

FIRST AMENDMENT TO THE  
CONTRACT FOR PRIVATE DEVELOPMENT  
TAX INCREMENT DISTRICT NUMBER SIXTY-FIVE

Between

PLUM CREEK DEVELOPMENT, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

## RECITALS

WHEREAS, Plum Creek Development LLC (“Plum Creek” or the “Developer”) and the City of Rapid City (the “City”) entered into a Contract for Private Development (the “Developer’s Agreement”) for Tax Increment Financing District No. 65 on June 2, 2008; and

WHEREAS, the portion of Minnesota Street across Zandstra’s property was being constructed to serve a proposed residential development on the eastern edge of the property; and

WHEREAS, the entity which proposed building the residential development has decided not to proceed with the project at this time; and

WHEREAS, without the proposed residential development, the portion of Minnesota Street across the Zandstra property would serve little purpose; and

WHEREAS, Plum Creek and Zandstra have proposed modifying the current Developer’s Agreements by requiring Plum Creek to construct Minnesota Street to the edge of its property and delay constructing of the portion of Minnesota Street across Zandstra’s property until such time as development occurs which would justify the street’s construction.

NOW THEREFORE, the parties hereby agree to modify the Developer’s Agreement as follows:

SECTION 2. The Developer agrees to construct the improvements contained in Section 1 of this agreement at its sole expense. The Developer’s reimbursement from the proceeds of the tax increment district for constructing these improvements are subject to the following terms and conditions:

a) Within ninety (90) days of approving this agreement the Developer agrees, in conjunction with Dennis Zandstra Real Estate Holdings (“Zandstra”) to plat H Lots for Minnesota Street from its intersection with the Southeast Connector to the eastern boundary of the E1/2 of the NE1/4 of T1N, R8E of Section 21, BHM, Unplatted and donate them to the City. The Developer shall not be eligible for any reimbursement from the tax increment district until the necessary H Lots have been platted and donated to the City;

b) The Developer agrees, in conjunction with Zandstra, to provide a completed design for Minnesota Street, including all utilities to be located within said right-of-way, from the street’s intersection with the Southeast Connector to the eastern boundary of the SE1/4 of the SW1/4, T1N, R8E, Section 16, Unplatted, by September 1, 2008. The Developer further agrees that in conjunction with Zandstra, it will provide the City with a preliminary design for the balance of Minnesota Street to the eastern boundary of the E1/2 of the NE1/4 of T1N, R8E of Section 21, BHM, Unplatted. The Developer shall not be eligible for any reimbursement from the tax increment district until these designs have been given to, and accepted by, the City. Once provided to the City, the designs shall become the property of the City. Should the Developer fail to comply with the terms of this Agreement and the City chooses to build Minnesota Street,

the City may use the design provided by the Developer to construct Minnesota Street at no cost to the City;

c) The City's primary consideration for approving this tax increment district and entering into this agreement is the completion of Minnesota Street from the Southeast Connector to the E1/2 of the NE1/4 of T1N, R8E of Section 21, BHM, Unplatted. It is anticipated that Minnesota Street will be constructed in several phases. The first phase will include constructing Minnesota Street from its intersection with the Southeast Connector to the intersection of a rearage road which will then connect Minnesota Street to Willowbend Drive or some other suitable street which will provide a secondary access to the housing currently located in the area ("Phase I"). The Developer has agreed to construct this phase, including the rearage road connection to Willowbend Drive or the other suitable street by August 1, 2009. The second phase will include constructing Minnesota Street from its intersection with the rearage road to the eastern boundary of the property currently owned by Plum Creek which is legally described as the SE1/4 of the SW1/4, T1N, R8E, Section 16, Unplatted ("Phase II"). Phase II and the balance of Minnesota Street to the eastern boundary of the Zandstra property legally described as E1/2 of the NE1/4 of T1N, R8E of Section 21, BHM, Unplatted, ("Phase III") shall be completed as development occurs.

d) At the time the Developer awards the bid for construction of Phase I, the Developer will provide the City with a surety in a form acceptable to the City Attorney's Office and in an amount sufficient to cover the cost of constructing Phase I, including the rearage road and/or any additional improvements which will be necessary to connect Minnesota Street and/or the rearage road to Willowbend Drive. The Developer can use the \$700,000 in the Infrastructure Development Partnership Loan it has previously received for construction of the Phase I improvements to Minnesota Street and the rearage road. If the Developer does not meet the deadlines in this Agreement, the City may terminate the Infrastructure Development Partnership Fund Loan and return to the fund any remaining money which has not already been expended.

e) Upon entering into contracts for construction of Phase I, and providing the City with acceptable surety per subsection d), the City will allow approval of final plats on the following property:

The NE1/4 of the SW1/4, Less Plum Creek Sub, Less ROW, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The NW1/4 of the SW1/4, Less Plum Creek Sub, Less ROW, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

