,** is presently zoned **PLANNED DEVELOPMENT** and is shown on the official zoning map within this zone.

Section 3. ZONE DISTRICT AMENDMENT. The official **Planned Development** on file in the office of the City Clerk under Ordinance 08-5460 and recorded with the County Clerk and Recorder under Doc. No. 3464966 as amended by Doc. No. 3505105 (minor modification), Doc. No. 3676656 (Zone Change 909 approved June 11, 2013) is hereby amended as shown in **Exhibit A** by **deleting these existing Planned Development documents in their entirety and replacing with the updated language and master zoning plan.**

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 All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.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

PASSED by the City Council on first reading this 24th day of May, 2021.

PASSED, ADOPTED and APPROVED on second reading this 14th day of June, 2021.

CITY OF BILLINGS



BY: William A Cole
William A. Cole, Mayor

Attest:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk

Zone Change 991 – Lenhardt Square PD update

Exhibit A

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 27th 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 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 (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, 2nd 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 replating, 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.

F. 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).

G. 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.

H. 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.

I. 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:

(i) **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.

(ii) **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.

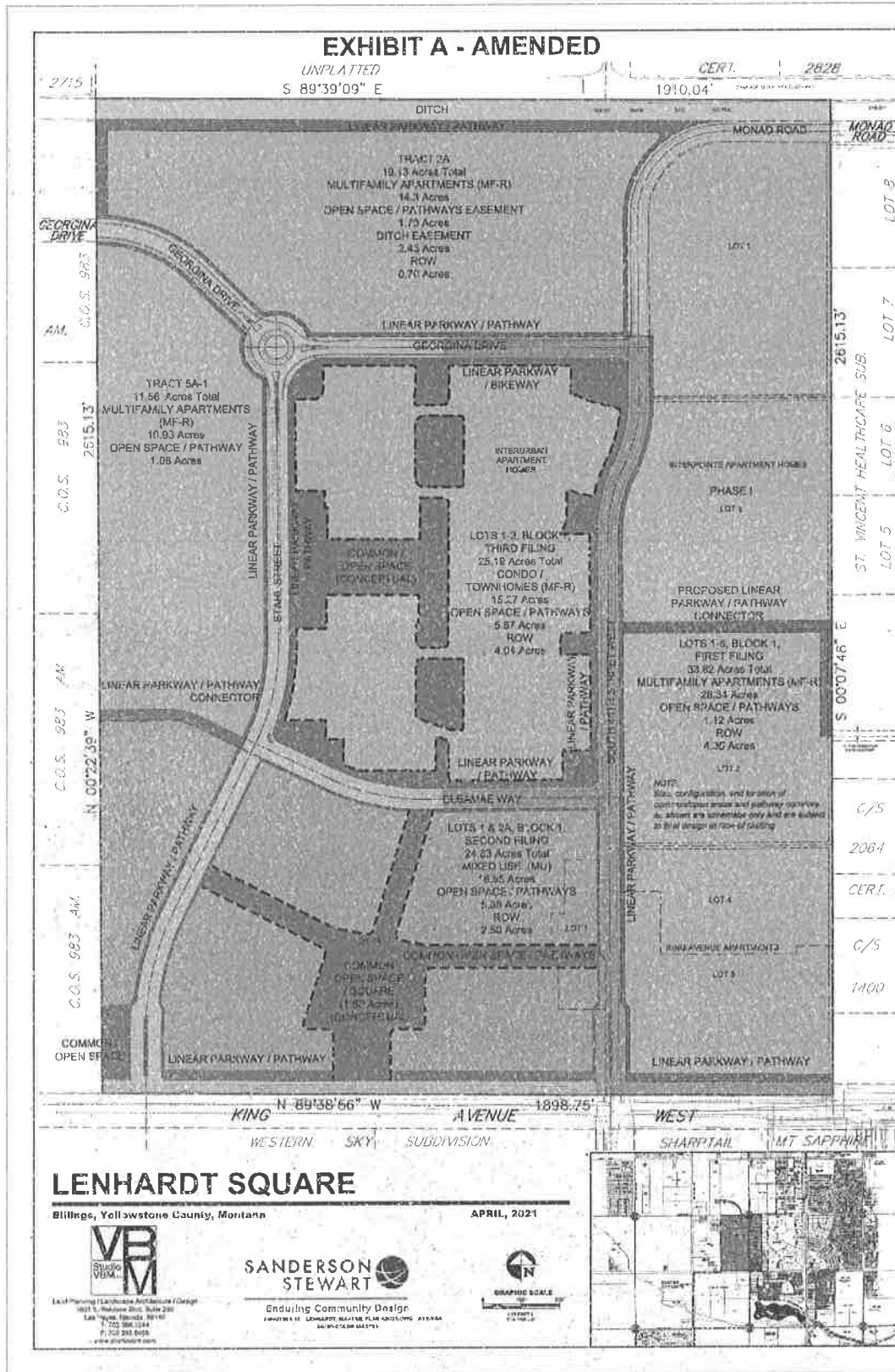
[signature]

[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*

| Minimum Lot Size Per Structure | MF-R** | MU** |
|---|---|-----------------|
| 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 | |
| Setback Requirements (in feet)¹ | | |
| Front:² | | |
| From Linear Parkway | 5 ¹ | 5 |
| From streets (right-of-way) | 20 ² | 0 |
| Sides:⁴ | | |
| 1 Story | 5 | 5 |
| 2 Story | 8 | 8 |
| 3+ Story | 9 + 1 | 0 |
| Side Adjacent to Street | 10 | 0 |
| Rear⁴ | 15 | 0 |
| Arterials | 25 | 25 |
| Maximum Height (in stories) | 4 | 7 ⁴ |
| Maximum Lot Coverage | 50% | 100% |
| Maximum Average Densities | 21 | 35 ² |
| (Dwelling Units/Acre) | | |
| Fence/Wall/Berm/Shrub Max. Height | | |
| 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,).

¹ 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.

² 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.

³ 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.

⁴ 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

| TYPE OF USE | REQUIRED PARKING (spaces / dwelling unit) |
|-------------|--|
| 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 foot 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.)