

**THE ROCKMAN PROJECT
DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") is entered into as of _____, 2024 by and between the Downtown Billings Partnership, Inc., an I.R.C. S501(c)(4) Montana nonprofit corporation ("DBP"), The City of Billings, Montana, a municipality of the State of Montana ("City"), and Honaker Realty, LLC & JWT Capital LLC, Montana limited liability companies (collectively, "Developer"). DBP, the City and Developer shall each be referred to herein as a "party" and shall collectively be referred to as the "parties."

RECITALS

WHEREAS, DBP is the entity responsible for administration of Tax Increment Financing ("TIF") funds for the City; and

WHEREAS, on or about October 2, 2023, Developer submitted a Funding Application (defined below) to DBP requesting a TIF grant for a project to renovate, rehab, remodel or construct improvements on the property located at 2702 2nd Ave N in downtown Billings (the "Property" as further defined below); and

WHEREAS, on or about October 27, 2023, DBP's Board of Directors approved the Application for a TIF grant; and

WHEREAS, on March 11, 2024, the City of Billings City Council approved a reimbursement grant using TIF funds to Developer in an amount of up to \$5,000,000 (the "TIF Grant") to be dedicated to qualified expenditures for the Project (defined below) and to be disbursed as described in this Agreement; and

WHEREAS, the parties wish to enter into a development agreement, in accordance with DBP's TIF Funding Criteria (defined below), to establish the terms and conditions under which DBP will allocate the TIF Grant funds to Developer from the City in accordance with the DBP agreement with the City regarding urban renewal in Downtown Billings,

NOW, THEREFORE, the parties agree as follows:

**SECTION 1
SUBJECT OF AGREEMENT AND DEFINITIONS**

1.1 Effect of Recitals. The foregoing Recitals are true and correct and are incorporated into the terms and conditions of this Agreement.

1.2 Purpose of Agreement. The purpose of this Agreement is to set forth the terms and conditions of the TIF Grant to Developer to effectuate the urban renewal project for certain real property located at 2702 2nd Ave N in Billings, Montana, and legally described on the attached Exhibit A (the "Property"). This Project will eliminate blight and complement and further the objectives of the Expanded North 27th Street Urban Renewal District and Urban Renewal Plan.

1.3 The Funding Application. The DBP and the City have approved the TIF Grant based on Developer's Downtown Tax Increment Financing Application attached hereto as Exhibit B ("Funding Application"), subject to the terms and conditions of this Agreement. The Funding Application includes a preliminary estimated cost of construction of Developer's Improvements (the "Preliminary Developer's Budget")

1.4 TIF Grant Funding Criteria. The term "TIF Funding Criteria" shall mean the Tax Increment Financial Assistance Program criteria for urban renewal projects in the Expanded North 27th Street Urban Renewal District as set forth in the attached Exhibit C.

1.5 Developer's Improvements. The term "Developer's Improvements" shall mean the improvements described on Exhibit B to be constructed by Developer on the Property pursuant to this Agreement and as described in Section 5.

1.6 Conceptual Design Drawings. The term "Conceptual Design Drawings" shall mean the conceptual preliminary depictions of the Developer's Improvements attached hereto as Exhibit B.

1.7 Project. The term "Project" shall mean the Property as improved by the Developer's Improvements.

1.8 Definitive Documents. The term "Definitive Documents" shall mean this Agreement and all Exhibits attached or to be attached hereto.

SECTION 2 PROPERTY

2.1 Ownership. The Developer owns or will own fee title to the Property as described on Exhibit A, subject only to those title exceptions set forth in Exhibit A. Upon completion of construction of the Project, Developer will own the Project.