Tract 1 of the E1/2, Less Elk Country Estates, Less Lot H1, Less ROW, T1N, R8E, BHM, Rapid City, Pennington County, State of South Dakota.

f) Upon completion of Phase I, the Developer will be responsible for closing the current temporary access to the Southeast Connector from Willowbend Dr. This will include, but is not necessarily limited to, the Developer removing the approach, the gate and providing topsoil, seed and mulch to the area.

g) No certificates of occupancy will be issued for any properties that are platted pursuant to subsection e) until Phase I is actually completed and has been accepted by the City and the temporary access has been closed.

h) Upon a contract being awarded for construction of Phase II, and acceptable surety being in place, the City will allow approval of final plats on the following property:

The SW1/4 of the SW1/4, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The SE1/4 of the SW1/4, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

i) No certificates of occupancy will be issued for any properties that are platted pursuant to subsection h) until Phase II has actually been completed and accepted by the City.

j) Upon a contract being awarded for construction of Phase III, and acceptable surety being in place, the City will allow approval of final plats on the following property:

The N1/2 of the N1/2 of the NW1/4 of the NE1/4 and the N1/2 of the N1/2 of the NE1/4 of the NW1/4, T1N, R8E, Section 21, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The E1/2 of the NE1/4 of T1N, R8E, Section 21, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota;

Final plat approval for any lots within the above described properties cannot be received until both Plum Creek and Zandstra have entered into a contract for the construction of the balance of Minnesota Street and provided the City with a surety in a form acceptable to the City Attorney's Office and in an amount sufficient to cover the cost of constructing the balance of Minnesota Street.

k) Nothing in this Agreement shall be construed to waive the City's requirement that no more than 40 housing units be served by only one point of access or the requirement that an exception be obtained before more than 40 housing units are served by only one point of access.

l) All public improvements being funded under this agreement shall be designed and built in conformity with the City's Standard Specifications for Public Works Construction, Design Criteria Manuals and any other laws, ordinances, policies or resolutions which may be applicable.

m) If the Developer does not meet the time frames specified, the City has the option to terminate this agreement. Prior to the City terminating the agreement, the City shall provide at least seven days written notice to the Developer and/or any entity that has an assignment interest

in the proceeds of the tax increment funds of the date of the meeting at which the City Council will consider terminating the agreement.

SECTION 7. All positive tax increment payments for Tax Increment District Number Sixty-Five shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Sixty-Five Fund," hereinafter referred to as the "Fund." Subject to Sections 2, 5, 6, 9 and 10 of this agreement and the limitation that at no time shall the cumulative total of payments made from the fund exceed the lesser of the total amount of disbursements certified pursuant to Section 5 of this agreement or the total of the estimated project costs set forth in the Tax Increment District Number Sixty-Five Project Plan as well as any other limitations contained herein, the City shall, within thirty (30) days after the receipt of each tax increment payment from the Treasurer of Pennington County, disburse One Hundred percent (100%) of the total amount in the fund to the Developer (Plum Creek) or their designee. However, at such time as Zandstra awards a contract for construction of the improvements contemplated in its Developer's Agreement, Plum Creek or their designee will only be eligible for disbursement of Fifty-Seven and a half percent (57.5%) of the total amount in the Fund.

SECTION 8. It is contemplated by the parties the Developer may assign its interest under this agreement as security for the note or loan agreement, or other financing described in Section 4 hereof. It is understood and agreed, by and between the parties, that any such assignment shall be in writing and that if the City shall make disbursement pursuant to such assignment that it shall, to the extent of such disbursement, relieve the City of the obligations to make such disbursement to Developer. Any assignee shall agree to be bound by the terms and conditions contained in this agreement. The City shall have the right to refuse any subsequent assignment if it will result in an increase in the amount of interest being paid to a financial institution, even if the interest rate being charged by the new lender complies with the terms of Section 4. Notwithstanding the provisions of this Section, the Developer shall be permitted, without prior City approval, to assign its interest under this agreement to an entity owned by Steve Zandstra, Scott Zandstra, Darcy Torres and Hani Shafai; provided, such entity holds title to the real property subject to this agreement and agrees to be bound by the terms and conditions contained in this agreement. Such assignment shall be effective on the date the City is provided with written notice of the assignment and such entity's consent to be bound by the terms and conditions contained in this agreement. Any such assignment shall serve to release Plum Creek Development, LLC, from any further obligations under this agreement

All other terms and conditions of the Developer's Agreement shall remain unchanged.

Dated this \_\_\_ day of \_\_\_\_\_, 2009.

PLUM CREEK DEVELOPMENT, LLC

\_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(SEAL)

State of South Dakota        )  
  ss.  
County of \_\_\_\_\_        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be the \_\_\_\_\_ of Plum Creek Development LLC, and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

(SEAL)

State of South Dakota        )  
  ss.  
County of Pennington        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

(SEAL)