

## **DRAFT DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (the “Agreement”) - dated as of this \_\_\_\_\_, day of \_\_\_\_\_, 2014, is entered into by and between **Community Leadership and Development Incorporated (CLDI, Inc.)**, a 501(c)(3) non profit, with an address of 109 1/2 S 32nd St, Billings, Mt 59101, the **City of Billings (the “City”)**, a municipal corporation with an address of 210 North 27<sup>th</sup> Street Billings, Montana 59103, and **South Billings Urban Renewal Association, Inc. (SBURA)**, a 501(c)(6) non-profit organization (collectively, the “Parties”).

### **WITNESSETH:**

**WHEREAS**, pursuant to City of Billings Ordinance No. 08-5462 (the “Ordinance”) the City has created the South Billings Boulevard Urban Renewal District (the “Urban Renewal District”) which contains a tax increment provision;

**WHEREAS**, CLDI, Inc. plans to develop certain property located within the Urban Renewal District as affordable housing on property more particularly described in the CLDI, Inc. TIF Application Packet (the “Project”) and has provided the Urban Renewal District with a schedule of development.

**WHEREAS**, the City requires certain details and specification of the rights, duties, obligations and responsibilities which exist in connection with the construction of certain public improvements, consisting of curb, gutter, and sidewalk, landscaping, street construction, and public utilities as well as all engineering services, architectural services, labor material costs, and other costs associated with the construction and installation thereof, as more particularly set forth in the CLDI, Inc. TIF Application Packet attached hereto and made a part hereof (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 a portion of the 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 SBURA, pursuant to the Ordinance creating the Urban Renewal District has determined that it is appropriate to return a portion of the Project Tax Increment Revenue to CLDI, Inc..

**WHEREAS**, the SBURA board of Directors has voted to recommend funding the CLDI, Inc. TIF application for a certain amount, pursuant to a Memorandum of Understanding approved by the City January 13, 2014 establishing the roles of the parties.

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

**Section 1. Development of the Project.**

- 1.A. The SBURA has prepared an application packet titled “CLDI, Inc. TIF Application Packet” which projects the amount of Project Tax Increment Revenue that will be generated from development of the Project. CLDI, Inc. represents that as expeditiously as possible, CLDI, Inc. Shall undertake construction of the Project, which consists of the construction of 5 duplex type affordable housing units generally located at the corner of Orrel St and Monroe St , parking areas, landscaping, and incidental improvements thereto and which will be substantially completed in approximately 20 months.
  
- 1.B. CLDI, Inc. shall obtain the necessary approval from the City for all construction relating to the Project. CLDI, Inc., shall construct all on-site improvements in accordance with City ordinances and any other applicable local, state and/or federal laws or regulations. The proposed development plan shall conform to the current zoning of the Property. All improvements and construction thereon and adjacent to the Project, including, but not limited to off-site development, building construction, landscaping, and lighting shall be performed in accordance with all local, state, and/or federal regulations and laws, and as approved by the City. CLDI, Inc. acknowledges that the Project is subject to applicable utility fees in place at the time a building permit is secured, or applied for, as to the construction and/or the extension of services to the Project or any portion thereof. Those fees shall be due and payable from CLDI, Inc., at the time of request for service extensions.

**Section 2. Construction and Maintenance of the Public Improvements.** CLDI, Inc. will construct the Public Improvements as a part of the construction Project. CLDI, Inc. agrees to maintain the adjacent sidewalks and boulevard landscaping as per City policy.

**Section 3. Assessments and Taxes.** CLDI, Inc. 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, CLDI, Inc. agrees to pay when due all special improvement district assessments and taxes.

**Section 4. Reimbursements.** Consistent with the Parties’ desire that a portion of the Project Tax Increment Revenue, specific to this Project, be used to reimburse CLDI, Inc. for a portion of the costs of Public Improvements, the City agrees to allocate up to and

not to exceed \$39,319.50. It is understood that at no time shall CLDI, Inc. be reimbursed for more than the portion of the cost of the total agreed upon qualified public improvements. The cost of said Public Improvements shall be subject to Audit by the City. The reimbursement will be made by the City to CLDI, Inc., with a lump sum payable after the project is completed.

**Section 5. Obligation of the City.** The City intends to refund a portion of the costs for Public Improvements as set forth above to CLDI, Inc., using South Billings Boulevard Urban Renewal District tax increment dollars that have been collected when all dwelling units that are a part of this project have been granted a Certificate of Occupancy by the City of Billings Building Division.

**Section 6. 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 7. 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 8. 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 9. Successors and Assigns.** The stipulations and agreements of this Agreement shall be binding upon the Parties' successors and assigns.

**Section 10. 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  
2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor  
Billings, MT 59101  
Attn: Candi Millar

CLDI, Inc.  
109 1/2 S 32nd St, Billings  
Billings, MT 59101  
Attn: Steve Houlihan

South Billings Urban Renewal Association, Inc.  
430 S Billings Blvd  
Billings, MT 59101  
Attn: Shawn Hanser

**Section 11. 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 12. 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 15. 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 16. Parties to this Agreement.** The only parties to this Agreement are CLDI, Inc. the City, and SBURA, Inc. This Agreement establishes a right of reimbursement for the cost of Public Improvements paid by CLDI, Inc. 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**

**STATE OF MONTANA**            )  
  )  
  )  
**County of Yellowstone**    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ and \_\_\_\_\_, respectively as Mayor and City Clerk or of the City of Billings.

SEAL

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

**COMMUNITY LEADERSHIP AND DEVELOPMENT  
INCORPORATED**

**By:** \_\_\_\_\_  
**Its: President**

**STATE OF MONTANA**            )  
  )  
  )  
**County of Yellowstone**    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by \_\_\_\_\_, the \_\_\_\_\_,  
of CLDI, Inc.

SEAL

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