SECTION 3 CONDITIONS PRECEDENT

3.1 Conditions Precedent. The DBP's and the City's obligation to be bound by this Agreement with Developer is subject to satisfaction or written waiver of each of the following conditions to the reasonable satisfaction of DBP ("Conditions Precedent"):

- a) Developer has presented DBP proof of ownership or control of the Property by proof of title insurance reflecting Developer as the fee owner of the Property, subject only to liens and encumbrances satisfactory to DBP.
- b) Developer has submitted a letter from their financial institution indicating Developer's ability to finance the construction of Developer's Improvements in accordance with the Funding Application within the time period set forth in the Performance Schedule (as defined in Section 6).

- c) Developer has prepared and submitted a detailed budget setting forth the preliminary estimated cost of construction of Developer's Improvements ("Developer's Budget"). When completed, the Developer's Final Budget ("Final Budget") will be made a part of this Agreement and will be appended as Exhibit E.
- d) Developer has prepared and submitted preliminary design drawings ("Design Drawings") for the Developer's Improvements ("Preliminary Plans") in accordance with the terms of this Agreement and the Preliminary Plans have been reviewed and approved by DBP and the City and the estimated cost of the approved design is within Developer's Budget. When completed and approved, the final plans ("Final Plans") will be made a part of this Agreement and will be attached as Exhibit F. It is agreed and acknowledged that the Project is currently under development and both the Final Plans and Final Budget are subject to revision.
- e) Developer has provided DBP with proof of zoning compliance and approval by any necessary governmental entities.
- f) Developer has executed the Agreement no later than 180 business days following the City Council's approval.

3.2 Satisfaction of Conditions. DBP and DBP's representatives, agents and consultants will work with the Developer to obtain satisfaction of the Conditions Precedent.

3.3 Termination for Failure of Conditions. If the Conditions Precedent are not satisfied or waived within 90 days of the date of this Agreement, then any party may terminate the Definitive Documents by written notice to the others and upon such termination the parties shall have no further liability to one another, however, Developer shall remain responsible for indemnifying DBP and the City in accordance with Section 5.12.

SECTION 4 GRANT AND RELEASE OF FUNDS

4.1 Use of TIF Grant Funds. The TIF Grant funds which are the subject of this Agreement shall be used only for urban renewal activities, including the renovation and rehabilitation of the Property, in accordance with the Definitive Documents and the Urban Renewal Law of the State of Montana, §§7-15-4201., et seq., Mont. Code Ann.

4.2 Grant of Funds. City, as recommended by DBP, agrees to grant to Developer the TIF Grant in an amount of up to \$5,000,000 from funds in the City's Fund 203 account, release of which shall be conditioned upon satisfaction of the Conditions Precedent set forth in Section 3.1 above, the conditions set forth in this Section 4, and the Developer's obligations, covenants and warranties set forth in this Agreement and the Definitive Documents.

4.3 Availability of TIF Grant Funds. TIF funds are not available to be encumbered (committed) to the Project by the City until they are received as unencumbered TIF funds.

- a) Subject to the availability of unencumbered TIF funds, City agrees that not later than one calendar year following the issuance of a Certificate of Occupancy from City to

Developer, it will encumber TIF funds to reimburse Developer for the Project. Reimbursements under the TIF Grant will not exceed \$5,000,000. The deadline to begin the reimbursement payment period is no later than one calendar year following the issuance of a Certificate of Occupancy from City to Developer for the Property. Notwithstanding to the contrary and subject to the terms and conditions herein, Developer may request a 12-month extension (“Extension”) in the event Developer requires additional time for the Project’s completion. The City shall encumber TIF funds annually for a total of five disbursements of \$1,000,000 in five consecutive fiscal years following completion of the Project. The City may extend the commitment schedule if TIF funds are not available to be encumbered to the Project.

