

**LOAN AND INFRASTRUCTURE
DEVELOPMENT AGREEMENT**

This Agreement is made and entered into by and between the **CITY OF RAPID CITY**, a South Dakota municipal corporation, hereafter called the “City,” and Lazy P-6 Land Company, Inc., a South Dakota corporation, hereafter called “Landowner.”

Recitals

WHEREAS, the City has established an Infrastructure Development Partnership Fund (hereafter called the “Fund”) to assist in providing adequate public improvements in areas of new development by financing the development of public improvements where such costs shall be repaid by the Landowner, and shall hereinafter be referred to as the “loan”; and

WHEREAS, Landowner is the owner of certain real property located generally north of Catron Boulevard in the southern portion of the City of Rapid City and more particularly described as follows:

SW 1/4 of the NW 1/4 Section 19, T1N, R8E, of the Black Hills Meridian,
Rapid City, Pennington County, South Dakota;

and

WHEREAS, Landowner has made application for the use of Infrastructure Development Partnership funds in connection with the development of the real property above described for the extension of sanitary sewer across the Landowner’s property to Highway 79; and

WHEREAS, the Rapid City Infrastructure Development Partnership Review Committee has recommended approval of the application for a loan to Landowner of \$121,000.00 from the Fund; and

WHEREAS, the parties hereto desire to enter into this Agreement to set forth the terms and conditions under which Landowner will borrow \$121,000.00 from the Fund and the terms and conditions under which the public improvements will be constructed; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed as follows:

1. IDPF Loan and Agreed Interest Rate. The City shall loan to Landowner and Landowner shall borrow from the Fund the principal sum of One Hundred Twenty One Thousand Dollars (\$121,000.00). The term of the loan shall be for ten (10) years and shall commence upon the substantial completion of the sewer improvements. The principal sum of One Hundred Twenty One Thousand Dollars (\$121,000.00) shall be interest-free for a period of five years from the earlier of October 1, 2004 or the date of substantial completion of the construction of Fifth Street from Minnesota Street to Catron Boulevard. For purposes of this

agreement, the determination of the substantial completion of the construction of Fifth Street shall be made by the Rapid City Public Works Director. Thereafter, and commencing at the earlier of October 1, 2009 or the beginning of the sixth year following the substantial completion of the construction of Fifth Street, interest shall accrue on the unpaid balance at an annual rate of 1% above the Wall Street Journal Prime Rate determined as of the date interest commences.

2. **Repayment.** Landowner shall repay the unpaid balance of the loan upon approval by the City of a final plat to divide the unplatted portion of the SW 1/4 of the NW 1/4 Section 19, T1N, R8E of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, (based upon the following: the amount due shall be an equal percentage of the total loan amount as the platted portion of land bears to the whole parcel as described herein.

3. **Security for Loan Repayment.** The repayment of the loan shall be secured by a bank letter of credit in the amount of the original principal balance of the loan issued in a form acceptable to the City. The letter of credit will be issued before the loan proceeds will be distributed.

4. **Promissory Note.** The loan as herein provided shall be evidenced by a Promissory Note in the form shown on the attached Exhibit A. The Promissory Note shall permit prepayment without penalty or premium.

5. **Sewer Construction Project.** The Landowner shall construct the project in accordance with applicable City construction standards and shall follow all bid laws applicable to municipalities.

6. **Easements and Rights of Way.** Landowner shall dedicate or obtain and provide to City, at no cost to the City, such easements and rights of way over, under and across Landowner's property, both permanent and for construction purposes, as may be necessary to construct and permanently locate, repair and maintain the sewer line constructed using the proceeds of the loan from the Fund.

7. **Project Improvements.** All infrastructure project improvements constructed by the Landowner under this Agreement shall be public in character and shall be conveyed to the City together with all easements and rights of way related thereto, upon substantial completion thereof. All such improvements and related easements and rights of way shall be conveyed and assigned to the City by deed or other appropriate conveyance, free and clear of all liens and encumbrances. Failure to execute the necessary conveyance documents within 30 days of substantial completion of the project shall result in all amounts due under the Promissory Note described in Paragraph 4 becoming immediately due and payable.

8. **Connection Fees.** The parties agree that applicable connection fees based on final project costs for water, sewer, and drainage construction shall be paid prior to the issuance of any building permits.

9. **Further Assurances.** The parties agree to execute such other and further documents and instruments, not inconsistent herewith, as may be reasonably necessary to accomplish the intent and purpose of this Agreement.

10. **Modification.** This Agreement may be amended only by written agreement of the parties hereto.

11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns.

12. **Merger.** This written Agreement along with the Promissory Note attached hereto constitutes the entire agreement of the parties. No other promises or consideration form any part of this agreement. All prior negotiations are merged herein or intentionally omitted.

13. **Choice of Law and Venue.** The parties' rights and obligations arising from this agreement shall be governed by the laws of the State of South Dakota. Any dispute arising from this agreement shall be litigated only in the Seventh Circuit Judicial Court for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.

DATED: _____, 2003.

CITY OF RAPID CITY

ATTEST:

Mayor

Finance Officer

(SEAL)

LAZY P-6 LAND COMPANY, INC.

President: _____

Secretary: _____

State of South Dakota,)
) ss.
County of Pennington.)

ON THIS DAY, _____, 2003, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be Mayor and Finance Officer, respectively, of the **CITY OF RAPID CITY**, a municipal corporation, and that as such Mayor and Finance Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the **CITY OF RAPID CITY** by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public
My Comm. Expires: _____

State of South Dakota,)
) ss.
County of Pennington.)

ON THIS DAY, _____, 2003, before me, the undersigned officer, personally appeared Orville Davis and Lois Bennett who acknowledged themselves to be the President and Secretary of Lazy P-6 Land Company, Inc., a South Dakota corporation, and in such capacities, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by themselves as such President and Secretary of Lazy P-6 Land Company, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public
My Comm. Expires: _____

Prepared By: CITY ATTORNEY'S OFFICE