

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

Between

TECHNOLOGY HOUSING 2 LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ____ day of _____, 20____, by and between Technology Housing 2 LLC, a South Dakota limited liability company located at 528 Kansas City Street, Rapid City SD 57701, 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-Five by resolution on December 1, 2014.

WHEREAS, on December 1, 2014, the City also adopted by resolution a Project Plan for Tax Increment District Number Seventy-Five which identifies expenditures for public improvements that qualify as project costs pursuant to SDCL 11-9-14 and SDCL 11-9-15.

WHEREAS, the purpose of this Agreement is to establish the conditions under which the Developer can be reimbursed from the proceeds of the tax increment district for the cost of the improvements in the Project Plan. This Agreement 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-Five, as set forth in the approved Project Plan, are as follows:

TOTAL ESTIMATED PROJECT COSTS TO BE PAID BY THE DEVELOPER:

Capital Costs:

Property Acquisition	\$	800,000.00
Environmental Cleanup & Demolition	\$	100,000.00
Alley Reconstruction	\$	100,000.00

Professional Costs:

Engineering	\$	30,000.00
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Financing Costs:

Financing Interest	\$	1,031,847.00
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Contingency Costs:	\$	30,000.00
Necessary and Convenient Costs:	\$	<u>2,000.00</u>
 Total	\$	2,093,847.00
 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 the balance remaining in the Tax Increment District #75 fund available to the City Finance Officer beginning on November 1, 2019. The Finance Officer may withdraw monies from the fund until such time as this fee is paid in full.

The parties agree that Developer may seek to revise the Project Plan to reallocate the project costs without increasing the total project costs of \$2,093,847.00.

The parties agree that Developer can only seek reimbursement for improvements made within the geographical boundaries of Tax Increment District Seventy-Five. The parties agree that any improvements made outside of the boundaries of Tax Increment District Seventy-Five are not reimbursable from the Tax Increment District Seventy-Five Fund, and Developer agrees that it will not seek reimbursement from City for any such improvements made outside of the district.

SECTION 2. The cost of constructing the improvements contained in Section 1 of this agreement is the responsibility of the Developer, and Developer agrees to construct the improvements described in Section 1. The Developer acknowledges that these improvements must be started or under contract for construction within 5 years of the approval of this tax increment district (i.e. by December 1, 2019) in order to be eligible for reimbursement under this Agreement.

The parties agree that the Project Costs in Section 1 include property acquisition costs of \$800,000. The parties agree that Developer shall obtain an independent appraisal prior to acquiring any property to be reimbursed out of the Tax Increment District. The Developer may be reimbursed up to \$10,000 from the land acquisition line item for appraisal expenses as part of the real property acquisition costs. The Developer may be reimbursed out of the Tax Increment District up to the independently-appraised value of the property, or the amount allocated in the approved Project Plan, whichever is less. When Developer certifies its costs pursuant to Section 5, it shall submit proof of the appraised value of the property and City acceptance of the public improvements.

The parties agree that the \$100,000 line item for Alley Reconstruction includes burying the overhead power lines. The alley reconstruction shall comply with the provisions of the Infrastructure Design Criteria Manual.

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 for these improvements. Developer shall submit for reimbursement all costs at one time and may not submit costs in phases. The parties agree that no reimbursement will exceed the specific costs listed in the Project Plan and in Section 1 of this Agreement without the consent of the parties.

SECTION 3. The base value of the property located in Tax Increment District Number Seventy-Five has been certified by the South Dakota Department of Revenue as Four Hundred Ninety-One Thousand, Nine Hundred Dollars (\$491,900).

SECTION 4. The Developer may secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Seventy-Five 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. At the time of signing this agreement, the Developer has provided to the City Finance Office a Tax Increment Financing proposal from a prospective lender of its choosing which addressed 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 has reviewed and analyzed the proposed financing terms and has forwarded a recommendation for approval to the City Council. The terms of the financing package as submitted are hereby incorporated into this Agreement.

Prior to approval of any request for refinancing, the Developer agrees to submit the information listed above for the Finance Officer's review and recommendation to the City Council. 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-Five fund of any project or financing costs it actually incurs.

SECTION 5. Developer shall complete the improvements described in the approved Project Plan and consistent with the costs in Section 1. 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 9 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-Five 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 and receipt of warranty surety, if required.

SECTION 6. All positive tax increment payments for Tax Increment District Number Seventy-Five shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Seventy-Five Fund," hereinafter referred to as the "Fund." Subject to Sections 2, 5, 8 and 9 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-Five Project Plan as well as any other limitations contained herein, the City shall, generally 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. The parties agree that this 30-day timeframe will not apply to the first payment after certification pursuant to Section 5, as such payment is approved by the Common Council through its approval process.

SECTION 7. It is contemplated by the parties that 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 8. 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-Five received into the "Fund" specified in Section 6 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 7 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 6 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 9. 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 Chapters 5-18A through 5-18D of South Dakota Codified Laws. The Developer shall provide City with documentation demonstrating that it has complied with Chapters 5-18A through 5-18D.

SECTION 10. Developer agrees to defend, indemnify and hold harmless the 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-Five Project Plan, other than the negligent acts of the City. 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 as an additional insured. Such a policy shall remain in effect until the City accepts the improvements. The certificates of insurance shall be submitted at the time of the execution of this Agreement.

SECTION 11. 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 12. 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 13. This document, along with the Project Plan for Tax Increment District Seventy-Five, constitutes the entire agreement of the parties with respect to the payment of funds from Tax Increment District Seventy-Five. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into these documents or are intentionally omitted. This Agreement may only be amended or modified in writing by mutual agreement of the parties.

SECTION 14. 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 7 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.

Dated this _____ day of _____, 20_____.

TECHNOLOGY HOUSING 2 LLC

By: _____

Its: _____

State of _____)

ss.

County of _____)

On this the _____ day of _____, 20____, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of Technology Housing 2 LLC, 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.

Notary Public, _____

My Commission Expires:
(SEAL)