Notwithstanding to the contrary and subject to the terms and conditions herein, the City and DBP reserve, in their sole discretion, the right to accelerate TIF reimbursement payments to Developer. If the City accelerates the TIF reimbursement payments resulting in a TIF award term that is four consecutive fiscal years or less, then the final TIF payment shall be discounted by \$400,000 (reducing the TIF Grant to \$4,600,000) to account for a reduction in the interest costs borne by Developer. In the event unencumbered TIF funds are not available to the City to meet the foregoing schedule, the City may continue to fully encumber, in its sole discretion but subject to the restriction on subsequent encumbrances below, the Project with available unencumbered TIF funds for a period extending beyond the five year period herein until the full TIF Grant is encumbered to the Project. Developer acknowledges the availability of the encumbrance of TIF funds for the Project is subject to prior encumbrances of TIF funds for other private development projects by the City, since those encumbrances and commitments predate this Agreement. Developer further acknowledges certain circumstances may render the City unable to make TIF Grant payments for private development projects. In the event of a shortfall in TIF funds, disbursements will be made in order based upon the date of the signed development agreements, with the oldest development agreement taking priority, and the Developer will hold the City harmless for changes to the encumbrance schedule described above caused by shortfalls or unavailability of TIF funds or by reason of a prior development agreement for which construction has not commenced or disbursements have not been made.

- b) Developer reimbursements shall be limited to only those funds that have been encumbered to Project by the City. Notwithstanding anything to the contrary, the payment of the Developer reimbursements is hereby expressly made subordinate in all respects to any and all bonds issued by the City pursuant to the Resolution No. [20-10878] adopted by the City Council of Billings on [June 22, 2020], as amended and supplemented, and the Development reimbursements are a Subordinate Obligation thereunder.
- c) Reimbursements will be made to Developer as explained in Section 4.2 and restricted to TIF funds that have to date been encumbered to the Project.

4.4 Release of Funds following Project Completion. Subject to the deadline requirements set forth in Section 4.3(a), DBP will release the TIF Grant funds approved by the City to the Developer upon the Developer's completion of Developer's Improvements and the Project, determined as follows:

- a) Developer has substantially completed construction of Developer's Improvements in accordance with the Funding Application, as supplemented by the Budget and Design Drawings, and the deadline set forth in Section 6.
- b) Developer has submitted all paid invoices showing the completion and lien-free status of all expenditures related to this Project and Property, including evidence that all construction liens have been satisfied and/or released.
- c) Project costs shall be paid and proof of payment shall be provided in an amount consistent with the Funding Application, as supplemented by the Budget, and this Agreement.
- d) The Project satisfies the public benefit provisions of the Funding Application and the TIF Funding Criteria.
- e) Developer has received a Certificate of Occupancy from the City for the Project.
- f) Developer has received from DBP a Certificate of Satisfaction as defined in Section 5.9 below.
- g) Reimbursement cannot begin before July 1st following the completion of the Project, as defined in Sections 3, 4, 5, and 6 of this Agreement; provided, however, that such reimbursement cannot begin later than one calendar year following the issuance of a Certificate of Occupancy from City to Developer.

4.5 Satisfaction of Project Completion Conditions. DBP and DBP's representatives, agents and consultants may assist the Developer to obtain satisfaction of the conditions for completion of the Project set forth in Section 4.4 (where applicable).

4.6 Extent of Commitment. DBP and the City shall have no obligation for any costs associated with the Project which exceed the amount of the TIF Grant funds approved in accordance with this Agreement.

SECTION 5 DEVELOPERS IMPROVEMENTS AND COVENANTS

5.1 Construction of Developer's Improvements. Developer agrees to construct and develop the Developer's Improvements, at its sole cost and expense, consistent with the Design Drawings and the other Definitive Documents.

5.2 Architects and Contractors. Developer will have the right to select its architects, contractor and other subcontractors and consultants in its sole discretion. Developer will require all architects, engineers, or other professional consultants to maintain professional liability insurance in an insurable amount not less than \$1,000,000 combined single limit, covering all

professional activities performed by them in connection with the Developer's Improvements. Further, Developer shall require its contractor to maintain broad form commercial general liability insurance in an insurable amount of not less than \$1,000,000 combined single limit, covering all work performed by contractor in connection with the Developer's Improvements. Developer shall demonstrate proof of coverage to DBP upon request by providing a Certificate of Insurance.

