

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (the “Agreement”) - dated as of this \_\_\_\_\_, day of \_\_\_\_\_, 2014, is entered into by and between **Big Sky King Properties, LLC**, a Montana limited liability company, with an address of 1250 15<sup>th</sup> Street West, Suite 201, Billings, Mt 59102, 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**, Big Sky King Properties, LLC plans to develop certain property located within the Urban Renewal District as a new quick serve restaurant on property more particularly described in the Big Sky King Properties, LLC 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, drive approaches, 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 Big Sky King Properties, LLC 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 Big Sky King, LLC.

**WHEREAS**, the SBURA board of Directors has voted to recommend funding the Big Sky King, LLC 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 “Big Sky King, LLC TIF Application Packet” which projects the amount of Project Tax Increment Revenue that will be generated from development of the Project. Big Sky King Properties, LLC represents that they have undertaken construction of the Project, which consists of the construction of an approximately 2,500 square foot quick serve restaurant, site improvements, bike-pedestrian trail, and adjacent offsite improvements located near the corner of King Avenue East and South Billings Boulevard in the Popelka Commerce Center Subdivision..
  
- 1.B. Big Sky King Properties, LLC has obtained the necessary approval from the City for all construction related to the Project. Big Sky King Properties, LLC 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 conforms 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. Big Sky King Properties, LLC acknowledges that the Project is subject to applicable utility fees in place at the time a building permit was secured 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 Big Sky King Properties, LLC at the time of request for service extensions.

**Section 2. Construction and Maintenance of the Public Improvements.** Big Sky King Properties, LLC will construct the Public Improvements as a part of the construction project. Big Sky King Properties, LLC agrees to maintain the adjacent sidewalks and boulevard landscaping as per City policy.

**Section 3. Assessments and Taxes.** Big Sky King Properties, LLC 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, Big Sky King Properties, LLC agrees to pay when due and applicable 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 Big Sky King Properties, LLC for a portion of the costs of Public Improvements, the City agrees to allocate up to and not to exceed \$70,838.63. It is understood that at no time shall Big Sky King Properties, LLC 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 Big Sky King Properties, LLC with a lump sum payable upon completion.

**Section 5. Obligation of the City.** The City intends to refund a portion of the costs for Public Improvements as set forth above to Big Sky King Properties, LLC using South Billings Boulevard Urban Renewal District tax increment dollars when this project has 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

Big Sky King Properties, LLC  
1250 15<sup>th</sup> Street West, Suite 201  
Billings, MT 59102  
Attn: Jan Rehberg

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 Big Sky King Properties, LLC, the City, and SBURA, Inc. This Agreement establishes a right of reimbursement for the cost of Public Improvements paid by Big Sky King Properties, LLC and the City shall honor that obligation as set forth herein.



**BIG SKY KING PROPERTIES, LLC**

**By:** \_\_\_\_\_  
**Its: Owner**

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

                  This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by \_\_\_\_\_, the \_\_\_\_\_,  
of Big Sky King Properties, LLC

SEAL

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

