

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) dated as of this ____, day of _____, 2013, is entered into by and between GSA Billings, L.C., a Utah limited liability company, with a business address of 90 South 400 West, Suite 200, Salt Lake City, UT 84101 (“GSA Billings LC”) and the **City of Billings**, a municipality of the State of Montana with an address of 210 North 27th Street Billings, Montana 59103 (the “City”) (collectively, the “Parties”).

WITNESSETH:

WHEREAS, pursuant to City of Billings Ordinance No. 06-5395 (the “Ordinance”) the City has created the East Billings Urban Renewal District (the “Urban Renewal District”) which contains a tax increment provision;

WHEREAS, GSA Billings LC has developed certain property located within the Urban Renewal District as an office facility on property more particularly described in the TIF Application Packet submitted by GSA Billings LC attached hereto as Attachment A and made a part hereof (“Application”) and has provided the Urban Renewal District with a schedule of development for the office center (the “Project”);

WHEREAS, the Project includes certain qualified public improvements, consisting of demolition, and construction of sidewalks, curbs, gutters, crosswalk HAWK signal, landscaping, offsite utility connections, and parking lot, including engineering services, architectural services, labor material costs, and other costs associated with the construction and installation thereof, as more particularly set forth in the Application and Attachment B hereto (hereafter the “Public Improvements”);

WHEREAS, it is the Parties’ intention and desire that a portion of the tax increment revenue generated from the Project (the “Project Tax Increment Revenue”) be used to pay for the costs of certain Public Improvements;

WHEREAS, pursuant to the Ordinance, the City has determined that the Project and Public Improvements to be constructed therewith are Urban Renewal Projects and that such improvements are eligible for tax increment financing;

WHEREAS, the City and the Billings Industrial Revitalization District, Inc. (“BIRD”) determined that it is appropriate to reimburse GSA Billings LC for certain Public Improvements using a portion of the Project Tax Increment Revenue.

NOW THEREFORE, for good and valuable consideration, the Parties hereto hereby agree, covenant and represent as follows:

Section 1. Development and Completion of the Project.

- 1.A. BIRD has prepared a report which identifies the qualified Public Improvements associated with the Project and the amount of reimbursement for the qualified Public Improvements (the "List of Qualified Public Improvements"). The List of Qualified Public Improvements is attached hereto as Attachment B. GSA Billings LC represents that it has constructed the Project, which consists of a 119,000 sq. ft. office building, parking areas, utility improvements, and incidental improvements thereto, and that the Project was substantially completed in May 2013.
- 1.B. GSA Billings LC represents that it has obtained the necessary approval from the City for all construction relating to the Project. GSA Billings LC represents that it has constructed all on-site improvements in accordance with City ordinances and any other applicable local, state and/or federal laws or regulations and the Project conforms to the applicable zoning of the Property. GSA Billings LC represents that all improvements and construction thereon and adjacent to the Project, including, but not limited to off-site development, building construction, landscaping, parking area construction and lighting have been performed in accordance with all local, state, and/or federal regulations and laws, and as approved by the City. GSA Billings LC represents that it has paid all applicable utility and service extension fees as to the construction and/or the extension of services to the Project or any portion thereof.

Section 2. Construction and Maintenance of the Public Improvements. GSA Billings LC represents that it has constructed the Public Improvements as a part of the construction of the overall Project and has substantially completed them in conformance with the plans in the Application before occupancy of the Project. Except with respect to the HAWK signal which shall be maintained by the City, the Public Improvements shall be maintained by GSA Billings LC in a reasonable manner and at no cost to the City. The parking lot that is part of the Public Improvements shall be available for use, at no charge, to the public as provided in this Agreement and where the use does not conflict with the use of the parking lot for those occupying or visiting the GSA Billings LC building. The number of parking spaces that are part of the Public Improvements may be decreased to accommodate the construction of additional office space or commercial space provided that the remaining parking is sufficient to meet the then existing zoning regulations or as otherwise permitted with the consent of the City.

In the event vandalism becomes unreasonably burdensome, all or part of the parking may be removed from public use. GSA Billings LC may also provide for reasonable regulation as to the use of the parking area. GSA Billings LC shall provide City with 30 days advance written notice of: (i) any intended removal of all or part of the parking area from public use; or, (ii) the proposed regulation of such use. In the event GSA Billings LC removes all or part of the parking area from public use, the Maximum

Reimbursement Payment (defined in Section 4.03 below) to GSA Billings LC shall be proportionately reduced from and after the reduction of parking spaces available to the public in proportion to the number of restricted parking spaces over the total number of parking spaces previously available to the public. When 20 years has passed since the issuance of an occupancy permit for the Project, GSA Billings, LC shall not be required to provide parking for public use, regardless of whether or not GSA Billings LC has been fully reimbursed.

The following additional conditions shall apply to the parking lot:

1. The specific hours the parking lot can be used for public parking are between 6:00 PM and 6:00 AM, Monday through Friday, and all day on weekends. No overnight RV use or “Camping” is permitted.
2. GSA Billings LC will provide signage stating "Public parking is authorized between the hours of 6:00 PM to 6:00 AM Monday through Friday and all day on weekends. No Overnight RV use or “Camping” is permitted”. Signs will be placed at each entrance of the parking lot.

Section 3. Assessments and Taxes. GSA Billings LC acknowledges and understands that the Project will be assessed for real property taxes and at some time in the future may be assessed with respect to special improvement districts. In this regard, GSA Billings LC agrees to pay when due all special improvement district assessments and taxes; provided, however, the foregoing shall not prevent GSA Billings, LC from contesting any such taxes or assessments as permitted by applicable law.

