

LOAN AND INFRASTRUCTURE DEVELOPMENT AGREEMENT

This Agreement is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation, hereafter called the “City,” and **PLUM CREEK DEVELOPMENT LLC**, a South Dakota Limited Liability 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 herein after be referred to as the “loan”; and

WHEREAS, Landowner is the owner of certain real property which is located generally in Section 16 of Township One North, Range Eight East of the Black Hills Meridian and is more particularly described as:

The unplatted portion of the NW1/4 of the SW1/4, less the platted portion of Plum Creek Subdivision, less Lot H1, less ROW; the unplatted portion of the NE1/4 of the SW1/4 less ROW and the platted portion of Plum Creek Subdivision; the unplatted portion of the SW1/4 of the SW1/4; the unplatted portion of the SE1/4 of the SW1/4 all located in Section 16 of T1N, R8E, BHM, 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 construction of an extension to Minnesota Street and associated infrastructure within said street extension (which will herein after be referred to as the “project”); and

WHEREAS, the Rapid City Infrastructure Development Partnership Review Committee has recommended approval of the application for a loan to Landowner of up to Seven Hundred Thousand dollars (\$700,000.00) 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 up to \$700,000.00 from the Fund and the terms and conditions under which the public improvements will be constructed;

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 Seven Hundred Thousand (\$700,000). The principal sum of Seven Hundred Thousand (\$700,000) shall be interest-free for a period of five years from the date of substantial completion of the project. "Substantially

complete" shall mean when all components of the project are available for public use and accepted by the City. Thereafter, and commencing at the beginning of the sixth year following substantial completion of the public improvements, 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 to the City a pro-rata portion of the loan upon the approval of a plat of any of the land included within the above legal description. The pro-rata portion of the loan shall be determined as follows:

$$\frac{\text{Number of acres of land platted}}{131 \text{ total acres}} \times 100 = \% \text{ of original loan to be repaid upon plat approval}$$

The pro-rata portion of the loan shall be repaid prior to recording of the final plat. Notwithstanding the requirement for payment of pro-rata portions of the original loan balance upon plat approval, the entire outstanding loan balance, including accrued interest, shall be due and payable not later than 10 years from the date of the substantial completion of the construction of the project.

3. Security for Loan Repayment. The repayment of the loan shall be secured by a letter of credit issued by a bank, in a form acceptable to the City, in the amount of the original principal balance of the loan. The letter of credit will be issued and accepted by the City prior to any loan proceeds being distributed pursuant to this agreement.

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. Construction. Landowner shall construct the project in accordance with all applicable City construction standards including but not limited to the City Street Design Criteria Manual and the City's Standard Specifications for Public Works Projects and shall follow all bid laws applicable to municipalities.

6. Cost Variations. In the event the actual construction costs vary from the above construction costs estimates, the parties agree that actual costs will be paid by the developer. The City is not obligated to advance funds in excess of the amount of the loan as set out in paragraph 1 herein.

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. 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.

9. Choice of Law and Venue. The parties agree that the terms of this Agreement and the Promissory Note and along with the rights and obligations of the parties shall be controlled by the laws of the State of South Dakota. Any dispute arising out of this agreement or the Promissory Note shall be litigated only in the Seventh Judicial Circuit Court for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.

10. Merger. This written agreement along with the Promissory Note and Oversize Reimbursement Agreement constitute the entire agreement of the parties. There are no other promises or consideration. All prior negotiations are merged herein or intentionally omitted.

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

DATED: _____, 200__.

CITY OF RAPID CITY

PLUM CREEK DEVELOPMENT, LLC.

Mayor

By:_____
Its: President

ATTEST:

Finance Officer

(SEAL)

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

ON THIS _____ **DAY** of, _____, 2005, before me, the undersigned officer, personally appeared _____ and James F. Preston, who acknowledged themselves to be _____ and Finance Officer, respectively, of the **CITY OF RAPID CITY**, a municipal corporation, and that as such _____ 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** of, _____, 2003, before me, the undersigned officer, personally appeared Doyle Estes, who acknowledged himself to be the President of Dakota Heartland, Inc., a South Dakota corporation, and in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as its President.

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

(SEAL)

Notary Public
My Comm. Expires: _____

Prepared By: CITY ATTORNEY'S OFFICE

US \$700,000.00Rapid City, SD

FOR VALUE RECEIVED, Plum Creek Development LLC, a South Dakota corporation, of Rapid City, SD (Borrower) promises to pay to the City of Rapid City, Rapid City, South Dakota, (Lender) the principal sum of Seven Hundred Thousand Dollars (\$700,000.00) plus accrued interest. The principal shall be interest-free for a period of five years from the date of substantial completion, as defined in the corresponding Loan and Infrastructure Development Agreement entered into between the Lender and Borrower for the construction of an extension of Minnesota Street to provide a second point of access to the Plum Creek Subdivision located in Rapid City. Thereafter, 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.

Lender hereby accepts that the principal sum represents repayment of an Infrastructure Development Partnership Fund Loan (Loan) to assist in providing adequate public improvements in the area described above and more specifically described in the Loan and Infrastructure Development Agreement (Agreement).

Borrower shall repay the loan upon the earlier of either (a) approval by the City of a final plat of Borrower's Development Project or (b) ten years from the date of substantial completion of the construction Fifth Street from Minnesota Street to Catron Boulevard. In the event final platting of Borrower's development is accomplished in separate phases, then repayment of the principal and accrued interest shall be prorated in accordance with the formula established in Section 2 of the Agreement. Borrower is obligated to repay the City the entire balance of the Loan including accrued interest when the final plat is approved for the last phase of this project.

Payments shall be made to: City of Rapid City Finance Office
300 Sixth Street
Rapid City, SD 57701

Attn: James F. Preston, Finance Officer

If any installment under this note is not paid when due and remains unpaid after a date specified by notice to Borrower, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the note holder. The date specified shall not be less than thirty (30) days from the date such notice is mailed. The note holder may exercise its option to accelerate during any default by Borrower regardless of any prior forbearance. In the event of default, if costs are incurred to collect this note, the note holder shall be entitled to collect all reasonable costs and expenses of collection allowed by law, including reasonable attorney's fees.

Borrower shall have the right to prepay without penalty all or any portion of the remaining balance of this note at any time after date of execution with interest, if any, computed to the date of such prepayment. PW083005-18

All makers, sureties, guarantors, and endorsers hereby waive presentment, notice of dishonor, and protest hereof. This note shall be the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this note shall be given by mailing such notice to Borrower at the following address:

Plum Creek Development, LLC.
C/O _____
2655 S. Valley Drive
Rapid City, SD 57703

The indebtedness evidenced by this Note is secured by a bank Letter of Credit in accordance with the terms of the Infrastructure Development Partnership Fund Agreement. A copy of this security is herein incorporated by reference as if fully set forth in this document.

This Note has been issued pursuant to, and shall be subject to, the terms, conditions, covenants and agreements set forth in the Agreement.

All documents and agreements between the parties hereto shall be governed by and construed in accordance with the laws of the State of South Dakota.

This agreement shall be binding upon the parties hereto, their heirs, successors, and assigns.

IN WITNESS WHEREOF, the undersigned sets its hand and seal this _____ day of _____, 2005.

ACKNOWLEDGEMENT

PLUM CREEK DEVELOPMENT, LLC.

City of Rapid City

Finance Officer

President: _____

Secretary: _____

(SEAL)

