

SECOND AMENDED CONTRACT FOR PRIVATE DEVELOPMENT

TAX INCREMENT DISTRICT NUMBER SIXTY-FIVE

Between

SSST, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2019, by and between SSST, LLC, located at 3840 Cambell Street, Rapid City, South Dakota 57701-2057 (“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 (“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 Sixty-Five by resolution on September 4, 2007; and

WHEREAS, on the same date, the City adopted by resolution a Project Plan for Tax Increment District Number Sixty-Five which identifies expenditures for public improvements which qualify as project costs pursuant to SDCL 11-9-14 and SDCL 11-9-15; and

WHEREAS, pursuant to SDCL 11-9-2(5), thereafter the City entered into an agreement with Plum Creek Development L.L.C., *Contract for Private Development Tax Increment District Number Sixty-Five*, which was fully executed on October 22, 2008, to establish the conditions under which Developer may be reimbursed from the proceeds of the tax increment district for the Project Plan costs and other terms related to the tax increment district; and

WHEREAS, the City and Plum Creek Development L.L.C. also entered into an *Amended Contract for Private Development Tax Increment District Number Sixty-Five*, fully executed on October 22, 2008, amending the original contract concerning the parties’ involvement in tax increment district; and

WHEREAS, on August 7, 2008, Plum Creek Development, L.L.C. signed an *Assignment and Assumption of Amended Contract for Private Development* concerning Plum Creek Development’s assignment of its obligations and privileges in Tax Increment District Sixty-Five to SSST LLC and concerning SSST LLC’s assumption of these obligations and privileges; and

WHEREAS, on December 16, 2008, the parties signed an *Assignment Agreement* concerning the payment of the proceeds of Tax Increment District Sixty-Five BankWest, Developer’s lender; and

WHEREAS, on December 17, 2018, the City adopted by resolution a Project Plan Revision #1 for Tax Increment District Number Sixty-Five that reallocated certain costs for items completed in the original Project Plan; and

WHEREAS, the purpose of this Agreement is to establish the conditions under which the Developer may be reimbursed from the proceeds of the tax increment district for the cost of the improvements which are included in the Project Plan Revision #1; and

WHEREAS, the purpose of this Second Amendment is to amend the original *Contract for Private Development Tax Increment District Sixty-Five* to revise the allowable payments to Developer for the cost of the improvements within the Project Plan Revision #1; and

NOW THEREFORE, the parties hereby agree as follows:

SECTION 1 of the original *Contract for Private Development Tax Increment District Sixty-Five* executed October 22, 2008, is hereby amended to read in its entirety as follows:

TOTAL ESTIMATED PROJECT COSTS TO BE PAID BY THE DEVELOPER:

Capital Costs:

Capital Costs:

Minnesota Street	\$ 2,658,588.79
Plum Creek Site Grading	\$ 1,104,600.00
Storm Water Pipe	\$ 615,917.19
Land Costs for oversize detention pond	\$ 280,000.00
Minnesota Street – Shared Costs	\$ 572,499.82
Power Line relocation	\$ 182,879.73
Traffic Signal	\$ 71,044.47

Professional Service Costs \$ 473,230.00

Financing Costs:

Financing interest \$ 13,572,265.03

Contingency Costs \$ 0.00

TOTAL \$ 19,531,025.03

Imputed Administrative Costs*

Original Project Plan	\$ 1,025.00
Amended Project Plan	\$ 10,000.00
Phasing Costs	\$ 2,500.00

* The imputed administrative costs are interest-free and are not included in the total project costs. The parties agree that \$2,050 of the costs have already been paid. The administrative costs will be paid from the balance remaining in the Tax Increment District Sixty-Five Fund available to the City Finance Officer on April 1, 2019, and the Finance Officer may withdraw monies from the fund until such time as this fee is paid in full.

SECTION 7 of the Amended Contract for Private Development Tax Increment District Number Sixty-Five executed on October 22, 2008 is hereby amended to read in its entirety as follows:

SECTION 7. All positive tax increment payments for Tax Increment District Number Sixty-Five shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Sixty-Five 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-Five Project plan or any approved revision 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 Developer's share of the Fund, as set forth below, to Developer or their designee.

As of the time of executing this Amendment, Developer's share of the Fund is Fifty-Seven and a half percent (57.5%) of the total amount in the Fund. The parties agree that at the time of executing this Amendment, they are engaged in negotiations, along with Dennis Zandstra Real Estate Holdings, LLC, concerning the final certified eligible costs payable pursuant to Section 2. During these negotiations, Developer's share of the Fund may be increased to include the share of the Fund for Dennis Zandstra Real Estate Holdings, LLC, if the City receives an executed release from Dennis Zandstra Real Estate Holdings, LLC, authorizing the City to pay all of or a portion of its share of the Fund to Developer. Any such release shall include a specified time period no longer than 180 days during which the release is effective.

Upon the City's receipt of a final release executed by Dennis Zandstra Real Estate Holdings, LLC, reflecting payment in full for all costs, Developer's share of the Fund shall be 100 percent (100%) of the total amount in the Fund, subject to the other provisions in this Agreement.

SECTION 15 of the Contract for Private Development Tax Increment District Sixty-Five executed October 22, 2008, is hereby amended to read in its entirety as follows:

SECTION 15. This document along with the Project Plan for Tax Increment District Sixty-Five, Project Plan Revision #1 for Tax Increment District Number Sixty-Five, the original *Contract for Private Development Tax Increment District Number Sixty-Five* executed on October 22, 2008, the *Amended Contract for Private Development Tax Increment District Number Sixty-Five* executed on October 22, 2008, *Assignment and Assumption of Amended Contract for Private Development* executed on August 7, 2008, the various agreements with Dennis Zandstra Real Estate Holdings, LLC and the Infrastructure Development Partnership Fund Loan agreements constitute 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

