

CONTRACT FOR PRIVATE DEVELOPMENT  
TAX INCREMENT DISTRICT NUMBER SIXTY-FIVE

Between

PLUM CREEK DEVELOPMENT, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between Plum Creek Development, LLC, located at P.O. Box 1940, Rapid City, South Dakota 57709, herein after referred to as the “Developer,” and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City.”

### **RECITALS**

WHEREAS, pursuant to the power and authority granted to it under Chapter 11-9 of the South Dakota Codified Laws, the City created Tax Increment District Number Sixty-Five by resolution on September 4, 2007.

WHEREAS, on the same date, the City adopted by resolution a Project Plan for Tax Increment District Number Sixty-Five which identifies expenditures for public improvements which qualify as project costs pursuant to SDCL 11-9-14 and SDCL 11-9-15.

WHEREAS, the purpose of this agreement is to establish under what conditions the Developer can be reimbursed from the proceeds of the tax increment district for the cost of the improvements which are included in the Project Plan. It further establishes the procedures by which the Developer may assign its right to any proceeds from the district in order to secure private financing for the project improvements. Pursuant to SDCL 11-9-2(5), the City is empowered to enter into contracts or agreements necessary and convenient to implement the provisions and effectuate the purposes of the Project Plan.

NOW THEREFORE, the parties hereby agree as follows:

SECTION 1. The estimated project costs for which the Developer can be reimbursed from Tax Increment District Number Sixty-Five, as set forth in the approved Project Plan, are as follows:

#### **TOTAL ESTIMATED PROJECT COSTS TO BE PAID BY THE DEVELOPER:**

##### Capital Costs:

##### Capital Costs:

Minnesota Street	\$ 3,050,000.00
Plum Creek Site Grading	\$ 713,800.00
Storm Water Pipe	\$ 425,000.00
Land Costs for oversize detention pond	\$ 280,000.00
Minnesota Street – Shared Costs	\$ 320,000.00
Power Line relocation	\$ 153,500.00
Traffic Signal	\$ 70,000.00

Professional Service Costs	\$ 473,230.00
Financing interest	\$ 13,572,265.03
Contingency Costs:	\$ 473,230.00
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0
Necessary and Convenient Costs:	\$ 0
TOTAL	\$ 19,531,025.03
Imputed Administrative Costs*	
City of Rapid City	\$ 1,025

\*The imputed administrative costs are interest-free, are not included in the total project costs, and are to be paid from the balance remaining in the TID #65 fund available to the City Finance Officer on June 1, 2012.

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 streets 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, by September 1, 2008. The Developer shall not be eligible for any reimbursement from the tax increment district until a design for the entire length of Minnesota Street covered by this agreement has been given to, and accepted by, the City. Once provided to the City, the design 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 this portion of 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 ("Phase I"). The Developer agrees to construct this phase, including the rearage road connection to Willowbend Drive by August 1, 2009. The balance of Minnesota Street shall be completed by June 1, 2011.

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, 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) The following property is also included in this agreement:

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

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;

The Developer cannot receive final plat approval for any lots within the above described properties until both it 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.

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

j) 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.

k) 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 3. The base value of the property located in Tax Increment District Number Sixty-Five has been certified by the South Dakota Department of Revenue as Nine Hundred Sixty Eight Thousand Seven Hundred Eighty One Dollars (\$968,781.00).

SECTION 4. The Developer may secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Sixty-Five Project Plan. If the Developer obtains private financing, the interest rate shall not exceed nine (9%) percent per annum during the life of the loan. During the construction phase of the project and until the project is cash flowing from a tax revenue basis the Developer and lender shall be free to negotiate an interest rate not to exceed nine (9%) percent per annum. Within 90 days of the date the Developer is notified by the City that the tax

revenue is sufficient to amortize the debt over the remaining life of the Tax Increment District and confirmed by the financial institution financing the public improvements, the interest rate on the remaining balance shall be reset at an interest rate of not more than three (3%) percent over the published ten (10) year U.S. Treasury rate not to exceed nine (9) percent per annum. That rate shall remain in effect for a five year period, at which time it will be reset using the same formula. It is understood by the parties that should the Developer receive a loan with an interest rate of less than Nine Percent (9%) per annum, the City will only reimburse the Developer for the amount of interest actually paid to a financial institution providing funding for the public improvements contained in the Project Plan. The City shall retain the right to refinance any Tax Increment District through the use of Revenue Bonds or any other funding source available during the life of the Tax Increment District.

