

**ASSIGNMENT AGREEMENT BETWEEN DENNIS ZANDSTRA  
REAL ESTATE HOLDINGS L.L.C. AND BANKWEST FOR TAX  
INCREMENT DISTRICT #65**

Agreement entered into as of the dates set forth in the acknowledgments below by and between the **CITY OF RAPID CITY**, State of South Dakota, hereinafter referred to as "**City**," **BANKWEST** of Rapid City, South Dakota, hereinafter referred to as "**Lender**," and **DENNIS ZANDSTRA REAL ESTATE HOLDINGS, LLC**, an South Dakota Limited Liability Company, herein referred to as "**Developer**," and the purpose of which is to set forth the Agreement between these parties as it relates to Tax Increment District Number Sixty-five (65).

WHEREAS, City has passed a Resolution Creating Tax Increment District Number Sixty-five (65) on September 4, 2007, a copy of said Resolution is attached hereto as Exhibit "A" which is, by reference, incorporated herein; and

WHEREAS, the City approved the Project Plan for Tax Increment District Number Sixty-five (65) on September 4, 2007, a copy of said Project Plan and Resolution is attached hereto as Exhibit "B" which is, by reference, incorporated herein; and

WHEREAS, Developer has agreed to advance the funds necessary to accomplish the goals to be achieved by the Tax Increment District Number Sixty-five (65) and

WHEREAS, Developer and City have entered into a Contract for Private Development-Tax Increment District Number Sixty-five (65) on June 2, 2008, a copy of said contract(s) being attached hereto as Exhibit "C" which by reference hereto is incorporated herein; and

WHEREAS, Lender has agreed to loan the funds to Developer to accomplish said purpose set forth in the Contract for Private Development, and any revisions thereof, on the condition that the future real estate taxes which are collected for the Tax Increment District Number Sixty-five (65) are paid directly by City to Lender, it is hereby agreed, as follows:

1. City will pay directly to Lender those real estate taxes collected which are subject to the Tax Increment District Number Sixty-five (65) and any properly revised project plan until the loan obligation incurred between Lender and Developer, for purposes relating solely to the Tax Increment District Number Sixty-five (65) and any properly approved revised project plan, are paid in full or the Tax Increment District is dissolved, whichever comes first. It is the specific intent of the parties that the City shall not be obligated to pay any sums to Lender other than the increment authorized by the Private Development Agreement and any revisions thereof and generated by Tax Increment District Number Sixty-five (65). Any obligations the City has to Lender shall cease by the City's paying to Lender said increments authorized by the Private Development Agreement and any revisions thereof until the loan is satisfied or Tax Increment District Number Sixty-five (65) is terminated, whichever comes first. Payments will be made at 311 Omaha Street, Rapid City, South Dakota 57701, or at a different place if required by the Lender.
2. Lender agrees that, provided City makes payment to Lender of all funds actually received or collected by City for Tax Increment District Number Sixty-five (65) and any properly approved and revised project plan, there is no liability by City for the loan obligation of Developer. Rather, should City have paid all funds set forth in the Private Development Plan and any revisions thereto, actually received or collected by City for Tax Increment District Number Sixty-five (65), Lender shall look solely to

- its agreement with Developer and its guarantors, for any rights of recovery upon default, it being the specific intent of the parties that in the event that Tax Increment District Number Sixty-five (65) is terminated before payment in full of the obligation to Lender is satisfied or in the event that the increments are insufficient to pay said obligation, Lender's sole recourse shall be against Developer and its guarantors and the City shall have no additional liability to Lender provided that City has made all payments required herein.
3. Upon reasonable request and notice, Lender agrees to provide financial reports to City and Developer to advise them of the on-going status of the loan obligation to Lender by Developer.
  4. All parties to this Agreement acknowledge that in the event Developer makes any payments on the loan obligation to Lender for this Tax Increment District Number Sixty-five (65), said payments will not reduce the obligation of City to make the Tax Increment District Number Sixty-five (65) and the revised project plan payments to Lender, pursuant to this Agreement, until the entire tax increment district obligation is paid in full. Said assignment shall continue until Lender Authority has been paid in full or Tax Increment District Number Sixty-five (65) is dissolved, whichever comes first.
  5. The parties further acknowledge that there are multiple developers participating in Tax Increment District Number Sixty-five (65) and the increment payments to the parties will be divided per the terms of the Contracts for Private Development with the respective parties. The Contract for Private Development with SSST, L.L.C., the other developer included in this Tax Increment District was previously assigned to BankWest. SSST, L.L.C. is composed of the same members that compose the membership of Dennis Zandstra Real Estate Holdings, L.L.C. BankWest acknowledges that if any of the increment funds which are paid to it as part of any assignment agreement related to Tax Increment District Number Sixty-five (65) are misapplied, or applied in a manner other than what is called for in the Contracts for Private Development, it is solely responsible.
  6. 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.
  7. 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.
  8. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this Agreement. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.
  9. 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.

10. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013

**City of Rapid City**

\_\_\_\_\_  
Sam Kooiker, Mayor

ATTEST:

\_\_\_\_\_  
Pauline Sumption, Finance Officer

STATE OF SOUTH DAKOTA     )  
  :SS  
COUNTY OF \_\_\_\_\_     )

On this \_\_\_\_\_ day \_\_\_\_\_, 2013, before me, the undersigned Notary Public, personally appeared Sam Kooiker 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 authorized so to do, 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)

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

**BankWest**

By: \_\_\_\_\_  
Chad Miller  
Its: Branch President

STATE OF SOUTH DAKOTA     )  
  )ss:  
COUNTY OF \_\_\_\_\_     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared Branch President who acknowledged himself to be the Regional President of BankWest, and that he, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing himself as the Regional President of BankWest.

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

(SEAL)

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

**DENNIS ZANDSTRA REAL ESTATE HOLDINGS, LLC**

By: \_\_\_\_\_  
      Scott B. Zandstra  
Its: Co-Manager/Partner

By: \_\_\_\_\_  
      Steven D. Zandstra  
Its: Co-Manager/Partner

By: \_\_\_\_\_  
      Darcy L. Torres  
Its: Co-Manager/Partner

STATE OF \_\_\_\_\_     )  
  )ss:  
COUNTY OF \_\_\_\_\_     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared Scott B Zandstra, Steven D Zandstra and Darcy L Torres, who acknowledged themselves to be Co-Managers/Partners of DENNIS ZANDSTRA REAL ESTATE HOLDINGS, LLC, and that they, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing themselves as Co-Managers/Partners of DENNIS ZANDSTRA REAL ESTATE HOLDINGS, LLC.

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

(SEAL)

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