

STOCKMAN DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) dated as of _____, day of _____, 2012, is made by and between _____ a Montana _____ whose address is _____ (the “Developer”), and the **CITY OF BILLINGS**, a municipality of the State of Montana whose address is 210 North 27th Street Billings, Montana 59103 (the “City”) (Developer and City are collectively the “Parties”).

WITNESSETH:

WHEREAS, The City has pursuant to Ordinances Nos. 08-5483, 06-5394, and 05-5333 (the “Ordinances”) created and expanded the North 27th St. Urban Renewal District which contains a tax increment provision (the “District”) and

WHEREAS, Developer owns and plans to develop property in the District as a bank and commercial office space (the “Project”) upon that property described in Exhibit A (the “Property”); and

WHEREAS, the Project will include the qualified improvements set forth in Exhibit B attached hereto and made a part hereof (the “Qualified Improvements”); and

WHEREAS, it is the intention and desire of the Parties that a portion of the tax increment revenue generated from the District (the “Adjusted District Tax Increment Revenue” as more specifically defined in Section 4) will be used to reimburse Developer for the costs of the Qualified Improvements; and

WHEREAS, it is necessary and desirable for the Project that the Developer proceed with construction of the Qualified Improvements paying for them with private funds; and

WHEREAS, the City has determined pursuant to the Ordinances that the Project and Qualified Improvements to be constructed therewith are Urban Renewal Projects within the Montana Urban Renewal Law and that such improvements are eligible for tax increment financing; and

WHEREAS, the City has determined that it is appropriate to provide some reimbursement to Developer for the costs of the Qualified Improvements on a periodic basis; and

WHEREAS, City and Developer wish to enter into an agreement to establish the terms and conditions and methodology by which City will reimburse Developer from District Tax Increment Revenue.

NOW THEREFORE, City and Developer agree, covenant and represent as follows:

Section 1. Development of the Project.

- 1.01. The Developer has submitted an application for tax increment financing or funding of the Project that was reviewed and approved by the Downtown Billings Partnership, Inc. Board of Directors on **October 28, 2011**, attached as Exhibit D (the “Application”) which includes schematic, site, landscaping and construction plans for the Project and a Project schedule. The City acknowledges and agrees that Developer has already performed a substantial amount of demolition with respect to the Project and is continuing to perform construction on the Project. **Developer will complete, substantially, the construction of the Project no later than June 30, 2012.** Developer shall complete construction of the Qualified Improvements substantially in conformance with the Application and will allow City or its development representative, The Development Committee of the Downtown Billings Partnership, Inc., (the Development Committee) to review the substantially completed Project and certify the satisfactory completion, or the timely plan for completion, of the Qualified Improvements.
- 1.02. The Developer will utilize the City’s normal construction plan review procedures and will obtain all necessary construction permits with respect to the Project. The Developer shall construct all Project Improvements in accordance with City ordinances and other applicable local, state and federal regulations. The proposed building plan shall be in conformance with the current zoning of the Property. All improvements and construction on the Project, including, but not limited to on-site development, building construction, landscaping, and lighting shall be performed in accordance with all local, state, and federal regulations.

Section 2. Construction and Maintenance of the Qualified Improvements. The Developer will construct the Qualified Improvements as a part of the construction of the overall Project and shall substantially complete the Qualified Improvements in material conformance with the plans in the Application before occupancy of the Project. The Qualified Improvements will be maintained for their normal useful life by the Developer in a reasonable manner and at no cost to the City, except to the extent similar Qualified Improvements are generally maintained by the City for other businesses in the District. Developer agrees, as set forth in Exhibit E, attached, to permit general public parking on the Project parking improvements during non-operation hours. The City acknowledges and agrees that replacement of Qualified Improvements for reasonable purposes (e.g. such Qualified Improvements are at the end of their useful life, have been damaged or are no longer in style) shall not alleviate the City’s obligation to reimburse for such Qualified Improvements.

Section 3. Assessments and Taxes. The Developer acknowledges and understands that the Project will be assessed for real property taxes and may be subject to special improvement assessments, including the Downtown Billings Business Improvement District. Developer further acknowledges that filing a protest of real property tax assessments on the Project property will suspend City's obligation to make a reimbursement payment until the protest has been settled. Notwithstanding the foregoing, nothing in this Agreement shall be deemed a waiver of the Developer's right to protest the creation of any special improvement district(s) or of any other rights of the Developer.

Section 4. Reimbursement. The Parties agree that City shall make every effort to reimburse Developer over a period of time commencing with the First Reimbursement, subject to the certification of Project completion by the Development Committee as set forth in Section 1 herein, to be made on **June 30, 2012 in the amount of \$50,000 from the fiscal year 2012 development budget, subject to sufficient monies in the fund as described below as "Adjusted District Tax Increment Revenue."** In subsequent fiscal years the Parties agree that a portion of the Adjusted District Tax Increment Revenue be used to reimburse the Developer for costs of the Qualified Improvements. Subject to the terms and conditions of this Agreement, City agrees to allocate and pay to Developer a portion of the Adjusted District Tax Increment Revenue by annual payments as follows:

4.01 Calculation of Annual Reimbursement Payment. The City's annual reimbursement payment to Developer shall be calculated annually, following the First Reimbursement, for each tax year beginning with calendar year 2013 and shall be payable according to Section 4.02, subject to the provisions of Sections 4.03 and 4.04 ("Annual Reimbursement Payment"). **[The Annual Reimbursement Payment shall be 15% of the Adjusted District Tax Increment Revenue. "Adjusted District Tax Increment Revenue" shall be the aggregate "tax increment" (as defined on the date of this Agreement in Section 7-15-4283 of the Montana Code) revenue actually received by the City for the entire District for the related tax year minus all encumbered project allocations identified in Exhibit E.]** An example of the calculation of the Annual Reimbursement Payment is set forth on Exhibit C.