5.3 Insurance. Developer shall maintain fire and casualty insurance covering the Project and the Developer's Improvements in an amount commensurate with the replacement cost of the Project during development and construction of the Project and until issuance of the Certificate of Satisfaction. DBP may, in its sole discretion, recommit funds for reconstruction of the Project in the event Developer determines to reconstruct the Project.

5.4 DBP Access. DBP and DBP's representatives, agents and designees will have the right, at reasonable times and upon reasonable notice to the Developer, to enter upon the Property, in connection with inspection of construction of Developer's Improvements. Upon reasonable notice and request, DBP shall have access to all records and contracts pertaining to the Project. Developer shall keep and maintain accounting records for the Project, and shall make the same available to DBP upon request, including but not limited to all purchase orders, invoices, statements, payment documents, and journals and ledgers related to the Project.

5.5 Governmental Permits. Before commencement of construction of Developer's Improvements, Developer shall obtain all necessary land use, building and other governmental permits. Developer shall maintain all necessary land use, building and other governmental permits during construction of the Project.

5.6 Local, State and Federal Laws. Developer shall carry out the construction of the Developer's Improvements in conformity with all applicable local, state and federal laws.

5.7 Prevailing Wages, Labor Preference, and Labor Relations.

- a) Subject solely to the application of Title 18, Part 4, MCA, for the purpose of setting a prevailing wage, Developer is required to ensure that all of the following occur:
 - i. Employees working on the Project are paid prevailing wages, benefits, and expenses. For purposes of Montana's prevailing wage requirements, the Project is considered as Insert Applicable Prevailing Wage. The Montana Prevailing Wage Rates for the Project are attached to this Agreement as Exhibit ____.
 - ii. A legible statement of all wages and fringe benefits to be paid to employees, as well as the frequency of such payments (i.e., hourly wage employees shall be paid weekly), is posted at the Project site. Such posting shall be made in a prominent and accessible location at the Project site and shall be made no later than the first day of work. Such posting shall be removed only upon the final completion of the Project and the termination of this Agreement.

- iii. All contractors for the Project give preference to the employment of bona fide Montana residents as required by § 18-2-403, MCA, and as such term is defined by § 18-2-401(1), MCA. When making assignments of work, contractors for the Project shall use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned.
- iv. All contractors for the Project maintain payroll records during the term of this Agreement, the course of the work on the Project, and for a period of three (3) years following the date of final completion of the Project and termination of this Agreement. Certified copies of such records shall be provided to the City upon request.
- b) Violation of the requirements may subject Developer to the penalties set forth in § 18-2-407, MCA.
- c) If during the term of this Agreement and throughout the course of the Project any labor problems or disputes of any type arise or materialize which in turn cause any work on the Project to cease for any period of time, Developer specifically agrees to take immediate steps, at its own expense and without expectation of reimbursement from City, to alleviate or resolve all such labor problems or disputes. The specific steps Developer shall take to resume work on the Project shall be left to the discretion of Developer; provided, however, that Developer shall bear all costs of any related legal action. Developer shall provide immediate relief to the City so as to permit the work on the Project to resume and be completed on time and at no additional cost to City.
- d) Developer shall indemnify, defend, and hold the City harmless from any and all claims, demands, costs, expenses, damages, and liabilities arising out of, resulting from, or occurring in connection with any labor problems or disputes or any delays or stoppages of work associated with such problems or disputes.

5.8 Prohibition Against Transfer. Prior to the issuance by DBP of the Certificate of Satisfaction, Developer shall not, except as permitted by this Agreement, without the prior approval of DBP, transfer its interest in the Property or the buildings or structures on the Property. Notwithstanding the foregoing, this prohibition shall not apply to:

- a) The transfer of the Property effective after issuance of the Certificate of Satisfaction; or
- b) Transfers of property involving transactions in place prior to the date of this Agreement; or
- c) The leasing of space in the Developer's Improvements.