SECTION 5. Developer shall complete the improvements described in the approved Project Plan. Upon completion of Phase I, the Developer shall certify to the City Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. The reimbursement for the Phase I improvements may begin upon the certification of the costs for Phase I. Upon completion of the balance of the improvements contemplated in the Project Plan, the Developer may certify and be reimbursed for those costs. Furthermore, the Developer shall provide sufficient documentation to certify that the terms of Section 10 of this agreement are complied with. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Sixty-Five Project Plan have, in fact, been disbursed for the costs contemplated in the Project Plan and state bid law has been complied with.

SECTION 6. It is understood by the parties that the boundaries of Tax Increment District Sixty-Five may overlap the boundaries of other tax increment districts. Any increments generated from areas within overlapping districts will be used to pay for the improvements in the districts based on the chronological order in which the districts were created. Only after the disbursements required of the City in the project plans or developer's agreements for any previously created districts have been satisfied, will the City have a duty to disburse funds under this 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 Fifty-Seven and a half percent (57.5%) of the total amount in the Fund to the Developer or their designee.

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.

SECTION 9. It is specifically a condition of this agreement and a condition of the City's obligation to pay, that all sums payable shall be limited to the proceeds of the positive tax increment from Tax Increment District Number Sixty-Five receipted into the "Fund" specified in Section 7 hereof. The obligation of the City to pay pursuant to this agreement does not constitute a general indebtedness of the City or a charge against the City's general taxing power. The provisions of SDCL 11-9-36 are specifically incorporated herein by reference. It is also specifically agreed that the City has made no representation that the proceeds from such fund shall be sufficient to retire the indebtedness incurred by Developer under Sections 4 and 8 hereof. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments to the fund created by Section 7 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 10. Selection of contractors for the construction of the public improvements described in Section 1 shall comply with all provisions of South Dakota law regarding the expenditure of public funds contained in Chapter 5-18 of the South Dakota Codified Laws. Upon a request by the City, the Developer shall provide documentation demonstrating that it has complied with Chapter 5-18.

SECTION 11. Developer agrees to defend, indemnify and hold harmless the City of Rapid City from obligations or liability, including reasonable attorney's fees, arising out of this agreement or the construction of the improvements contemplated by the Tax Increment District Sixty-Five Project Plan. The Developer shall maintain a policy of liability insurance, acceptable to the City, with liability limits of at least one million dollars (\$1,000,000.00) that names the City of Rapid City as an additional insured. Such a policy shall remain in effect until the City accepts the improvements.

SECTION 12. Developer agrees to immediately satisfy any and all mechanic's liens or material man's liens that arise as a result of this project. This provision shall not prevent Developer from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment.

SECTION 13. The parties acknowledge that the public improvements contemplated in Section 1 of this agreement could not feasibly be constructed without the creation of this tax increment district and the use of private financing being secured by the Developer.

Accordingly, the mutual covenants and obligations hereunder shall constitute good and sufficient consideration for the execution and performance of this agreement.

SECTION 14. The Developer's obligations under this agreement are contingent upon Zandstra entering into a Developer's Agreement covering its portion of Minnesota Street. If Zandstra and the City are not able to reach agreement on the terms of the Developer's Agreement, the parties are released from their obligations under this Agreement.

SECTION 15. This document along with the Project Plan for Tax Increment District Sixty-Five, the Developer's Agreement with Zandstra and the Infrastructure Development Partnership Fund Loan agreements constitute the entire agreement of the parties. No other promises or consideration form a part of this agreement. All prior discussions and negotiations are merged into these documents or intentionally omitted. This agreement may only be amended or modified in writing by mutual agreement of the parties.

SECTION 16. This agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. Except as allowed under Sections 4 and 8 of this agreement, the rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

SECTION 17. Failure of a party to insist upon adherence to any term of this agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this agreement.

SECTION 18. If one or more provisions of this agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this agreement if they can be given effect without the invalid section(s) or provisions.

SECTION 19. This agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

SECTION 20. This agreement shall be construed and the parties' actions governed by the laws of the State of South Dakota. The Circuit Court of Pennington County shall be the sole venue for any disputes arising under this agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.



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)

County of Pennington )

My Commission Expires:  
(SEAL)