4.02 Payment of "Annual Reimbursement Payment." The Annual Reimbursement Payment shall first become due as described above in section 4.01 and pursuant to completion of the Project, including all of the Qualified Improvements, issuance of a certificate of occupancy, and real property taxes actually collected by City as described in section 4.01. City shall pay Developer the Annual Reimbursement Payment without interest, setoff or recoupment on or before July 1st of each year or within 10 days following Yellowstone County's transfer of the second half tax increment payment/distribution to the City, whichever occurs later.

4.03 Maximum Reimbursement Amount. The cumulative Annual Reimbursement Payments, including the First Reimbursement, from City to Developer under this Agreement shall not exceed **the Maximum Reimbursement Amount of**

\$630,000 as set forth in Exhibit C attached. Subject to the terms of Section 4.04, upon payment by City of the Maximum Reimbursement Amount, City's obligation to reimburse Developer under this Agreement shall be satisfied and shall terminate.

4.04 Limitation and Termination of Reimbursement. In no event shall Developer be reimbursed for more than the actual cost of the Qualified Improvements as **set forth in Exhibit B, and as documented as actual expenditures by Developer. City and Developer acknowledge that they have identified total Qualified Improvements of up to \$630,000.00.**

City's obligation to reimburse Developer for the Qualified Improvements shall terminate, without notice, upon the occurrence of any of the following events:

- a. The later of August 11, 2020 or such later date that the District terminates, regardless of whether the Maximum Reimbursement Amount has been paid. The Parties acknowledge that the term of the District is presently 15 years commencing on August 11, 2005; however, the term may be extended by issuance of bonds for the District; or
- b. Payment of the Maximum Reimbursement Amount; or
- c. Developer's failure to make properly due and owing property tax payments for the Property; or
- d. Sale of the Property by Developer, where the purchaser does not agree to the terms and conditions of this Agreement; or
- e. Developer's unreasonable restriction or elimination in whole or in part of any of the Qualified Improvements; or

4.5 If Developer receives a property tax abatement under Section 15-24-1501 et seq. of the Montana Code, the reimbursements hereunder shall be delayed until the abatement period terminates and Developer understands that the total amount of taxes abated during the abatement period shall be deducted from the Maximum Reimbursement Amount

Section 5. Obligation of the City. City will make every effort to reimburse the Developer annually for a portion of Qualified Improvements costs when and to the extent that the Project Tax Increment Revenues are received, as described in Section 4.2.

Section 6. Entire Agreement. This Agreement supercedes all prior written or oral understandings which the parties may have had and constitutes the entire agreement between the parties.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Montana.

Section 8. Construction. If any provision of this Agreement is found invalid to any extent, the remainder of this Agreement shall not be affected thereby, and any provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns. Provided, however, that Developer shall not be entitled to assign its interests under this Agreement, unless any successor or assignee of Developer assumes in writing all of the obligations, stipulations and agreements of Developer under this Agreement.

Section 10. Notices. Any notice, demand or request under this Agreement shall be delivered in person or sent via US Certified Mail, postage prepaid, to the Parties at the following addresses:

City of Billings
210 North 27th Street
Billings, MT 59103
Attn: Finance Director

Attn:_____

Section 11. Indemnification and Attorney’s Fees. The Developer and the City agree to indemnify, defend and hold harmless each other for any and all claims, demands, lawsuits, judgments, liabilities or damages including reasonable attorneys fees arising out of their respective negligent or intentional acts or omissions.

If it becomes necessary for any Party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, or to give any notice required herein, then the prevailing party shall be entitled to recover from the other reasonable attorney fees and costs.

Section 12. Amendments. Amendment or modification of this Agreement or any provisions herein shall be made in writing by the Party requesting the change and upon acceptance and execution by all Parties shall become a part of this Agreement.

Section 13. Force Majeure. For the purposes of this Agreement “Force Majeure” shall mean any act of God, fire, earth movement, flood, explosion, action of the elements, war, invasion insurrection, acts of terrorism, riot, mob violence, sabotage, inability to procure general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions (unless provoked in bad faith violation of any labor laws by the party claiming its obligation or undertaking was prevented or delayed), condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, similar to the foregoing, not within the control of such party. During any time period in which an element of Force Majeure may exist, the Parties hereto are excused as to any performance substantially affected thereby, other than the City’s obligation to reimburse the Development hereunder.

Section 14. Parties to this Agreement. The only parties to this Agreement are the Developer and the City, and except as stated in this section nothing herein should be held to give rise to claims of third parties. This Agreement establishes a right of reimbursement based on the cost of Qualified Improvements paid by the Developer and the City will honor that obligation.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

CITY OF BILLINGS

By: _____
Mayor

Attest: _____
City Clerk

“DEVELOPER”

By: _____

Its, _____

Exhibits

Exhibit A – Legal Description

Exhibit B – List of Public Improvements

Exhibit C – Calculations of First Reimbursement and Annual Payment

Exhibit D – Application for TIFD Assistance

Exhibit E - Public Parking Letter