5.9 Certificate of Satisfaction. After substantial completion of Developer's Improvements as determined by DBP, DBP shall furnish Developer with a Certificate of Satisfaction of this Agreement upon written request therefore by the Developer, substantially in

the form of Exhibit H. Upon issuance of the Certificate of Satisfaction, Developer and the Property shall be fully relieved of all obligations and restrictions under this Agreement, excluding the obligations to indemnify City and DBP in Sections 4.6, 5.13, 5.14 and 5.15. DBP shall not unreasonably withhold, condition or delay the Certificate of Satisfaction. Such Certificate of Satisfaction shall be a conclusive determination of satisfactory completion of the construction of the Developer's Improvements required by this Agreement as to the Property and such Certificate shall so state. No Certificate of Satisfaction shall constitute a Certificate of Occupancy or evidence thereof under the building permit or codes of the City of Billings.

5.10 No Speculation. Developer represents that its interest in the Property is for redevelopment and not for speculation in land holding.

5.11 Environmental History. To the best of Developer's knowledge, the Property does not contain any hazardous substances found in violation of applicable laws and all mandatory requirements of applicable law with respect to environmental hazards or hazardous substances have been complied with by Developer.

5.12 Compliance with Definitive Documents. Developer has received, reviewed, and approved the Definitive Documents and shall be bound by the terms of the Definitive Documents.

5.13 Control/Indemnification. Developer shall have sole control and responsibility for the construction of the Project. Developer will indemnify, defend and hold the DBP, the City, and their directors, officers, officials, employees and agents harmless for, from and against any and all claims, damages, costs, liabilities and losses arising out of or related in any way to the use, condition, construction or development of the Property, the Project, or the Developer's Improvements, including without limitation to any claims for personal injury, property damage, or for liability to any contractor or its subcontractors, agents or employees.

5.14 Taxes/Assessments. Developer shall pay all applicable taxes, special assessments, and other assessments on the Property and the Developer's Improvements, if any, when due.

5.15 No Tax Protest. Developer shall not protest, or attempt in any way to avoid or dispute, any property taxes, special improvement district assessments, and other assessments on the Property for three (3) years from the date on the Certificate of Occupancy, without prior written consent of DBP, which consent shall not be unreasonably withheld. In the event the Developer believes that a property tax or other assessment of the Project is unreasonable, it may request DBP's written consent to protest such assessment to the appropriate authority.

SECTION 6 SCHEDULE OF PERFORMANCE

6.1 Deadline. A Schedule of Performance of construction of Developer's Improvements is attached as Exhibit G and incorporated herein (the "Performance Schedule"). Developer shall proceed expeditiously to complete construction of the Project in accordance with the Performance Schedule. All construction work for the Project shall be completed by the completion date set forth in the Performance Schedule of December 31, 2026, unless Developer requests an Extension per Section 4.3(a). Developer will be excused for delays resulting from the following circumstances: an act of God or public enemy, fire; storm; wind; flood; earthquake;

epidemic; explosion; lightning; continuous loss of power of other utilities for more than thirty days; nuclear radiation; geological or archeological condition; quarantine restrictions; riot or public discord; act of terrorism; Criminal damage; the suspension of the national or state banking system due to financial crises; a union strike, unanticipated pre-existing but undiscovered conditions; or appeal of governmental permits.

SECTION 7 WARRANTIES

7.1 Developer Representations and Warranties. Developer Warrants and represents that the information and documentation provided pursuant to Sections 3.1 and 5 are accurate and complete and that Developer will promptly notify DBP of any changes in such information and documentation.

