

CONTRACT FOR PRIVATE DEVELOPMENT  
TAX INCREMENT DISTRICT NUMBER SIXTY-NINE

Between

NORTH STREET FIRE STATION, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between North Street Fire Station, LLC, a South Dakota limited liability company, located at ADDRESS, 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." The City acknowledges that other than Rapid Center, LLC, the Members of North Street Fire Station, LLC are not developers as the word is commonly used.

### 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-Nine by resolution on July 21, 2008.

WHEREAS, on the same date, the City adopted by resolution a Project Plan for Tax Increment District Number Sixty-Nine 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 Developer agrees to fund certain project costs for Tax Increment District Number Sixty-Nine which have been previously identified and approved in the Project Plan. Those project costs, along with the maximum amount the Developer can be reimbursed for them, are as follows:

#### Capital Costs

|  |                |
|--|----------------|
| Construction of East North Street:   |                |
| Street   | \$ 563,800.00  |
| Lighting   | \$ 60,200.00   |
| Water  | \$ 175,000.00  |
| Sanitary Sewer   | \$ 63,000.00   |
| Storm Sewer  | \$ 116,200.00  |
| <br>   |                |
| Widen East Mall Drive by two lanes between<br>East North St. and Dyess Ave | \$ 400,000.00  |
| <br>   |                |
| Traffic Signal at East Mall Drive and Dyess Ave**                          | \$ 42,327.50** |

|  |               |
|--|---------------|
| Interim Sanitary Sewer Lift Station and Force Main | \$ 53,100.00  |
| Gravity Sewer                                      | \$ 94,500.00  |
| 12' x 5' Box Culvert                               | \$ 192,100.00 |
| Grass Lined Channel & Channel Protection           | \$ 237,500.00 |

Professional Services

Engineering:

|                                   |              |
|-----------------------------------|--------------|
| Construction of East North Street |              |
| Street                            | \$ 84,570.00 |
| Lighting                          | \$ 9,030.00  |
| Water                             | \$ 26,250.00 |
| Sanitary Sewer                    | \$ 9,450.00  |
| Storm Sewer                       | \$ 17,430.00 |

|  |               |
|--|---------------|
| Interim Sanitary Sewer Lift Station and Force Main                         | \$ 7,965.00   |
| Gravity Sewer  | \$ 14,175.00  |
| 12' x 5' Box Culvert   | \$ 28,815.00  |
| Grass Lined Channel & Channel Protection                                   | \$ 35,625.00  |
| Widen East Mall Drive by two lanes between<br>East North St. and Dyess Ave | \$ 60,000.00  |
| Traffic Signal at East Mall Drive and Dyess Ave**                          | \$ 6,349.13** |
| Downstream Drainage Study  | \$ 100,000.00 |

Financing Costs

|  |                        |
|--|------------------------|
| Interest   | \$ 2,082,497.19        |
| Contingency  | \$ 199,772.75          |
| Necessary and Convenient Costs   | \$ 199,772.75          |
| <b>TOTAL PROJECT COSTS REIMBURSEABLE THROUGH<br/>TAX INCREMENT DISTRICT #69 FOR THIS DEVELOPER</b> | <b>\$ 4,879,429.32</b> |
| Imputed Administrative Costs*  | \$ 2,050.00            |

\* The imputed administrative costs are interest free, are not included in the total project costs, and are to be paid to the City from the balance remaining in the TID #69 Fund available to the City Finance Officer on April 15, 2013.

\*\* The actual estimate of the traffic signal at East Mall Drive and Dyess Avenue is \$84,655 and the actual design fees for the same are \$12,698.25. Pursuant to a separate Covenant Agreement, the City has agreed to pay half the costs of both of these items. In lieu of paying half of the costs, the City has already acquired most of the signal heads, controllers, masts, booms and other miscellaneous items and will be contributing all of those in lieu of its 50% of the cost that it contractually agreed to pay pursuant to a separate agreement.

SECTION 2. The Developer agrees to design and construct the public improvements contemplated in Section 1 of this Agreement. The Developer will be solely responsible for obtaining the capital necessary to fund these improvements. The Developer's reimbursement from the proceeds of the tax increment district for constructing these improvements is subject to the following terms and conditions:

a. One of the City's considerations for approving this Tax Increment District and entering into this Agreement is the promise of FMLC, Inc. (herein after referred to as "Landowner") to transfer to the City, at no cost to the City, fee title to approximately 3 acres of land for use as a fire station. The land to be donated is generally located in the northeast corner of a parcel of property which is immediately west of the segment of East North Street to be constructed as part of this Agreement and which is legally described as:

The Northwest Quarter (NW ¼), including the vacated portion of E. Mall Drive, less the Northeast Quarter of the Northeast Quarter of the Northwest Quarter (NE¼ NE ¼NW ¼), less Lots AR, B and C all within Section 29 of Township Two North (T2N), Range Eight East (R8E), of the Black Hills Meridian, Rapid City, Pennington County, State of South Dakota.

