

CONTRACT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS THROUGH  
PRIVATE DEVELOPER  
TAX INCREMENT DISTRICT NUMBER SEVENTY-ONE

Between

THF STONERIDGE DEVELOPMENT, L.L.C.

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between THF Stoneridge Development, L.L.C., a Missouri limited liability company located at 2127 Innerbelt Business Center Dr., Suite 200, St. Louis, Missouri 63114, 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 Seventy-One by resolution on March 21, 2011.

WHEREAS, on the same date, the City adopted by resolution a Project Plan for Tax Increment District Number Seventy-One 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 Seventy-One, 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:

|  |               |
|--|---------------|
| Fifth Street Blvd & Turn Lane                | \$ 528,185.00 |
| Catron Blvd Turn Lanes                       | \$ 96,000.00  |
| Stumer Road Turn Lanes & Blvd Extension      | \$ 195,000.00 |
| Black Hills Blvd Turn Lanes & Blvd Extension | \$ 37,000.00  |
| Traffic Signal                               | \$ 366,871.00 |

Professional Costs:

|             |               |
|-------------|---------------|
| Engineering | \$ 150,000.00 |
|-------------|---------------|

Financing Costs:

|                    |                 |
|--------------------|-----------------|
| Financing interest | \$ 1,552,834.73 |
|--------------------|-----------------|

|              |              |
|--------------|--------------|
| Contingency: | \$ 60,000.00 |
|--------------|--------------|

|                   |      |
|-------------------|------|
| Relocation Costs: | \$ 0 |
|-------------------|------|

|                       |      |
|-----------------------|------|
| Organizational Costs: | \$ 0 |
|-----------------------|------|

|                                 |                     |
|---------------------------------|---------------------|
| Necessary and Convenient Costs: | <u>\$ 62,000.00</u> |
|---------------------------------|---------------------|

|       |                 |
|-------|-----------------|
| TOTAL | \$ 3,047,890.73 |
|-------|-----------------|

Imputed Administrative Costs\*

|                    |              |
|--------------------|--------------|
| City of Rapid City | \$ 20,000.00 |
|--------------------|--------------|

\*The imputed administrative costs are interest-free, are not included in the total project costs, and are to be paid from monies in the TID #71 fund which are available to the City Finance Officer beginning on March 15, 2016. The Finance Officer may withdraw monies from the fund until such time as this fee is paid in full.

SECTION 2. The cost of constructing the improvements contained in Section 1 of this agreement is the responsibility of the Developer. The Developer will construct the Fifth Street Blvd & Turn Lane (\$528,185), the Stumer Road Turn Lanes & Blvd. Extension (\$195,000), and the Traffic Signals (\$366,871) by September 1, 2012. It is anticipated by the parties that the Catron Blvd Turn Lanes (\$96,000) will be constructed by the South Dakota Dept. of Transportation in conjunction with the Department's Catron Blvd. reconstruction project. If constructed by the State, the Developer will be required to reimburse the State for the cost of constructing this improvement. The parties acknowledge that the City will reimburse the Developer from the tax increment funds upon the Developer certifying to the Finance Office the amounts actually paid to the State for this improvement. If the Developer constructs this improvement in lieu of the State, the Developer can be reimbursed for the costs of construction in the same manner as the other improvements contemplated in this agreement. The construction of the Black Hills Blvd Turn Lanes & Blvd Extension (\$37,000) will be necessitated by future development of the site. If future development does not occur this improvement may not be needed. The Developer acknowledges that the improvements, including the Black Hills Blvd Turn Lanes & Blvd Extension (\$37,000) must be started or under contract for construction within 5 years of the approval of this tax increment district in order to be eligible for

reimbursement under this agreement. The Developer may certify the Fifth Street Blvd & Turn Lane (\$528,185), the Stumer Road Turn Lanes & Blvd. Extension (\$195,000), and the Traffic Signals (\$366,871) upon these improvements being completed. The Developer may certify the Catron Blvd Turn Lanes (\$96,000) upon providing proof of reimbursing the State and that all other requirements for reimbursement of improvements have been met. Since the completion of this improvement is out of the control of the Developer, certification and reimbursement for this improvement will not be dependent on completion of the other improvements. Since it is unclear if the Black Hills Blvd Turn Lanes & Blvd Extension (\$37,000) will need to be constructed, the Developer may certify the cost of this improvement separately from the others at the time of its actual completion.