7.2 Joint Representations and Warranties. The following representations and Warranties are made by each party to the others as of the date hereof:

- a) Authority. Each party has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate this transaction.
- b) Actions. All requisite action has been taken by each party in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of this transaction. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
- c) Due Execution. The individuals executing this Agreement and the instruments referenced herein on behalf of each party and the partners, officers or trustees of each party, if any, have the legal power, right, and actual authority to bind each party to the terms and conditions of those documents.

SECTION 8 DEFAULTS AND REMEDIES

8.1 Default/General. Subject to the extensions of time set forth in Section 6, and subject to the notice and opportunity to cure provisions contained in this Agreement, the failure or delay by any party to perform any term or provision of this Agreement constitutes a default; however, if the defaulting party commences to cure such default within 60 days after receipt of a notice specifying the default, and thereafter diligently prosecutes such cure to completion, then such party shall not be deemed to be in default. The injured party shall give written notice of default to the defaulting party, specifying the default. The injured party may not institute proceedings, whether judicial or otherwise, against the party in default until 60 days after giving such notice. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies or deprive such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

8.2 Rights and Remedies. Subject to the provisions of Section 8.1 hereof, in addition to its other rights or remedies, if Developer fails to cure a default or withdraws from the Project for any reason, DBP and City shall have no obligation to release grant funds to Developer. If the Developer fails to cure a default, or withdraws from the Project for any reason, after funds have been released for the Project, Developer shall repay City the amount of any funds released to Developer for the Project. Either party may seek any legal or equitable remedy to cure, correct or remedy any default, to recover any damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement in accordance with the terms of this Section 8.

8.3 Rights and Remedies Not Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are not cumulative, and the exercise by any party remedies provided in this Section 8 shall preclude the exercise by it, at a different time, of any other rights or remedies for the same default.

8.4 Dispute Resolution. In the event a dispute arises, whether due to a default or the interpretation of any term of this Development Agreement, the complaining party shall deliver notice of the matter in dispute to the other party at the address and in the manner provided for in Section 9.2 hereof. Each party shall within 7 calendar days thereafter designate a representative to address the matter, which representatives shall attempt, in good faith, to resolve the disputed matter within 7 calendar days of the last designation of a representative.

In the event the designated representatives are unable, despite their good faith efforts, to timely resolve the disputed matter within fourteen calendar days of the initial notice thereof, then, and in that event, any party may request in writing that the matter be resolved through informal mediation. Informal mediation must be completed within 14 calendar days of the request.

8.5 Waiver. Upon written agreement of both parties, any provision of this Section 8 may be waived. Unless waived, the terms of this Section 8 shall be strictly applicable to any dispute between the parties hereto.

SECTION 9 GENERAL PROVISIONS

9.1 Litigation. In the event of the bringing of any action, arbitration or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, the prevailing party will be entitled to have the recovery of and from the other party all costs and expenses of the action, arbitration or suit, actual attorneys' fees (including the allocated costs of in-house counsel), witness fees and any other professional fees resulting therefrom.

9.2 Notices. All notices or other communications required or permitted hereunder must be in writing, and must be personally delivered (including by a professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All notices sent by mail will be deemed received 2 (two) days after the date of mailing and all notices sent by other means permitted herein shall be deemed received on the date delivered. Notices will be sent as follows:

Developer: Honaker Realty LLC &
JWT Capital LLC or their assigns
P.O. Box 2094
Billings, MT 59103
Telephone: (406) 861-3201
Email: bill@honaker.us

City: The City of Billings, Montana
Attn: Gina Dahl, City Attorney
Address: 20 North 27th Street
Billings, MT 59101
Telephone: (406) 657-8205
Email: dahlg@billingsmt.gov

DBP: Downtown Billings Partnership, Inc.
Attn: Mehmet Casey
Address: 116 N 29th Street Suite A
Billings, MT 59101
Telephone (406) 294-5060
Email: mehmetc@downtownbillings.com

9.3 Nonliability of Officials and Employees. No director, officer, member, official, employee or agent of Developer, DBP or the City shall be personally liable to any party or any successor-in-interest thereto, in the event of any default or breach by any party or for any amount which may become due to any party or its successor, or any obligations under the terms of this Agreement.