The location of the land to be donated is shown on the Project Plan Exhibit entitled "Tax Increment District – North Street Fire Station – Public Improvements."

b. In order to provide the City with fee title to this property, the 3 acre site will need to be platted by the Landowner. The Developer will get the Landowner to initiate the platting process for the fire station site within sixty (60) days of this Agreement being approved. The City will join the Landowner as a joint applicant on the platting request so the filing cost can be waived. The Landowner will be responsible for preparing any and all surveys, reports and other exhibits which may be necessary to obtain plat approval.

c. Upon approval of the plat, the Landowner will cause fee title for the property to be transferred to the City by warranty deed. Such transfer will occur within sixty (60) days of the plat being approved. This agreement is contingent upon the Developer causing the Landowner to transfer title to this property to the City within the time frames specified. If the Developer fails to do so, the City may, in its sole discretion, extend the time frame for the

Developer to cause title to the property to be transferred or proceed with terminating the agreement pursuant to sub-section (j).

d. The Developer agrees to design and construct E. North Street from its current terminus just to the north of East Mall Drive to the northern edge of the property described in sub-paragraph (a) of the Section. This street will be designed and constructed as a three lane facility. In conjunction with constructing the street, the Developer agrees to construct the interim lift station, sanitary sewer force main and box culvert referred to in Section 1 of this Agreement. The Developer will provide the City with right-of-way One Hundred (100) feet in width in which to locate this street at no cost to the City. The Developer will provide the City with the necessary right-of-way prior to, or simultaneously with, the platting and donation of the fire station site. Within thirty (30) days of right-of-way being dedicated and accepted by the City, the Developer will provide an engineer's estimate for the cost of constructing the street which will be reviewed and approved by the City in the normal manner for review and approval of subdivision improvements. Nothing in this agreement shall be construed as releasing the Developer from any obligations under the City's Subdivision Ordinances, including but not limited to the posting of acceptable surety for any required subdivision improvements. The Developer will have dedicated the right-of-way and entered into a contract for construction of these improvements by July 1, 2009.

e. The Developer will design and construct E. Mall Drive between E. North Street and Dyess Ave. to a five lane facility. If sufficient right-of-way has not already been dedicated, the Developer will provide the City with right-of-way One Hundred (100) feet in width through the platting of adjacent property or through the creation and donation of H Lots at no cost to the City. Such dedication shall be accomplished within One-Hundred Twenty (120) days of the approval of this Agreement. The Developer further agrees that the scope of this project includes any improvements to the intersection of East Mall Drive and Dyess Ave, including but not limited to the installation of the traffic signals contemplated in Section 1 of this Agreement. Within Thirty (30) days of the right-of-way being dedicated and accepted by the City, the Developer will provide an engineer's estimate for the cost of constructing the street which will be reviewed and approved by the City in the normal manner for review and approval of subdivision improvements. The Developer will have dedicated the right-of-way and entered into a contract for construction of these improvements by July 1, 2009.

f. The City is responsible for half the cost of the traffic signals at E. Mall Drive and Dyess Ave. Upon the Developer completing installation of the traffic signals and their acceptance by the City, the Developer will provide the City with an itemized invoice of the final total cost of the installation. Within Forty-Five (45) days of receiving the invoice, the City will remit payment equivalent to 50% of the final installation cost to the Developer or their designee.

g. The parties contemplate that, for purposes of certification and reimbursement, the public improvements funded by this project will be completed in three phases. Those phases (with the obligations of the City for the building of the North Street Fire Station having been excluded) are:

PHASE I – E. North Street, interim lift station, sanitary sewer force main and box culvert;

PHASE II – E. Mall Drive and traffic signals;

PHASE III – All remaining funded improvements

The improvements in Phases I and II shall be constructed based on the provisions contained in sub-paragraphs (d) and (e) of this Section. The improvements in Phase III shall be constructed as development occurs.

h. Upon the execution of this Agreement, the Developer will provide evidence of financing to fund the completion of the improvements herein contemplated.

i. 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.

j. 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-Nine has yet to be certified by the South Dakota Department of Revenue. The parties understand and acknowledge that before any increment can be generated from the district, the base valuation of the property within the district must be certified by the Department of Revenue. It is further understood that this Agreement is contingent upon certification of the value of the land in the district by the South Dakota Department of Revenue. When the certified land value has been received by the City from the Department of Revenue it will be incorporated into, and become part of, this Agreement. The Developer assumes any and all risk that may result from entering into this Agreement prior to receiving a certified land value from the Department of Revenue.

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. The Developer shall certify to the City Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. Upon completion of the various phases, the Developer may certify to the City Finance Officer the public improvements for that phase have been completed and certify the amount of money disbursed therefore. The reimbursement for the public improvements for the various phases may begin upon the certification of the costs for that phase. 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-Nine 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-Nine 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-Nine shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Sixty-Nine 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-Nine 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 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-Nine received 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-Nine 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. This document along with the Project Plan for Tax Increment District Sixty-Nine constitutes 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 15. 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 16. 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 17. 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 18. 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 19. 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 \_\_\_\_\_, 2008.

NORTH STREET FIRE STATION, LLC  
BY ITS MEMBERS:

\_\_\_\_\_  
FMLC INC., Julie Lien, President

\_\_\_\_\_  
KRYTOYLAND, Kevin Randle, Authorized Rep.

\_\_\_\_\_  
MRS Land II LLC.,

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

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

\_\_\_\_\_  
Chuck Lien

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Julie Lien, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged herself to be the President of FMLC INC., a member of North Street Fire Station, LLC, and as a member of North Street Fire Station 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 the \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Kevin Randle, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged himself to be an authorized signer on behalf of KRYTOYLAND a member of North Street Fire Station, LLC, and as a member of North Street Fire Station LLC 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 the \_\_\_\_ day of \_\_\_\_\_, 2008, 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 MRS Land II LLC., a member of North Street Fire Station, LLC, and as a member of North Street Fire Station LLC 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 the \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Chuck Lien, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and as a member of North Street Fire Station LLC acknowledged he 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 \_\_\_\_\_, 2008, 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)