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(Dakota Heartland)

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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 **DAKOTA HEARTLAND, 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 known as Big Sky Business Park (hereafter called the "Development") located generally east of Elk Vale drive and north of SD Highway 44 in the eastern portion of the City of Rapid City and more particularly described as follows:

Beginning at the intersection of the south line of the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T1N, R8E, BHM and the easterly right-of-way line of N. Elk Vale Road; thence N00°03'48"W along said easterly right-of-way line, 1459.51 feet; thence departing said right-of-way line N89°56'12"E, 210.36 feet; thence N30°52'15"E, 68.52 feet; thence N24°03'50"W, 116.46 feet; thence N89°58'35"E, 1000.14 feet; thence S00°07'12"E, 300.00 feet; thence S89°58'35"W, 661.83 feet; thence S00°07'25"E, 1324.68 feet to a point lying on said south line of the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T1N, R8E, BHM; thence westerly along said south line the following two courses; thence N89°59'59"W, 262.31 feet; thence S89°55'21"W, 275.92 feet to the POINT OF BEGINNING containing 1,034,566.08 sq. ft. or 23.750 Acres more or less.

; 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 Timmons Boulevard and associated infrastructure within said development between Homestead Street and Bernice Street (hereinafter "project"); and

WHEREAS, the Rapid City Infrastructure Development Partnership Review Committee has recommended approval of the application for a loan to Landowner of One Million Nine Hundred Eighty Thousand dollars (\$1,980,000.00) 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 \$1,980,000.00 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 One Million Nine Hundred Eighty Thousand dollars (\$1,980,000.00). The principal sum of One Million Nine Hundred Eighty Thousand dollars (\$1,980,000.00) 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:

$$\frac{\text{Number of square feet of land platted}}{1,034,566.08 \text{ sq. ft.}} \times 100 = \% \text{ of original loan to be repaid upon plat approval}$$

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 Timmons Blvd.

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. **Construction.** Landowner shall construct the project in accordance with all applicable City construction standards including but not limited to the City Street Design Criteria Manuel 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 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: December 15, 2003.

CITY OF RAPID CITY

DAKOTA HEARTLAND, INC.




Mayor

By: 

Its: President

ATTEST:



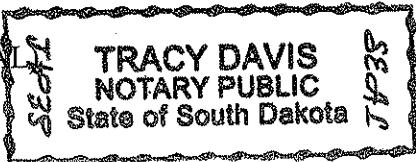
Finance Officer

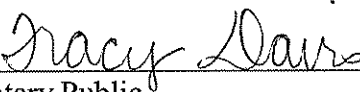
(SEAL)

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

ON THIS 15th DAY of, December, 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)  (SEAL)



Notary Public
My Comm. Expires: Jan 6, 2005

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

ON THIS 15th DAY of, December 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)

Margaret Paul
Notary Public
My Comm. Expires: 6/25/2009

Prepared By: CITY ATTORNEY'S OFFICE