9.4 Headings. Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

9.5 Time of Essence. Time is of the essence of this Agreement. All obligations of the parties to one another shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

9.6 Construction/Governing Law, and Venue. The parties and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against any party. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of sophisticated parties. The parties hereto expressly agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Montana. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement or any of the provisions contained herein, shall be instituted and maintained only in Thirteenth Judicial District Court for Yellowstone County, Montana.

9.7 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

9.8 No Partnership. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

9.9 Government Rights. Except as provided herein, by making this Agreement, DBP and the City are not obligating themselves or any other agency with respect to any discretionary action relating to the development of the Property or development, operation and use of the improvements to be constructed on the Property, including but not limited to, condemnation, comprehensive planning, re-zoning, variances, environmental clearances or any other governmental agency approvals which are or may be required.

9.10 Non-Waivers. No Waiver of any breach of any covenant or provision contained herein will be deemed a Waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

9.11 Entire Agreement/Counterparts. This Agreement, together with the Definitive Documents, integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. This Agreement may be signed by counterparts.

9.11 Successors. This Agreement shall be binding upon and inure the benefit of the parties, their successors and assigns.

[Signature Pages to Follow]

DOWNTOWN BILLINGS PARTNERSHIP (“DBP”)

By: _____

Its: President

STATE OF MONTANA)

:

County of Yellowstone)

This record was acknowledged before me on _____, 2024 by
_____, as President of Downtown Billings Partnership.

Notary Public for the State of Montana

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THE CITY OF BILLINGS, MONTANA (“CITY”)

By: _____
Its: Mayor

By: _____
Its: City Clerk

STATE OF MONTANA)
 :
County of Yellowstone)

This record was acknowledged before me on _____, 2024 by
_____ and _____ as Mayor and City Clerk of the City of
Billings, Montana.

Notary Public for the State of Montana

Draft

**HONAKER REALTY, LLC, a MONTANA LIMITED LIABILITY COMPANY
("DEVELOPER")**

By: _____

Its: _____

STATE OF MONTANA)

:

County of Yellowstone)

This record was acknowledged before me on _____, 2024 by
_____ as _____ of Honaker Realty, LLC, a Montana limited
liability company.

Notary Public for the State of Montana

**JWT CAPITAL, LLC, a MONTANA LIMITED LIABILITY COMPANY
("DEVELOPER")**

By: _____

Its: _____

STATE OF MONTANA)

:

County of Yellowstone)

This record was acknowledged before me on _____, 2024 by
_____ as _____ of JWT Capital, LLC, a Montana limited liability
company.

Notary Public for the State of Montana

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EXHIBITS

- Exhibit A** Legal Description
- Exhibit B** Funding Application (floor plans and conceptual designs included)
- Exhibit C** TIF Funding Criteria (City TIF Resolution & Scoring Criterion)
- Exhibit D** DBP Board Minutes and City Council Minutes, showing approval of the grant funds
- Exhibit E** Developer's Final Budget, supplied by contractor
- Exhibit F** Final Construction Drawings, submitted for permit
- Exhibit G** Performance Schedule
- Exhibit H** Certificate of Satisfaction
- Exhibit I** W-9, completed and signed at time of Development Agreement

Exhibit A - Legal Description

Draft

Exhibit B - Funding Application

Draft

Exhibit C - TIF Application Criteria

Draft

Exhibit D - DBP Board Minutes and City Council Minutes

Draft

Exhibit E - Developer's Final Budget

Draft

Exhibit F - Developer's Final Drawings

Draft

Exhibit G - Performance Schedule

Draft

Exhibit H - Certificate of Satisfaction

Draft

Exhibit I - Tax ID Number and Certification

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