Section 4. Reimbursements. The Parties intend that a portion of the Project Tax Increment Revenue, specific to this Project, be used to reimburse GSA Billings LC for costs of the Public Improvements in an amount up to and not to exceed \$613,741.60. Subject to the terms and conditions of this Agreement, City agrees to allocate and pay to GSA Billings LC a portion of the actual Project Tax Increment Revenue by annual payments as follows:

4.01 Calculation of Annual Reimbursement Payment. The City reimbursement payment to GSA Billings LC shall be calculated annually for each tax year beginning with tax 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 the lesser of: (1) 45% of the Project Tax Increment Revenue; or (2) \$76,717.70. The Project Tax Increment Revenue shall be calculated by subtracting the 2012 base property tax for the Property of \$15,204 from the property tax for the current tax year as reflected on GSA Billings LC’s property tax statement. The Project Tax Increment Revenue is intended to reflect the tax increment revenue generated by the Project and actually received by the City from GSA Billings LC’s payment of the related property taxes.

4.02 Payment of Annual Reimbursement Payment. The Annual Reimbursement Payment shall first become due for the year in which the full tax revenues are actually collected for the completed Project. City shall pay GSA Billings LC the Annual Reimbursement Payment without interest on or before July 1st of each year beginning July 2014 or within 10 days following Yellowstone County's transfer of the prior year's first and second half tax increment payment/distribution to the City, which ever occurs later.

4.03 Maximum Reimbursement Amount. The total Annual Reimbursement Payments from City to GSA Billings LC under this Agreement shall not exceed \$613,741.60 ("Maximum Reimbursement Amount") based upon the agreed maximum amount of reimbursement for qualified Public Improvements set forth on Attachment B.

4.04 Limitation and Termination of Reimbursement. In no event shall GSA Billings LC be reimbursed for more than the actual cost of the qualified Public Improvements as set forth in the List of Qualified Public Improvements. The cost of said qualified Public Improvements shall be subject to audit by the City. Upon payment by City of the Maximum Reimbursement Amount, City's obligation to reimburse GSA Billings LC under this Agreement shall be satisfied and shall terminate.

City's obligation to reimburse GSA Billings LC for the Public Improvements shall terminate, without notice, upon the occurrence of any of the following events:

- a. Sunset of the Urban Renewal District, regardless of whether the Maximum Reimbursement Amount has been paid; or
- b. Payment of the Maximum Reimbursement Amount; or
- c. Sale of the Property by GSA Billings LC, where the purchaser does not agree to the terms and conditions of this Agreement; or
- d. GSA Billings LC's unreasonable restriction or elimination in whole or in part of any use of the Public Improvements; or

In addition, in the event GSA Billing LC fails to pay property taxes, the City's obligation to reimburse GSA Billings LC as provided herein shall be suspended until such time as GSA Billings LC pays such property taxes.

Section 5. Entire Agreement. This Agreement supercedes all prior written or oral understandings or negotiations that the Parties may have undertaken and constitutes the entire agreement between the Parties.

Section 6. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Montana. Venue shall be in Yellowstone County, Montana.

Section 7. Construction. If any provision of this Agreement is found to be invalid to any extent, the remainder of this Agreement shall not be affected thereby, and any such provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 8. Successors and Assigns. The stipulations and agreements of this Agreement shall be binding upon the Parties' successors and assigns.

Section 9. Notices. Any notice, demand or request under this Agreement shall be delivered in person or sent via U.S. Certified Mail, postage prepaid, to the Parties at the following addresses:

City of Billings
210 N 27th Street
Billings, MT 59101
Attn: City Attorney

GSA Billings LC
90 South 400 West, Suite 200
Salt Lake City, UT 84101
Attn: Nate Boyer

With copy to:

Billings Industrial Revitalization District, Inc.
1413 4th Avenue North, Suite C
Billings, MT 59101

Section 10. Attorney Fees. 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 party its' reasonable attorney fees and costs.

Section 11. Amendments. Amendments or modifications to this Agreement or any provisions herein shall be made in writing by the party requesting the change and upon written acceptance and execution by all parties shall become a part of this Agreement.

Section 12. 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, provided, however, Force Majeure, shall not include lack of funds or inability of obtain financing. 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.

Section 13. Parties to this Agreement. The only parties to this Agreement are GSA Billings LC 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 for the cost of Public Improvements paid by GSA Billings LC and the City shall honor that obligation as set forth herein.

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

GSA BILLINGS, L.C., by its Manager

Boyer Project Company, L.C.

The Boyer Company, L.C.

By: _____
Its: _____

Billings Industrial Revitalization District, Inc. is not a party to the agreement but approves and accepts the terms and conditions of the Agreement under its authority granted under the Urban Renewal District Plan.

BILLINGS INDUSTRIAL REVITALIZATION DISTRICT, INC.

By: _____
Its: President

Attest: _____
Its: Secretary

STATE OF MONTANA)
)
:SS
County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____,
2013, by _____ and _____,
respectively as Mayor and City Clerk of the City of Billings.

SEAL

Sign: _____
Print Name: _____
Notary Public for the State of Montana
Residing at Billings, MT
My Commission expires: _____

STATE OF UTAH)
)
:SS
County of Salt Lake)

This instrument was acknowledged before me on the ____ day of _____,
2013, by _____, a manager of The Boyer
Company, L.C., the Manager of Boyer Project Company, L.C., the manager of GSA
Billings, L.C.

SEAL

Sign: _____
Print Name: _____
Notary Public for the State of Montana
Residing at Billings, MT
My Commission expires: _____