If the Developer does not complete the Fifth Street Blvd & Turn Lane (\$528,185), the Stumer Road Turn Lanes & Blvd. Extension (\$195,000), and the Traffic Signals (\$366,871) by September 1, 2012, the City has the option to terminate this agreement as to any improvements that have not been constructed or on which construction has not been started including the other improvements identified in the agreement. Prior to the City terminating the agreement, the City shall provide at least thirty (30) 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 Seventy-One has been certified by the South Dakota Department of Revenue as Eleven Million, Fourteen-Thousand, Six-Hundred Dollars and zero cents (\$11,014,600.00).

SECTION 4. The Developer may secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Seventy-One Project Plan. 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. If the Developer obtains private financing, the interest rate shall not exceed nine (9%) percent per annum during the life of the loan. At no time shall the actual interest paid exceed the maximum amount of financing interest identified in Section 1 of this agreement and the Project Plan. Prior to approval of this agreement, the Developer shall provide to the City Finance Office a Tax Increment Financing proposal from a prospective lender of its choosing which shall address these loan terms and conditions:

1. Fixed or variable interest rate, if variable state frequency of pricing adjustments
2. Interest rate index
3. Interest rate spread over/under index, if any
4. Loan term
5. Collateral
6. Guaranty requirements from the developer
7. All identity of interests between developer and lender

The City Finance Officer will review and analyze the proposed financing terms and forward a recommendation for approval or disapproval to the City Council along with this agreement. If the City Finance Officer concludes that the proposal is not competitive with current market conditions or is otherwise unsatisfactory, a report detailing the deficiencies shall also be forwarded to the City Council. The Developer will also be required to submit this information and have the Finance Officer review and make a recommendation to the City Council prior to approval of any request for refinancing. The City further reserves the right to require the refinancing of any existing tax increment finance loan utilizing whatever means the City decides most beneficial to the taxpayers, including the issuance of revenue or other bonds, at any time during the term of this agreement. This shall include the City's right to require the Developer to assign and/or reassign the Tax Increment Finance loan to the City or any other entity designated by the City. If the City chooses to finance or refinance the Tax Increment Finance loan the City will be eligible for reimbursement from the Tax Increment District Seventy-One fund of any project or financing costs it actually incurs.

SECTION 5. Developer shall complete the improvements described in the approved Project Plan. Upon completion of the improvements 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 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 Seventy-One Project Plan have, in fact, been disbursed for the costs contemplated in the Project Plan and that state bid law has been complied with. Submission of the final costs certification shall be made to the Finance Office no later than 120 days after acceptance of the final project within the phase and receipt of warranty surety, if required.

SECTION 6. It is understood by the parties that the boundaries of Tax Increment District Seventy-One 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 Seventy-One shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Seventy-One 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 Section 1 of this agreement and the Tax Increment District Number Seventy-One 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 Seventy-One 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 Seventy-One 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 promptly satisfy or bond over 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 agreement is based on the anticipated purchase of a portion of the property owned by the Developer by Wal-Mart Stores Inc. If closing on this property does not occur by November 1, 2011, the Developer may terminate this agreement.

SECTION 15. This document along with the Project Plan for Tax Increment District Seventy-One, constitutes the entire agreement of the parties with respect to the payment of funds from Tax Increment District Seventy-One. 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 \_\_\_\_\_, 2011.

CITY OF RAPID CITY

\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

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

State of South Dakota            )  
  ss.  
County of Pennington            )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned officer, personally appeared Alan Hanks and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes herein 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.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

(SEAL)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

THE STONERIDGE DEVELOPMENT,  
L.L.C.

By:\_\_\_\_\_

Its:\_\_\_\_\_

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

On this the \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned officer personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of THF Stoneridge Development, L.L.C., and that 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.

My Commission Expires:

Notary Public, \_\_\_\_\_

(SEAL)