AMENDED
AGREEMENT BETWEEN THE CITY OF RAPID CITY AND DTH, LLC TO ALLOW FOR ACCEPTANCE OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR RAINBOW RIDGE SUBDIVISION.

This amended agreement is entered into on this 5 day of April, 2010, by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, SD 57701, herein after referred to as the "City" and DTH, LLC, 3220 West Main Street, Rapid City, SD, 57702.

WHEREAS, the Developer owns certain residential lots within Rainbow Ridge Subdivision in Rapid City; and

WHEREAS, prior to approval of the final plat for Rainbow Ridge Subdivision the Developer was required to post surety to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, this surety includes the cost for completing sidewalks within the subdivision; and

WHEREAS, the Developer has completed all of the improvements required under the City's Subdivision Regulations with the exception of various sidewalk segments fronting non-contiguous residential lots; and

WHEREAS, the Developer has requested that it be allowed to construct the remaining sidewalk segments in conjunction with the construction of the homes on the individual lots; and

WHEREAS, this manner of constructing sidewalks in residential areas is consistent with current development practices and is also consistent with policies and ordinances that have been recently adopted by the City; and

WHEREAS, this subdivision was approved prior to the adoption of the new policy; and

WHEREAS, the Developer has requested that the City accept the completed improvements and start the running of the warranty period once the improvements have been officially accepted; and

WHEREAS, the parties previously entered into an agreement whereby the sidewalks were to be completed within two years of the approval of the agreement; and

WHEREAS, with the exception of some of the sidewalks, the improvements have been completed and accepted by the City, and have been placed into the warranty period; and

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WHEREAS, the Developer is requesting an extension of the time period in which the Developer is to complete all the sidewalks; and

WHEREAS, the City is willing to accommodate the Developer's request if it can insure that the sidewalks are completed.

NOW THEREFORE, the parties agree as follows:

1. The Developer will provide an updated estimate of the cost to construct all required sidewalks that remain to be built within the subdivision. The Developer will then provide the City with a new surety in an amount sufficient to cover the cost of installing the sidewalks as shown in the updated estimate. The surety shall be in a form acceptable to and approved by the City Attorney's Office.

2. In exchange for the Developer providing the updated estimate and a surety sufficient to cover the cost of completing the sidewalks within the subdivision, the City will refrain from drawing on the Letter of Credit currently in place. Upon the completion of a sidewalk in conjunction with the construction of a home, the City shall inspect the sidewalk. Upon the sidewalk passing final inspection the City will issue a letter to DTH, LLC officially accepting the sidewalk. Upon issuance of the letter of acceptance by the City the two year warranty period will begin to run.

3. The Developer agrees that all sidewalks will be installed within two years of the approval of this agreement. If any sidewalks in Rainbow Ridge Subdivision are not completed by this time the City has the right to draw on the surety and construct the sidewalk. If the amount of the surety is insufficient to fully cover the cost of constructing the sidewalks, the Developer agrees to pay to the City the difference between the amount of the surety and the actual cost of constructing the sidewalk.

4. The following lots are covered by this agreement:

   Lots 1R and 28 of Block 1, Rainbow Ridge Subdivision; Lots 3, 4, 27, 29, 31, 32, 33, 34 and 36 of Block 2, Rainbow Ridge Subdivision; Lots 2R, 4R and 5 of Block 3, Rainbow Ridge Subdivision; Lots 10 and 11 of Block 5, CHMH Subdivision; Lots 1, 2, 5 and 8 of Block 10, CHMH Subdivision; and Lot 5 of Block 11 of CHMH Subdivision.

5. The Developer acknowledges that the City's agreement to accept the public improvements for the subdivision and start the running of the warranty period prior to the completion of all the sidewalk segments required under the City's Subdivision Regulations is sufficient consideration for the promises made herein.

6. The City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or its subdivision regulations in connection with this agreement, the undersigned, heirs, assigns

12/10

or successors in interest agree the City may recover from the Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

7. This document represents the entire agreement of the parties. No other writing is a part of this agreement. All other prior representations, writings, oral statements or negotiations have been merged into this document and are either included herein or intentionally excluded.

8. 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 5 day of April, 2010.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

DTH, LLC

By: _____

Its: MANAGER

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 5 day of April, 2010, 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 they, as such Mayor and Finance Officer, being authorized so to do, 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.

Amber K. Sitts
Notary Public, State of South Dakota
My Commission Expires: 9-13-15

[SEAL] AMBER K. SITTS NOTARY PUBLIC State of South Dakota SEAL

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 2nd day of March, 2010, before me, the undersigned officer, personally appeared Doyle Estes, who acknowledged themself to be the Manager of DTH, LLC, and that as such, being duly authorized so to do, executed the foregoing instrument for the purposes herein contained.

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

Jean Lassegard
Notary Public, State of South Dakota
My Commission Expires: 9-19-2013

[SEAL] JEAN LASSEGARD NOTARY PUBLIC State of South Dakota SEAL