CONTRACT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

BY PRIVATE DEVELOPER FOR

TAX INCREMENT DISTRICT NUMBER EIGHTY-ONE

Between

PARK HILL DEVELOPMENT, INC.

and

CITY OF RAPID CITY
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>RECITALS</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Article I.</td>
<td>TAX INCREMENT DISTRICT EIGHTY-ONE</td>
<td>1</td>
</tr>
<tr>
<td>Article II.</td>
<td>THE PROJECT</td>
<td>2</td>
</tr>
<tr>
<td>Article III.</td>
<td>FINANCING OF IMPROVEMENTS</td>
<td>3</td>
</tr>
<tr>
<td>Article IV.</td>
<td>ASSIGNMENT</td>
<td>4</td>
</tr>
<tr>
<td>Article V.</td>
<td>CONSTRUCTION OF IMPROVEMENTS</td>
<td>4</td>
</tr>
<tr>
<td>Article VI.</td>
<td>ACCEPTANCE OF PUBLIC IMPROVEMENTS</td>
<td>5</td>
</tr>
<tr>
<td>Article VII.</td>
<td>CERTIFICATION</td>
<td>6</td>
</tr>
<tr>
<td>Article VIII.</td>
<td>REIMBURSEMENTS BY CITY TO DEVELOPER</td>
<td>6</td>
</tr>
<tr>
<td>Article IX.</td>
<td>COMPLIANCE WITH COMPETITIVE BIDDING LAWS</td>
<td>8</td>
</tr>
<tr>
<td>Article X.</td>
<td>AFFORDABLE HOUSING COMPONENT</td>
<td>8</td>
</tr>
<tr>
<td>Article XI.</td>
<td>INDEMNIFICATION AND INSURANCE</td>
<td>9</td>
</tr>
<tr>
<td>Article XII.</td>
<td>ADDITIONAL DEVELOPER WARRANTIES</td>
<td>10</td>
</tr>
<tr>
<td>Article XIII.</td>
<td>DEFAULT AND REMEDIES</td>
<td>10</td>
</tr>
<tr>
<td>Article XIV.</td>
<td>MISCELLANEOUS</td>
<td>12</td>
</tr>
</tbody>
</table>
This Agreement is made and entered into on this ____ day of ____________, 202__, by and between PARK HILL DEVELOPMENT, INC., a South Dakota corporation, of 1129 B East Oakland Street, Rapid City, SD 57701 (hereinafter the “Developer”), and the CITY OF RAPID CITY, a municipal corporation of 300 Sixth Street, Rapid City, SD 57701 (hereinafter the “City”).

RECATALS

WHEREAS, the City has a strong interest in promoting economic development and is authorized pursuant to South Dakota Codified Law (SDCL) Chapter 11-9 to create tax increment financing districts when the creation will stimulate and develop the general economic welfare and prosperity of the state; and

WHEREAS, the Developer made application to the City for creation of a tax increment financing district, as described herein, in order to finance improvements that would make development of certain real property within the district’s boundaries possible; and

WHEREAS, the Common Council of the City of Rapid City approved Resolution 2018-081 on April 15, 2019, creating Tax Increment District Number Eighty-one; and

WHEREAS, on April 15, 2019, the City also adopted Resolution 2018-082, which approved a Project Plan for Tax Increment District Number Eighty-one, identifying the project costs payable from the tax increment generated, pursuant to SDCL 11-9-14 and SDCL 11-9-15; and

WHEREAS, 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; 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 project costs identified in the approved Project Plan; and

WHEREAS, 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 costs contained in the Project Plan.

NOW THEREFORE, the parties hereby agree as follows:

Article I. TAX INCREMENT DISTRICT EIGHTY-ONE

Section 1.1 Creation. Tax Increment District Eighty-one was created by Resolution 2018-081 of the Common Council of the City of Rapid City. The parties agree that Resolution 2018-081 was effective on May 17, 2019 (the “Creation Date”). Throughout this Agreement, any references to the “Tax Increment District,” the “District,” “TID” or “TIF” shall refer to Tax Increment District Eighty-one as created by Resolution 2018-081.
Section 1.2  Base value. The South Dakota Department of Revenue has certified the base valuation of the property within the TID to be One Hundred Eighteen Thousand Five Hundred Dollars ($118,500).

Section 1.3  TID Fund. Pursuant to SDCL 11-9-31, the City shall create a TID Eighty-one Fund (the “Fund”). All positive tax increment payments for TID Eighty-one received within twenty (20) years of creation of the District shall, upon receipt by the City, be deposited into the Fund.

Section 1.4  Dissolution. The parties agree that the City may dissolve the TID upon any one of the following circumstances:

1.4.1 All payments required to be made to the Developer under Article VIII for all Project Plan improvements have been made; or

1.4.2 Twenty years following creation of the District per SDCL 11-9-25.

Article II.  THE PROJECT

Section 2.1  Project Plan. The Common Council of the City of Rapid City approved a Project Plan for the TID on April 15, 2019. This Project Plan, including any amendments thereto approved by resolution of the City’s Common Council, is expressly incorporated into this Agreement by this reference as if fully set forth herein as an agreement of the parties.

Section 2.2  Imputed administrative costs. The imputed administrative costs are interest-free and are not included in the total project costs. The administrative costs will be paid from the balance remaining in the TID Fund available to the City Finance Officer beginning on April 15, 2024. The Finance Officer may withdraw monies from the fund until such time as these costs are paid in full.

Section 2.3  Reimbursement for improvements within boundaries of TID. The Developer shall only be reimbursed pursuant to this Agreement for construction of improvements within the boundaries of the TID. The parties agree that any improvements made outside of the boundaries of the TID are not reimbursable from the TID Fund, and the Developer further agrees that it will not seek reimbursement from the City for any improvements made outside of the District.

Section 2.4  Reimbursement only for actual costs. The Developer shall only be reimbursed for the actual design and/or construction costs of the improvements listed in the Project Plan. No reimbursements shall be made for design or construction costs for public improvements not listed in the Project Plan. To the extent that Developer’s design plans or Developer’s costs submitted for certification include costs for designing and building public improvements that are not included in the Project Plan or this Agreement, it is the Developer’s responsibility to separate out the non-reimbursable charges and provide the City with the documentation necessary to show that any payments from the Fund are only for approved project costs.

Section 2.5  Revisions to Project Plan. Developer may request a revision of the Project Plan to reallocate the project costs so long as the revision does not include additional project components.
or increase the total project costs beyond $987,393.72. Any revision to the Project Plan shall not reallocate financing costs to any other costs. The parties agree that the City is not obligated to revise the Project Plan if Developer seeks a revision, and Developer understands that City does not guarantee that it will approve any revision if requested. Developer agrees not to seek an amendment to the Project Plan that would reestablish the base value of the property as set forth in Section 1.2, pursuant to SDCL 11-9-23.

Section 2.6 Allocation of contingency funds. The parties agree that any allocation or reallocation of Contingency Fees to Capital Costs or Professional Fees shall not be considered an amendment to the Project Plan. Any such allocation or reallocation shall be reviewed and approved, or denied, administratively by the City’s Community Development Director.

Article III. FINANCING OF IMPROVEMENTS

Section 3.1 Private financing. The Developer may secure private financing to fund the improvements contemplated in the approved Project Plan. The City will only reimburse the Developer for the amount of interest actually paid to a financial institution providing financing for the public improvements contained in the Project Plan. If the Developer obtains private financing, the interest rate shall not exceed five and one-half percent (5.5%) per annum during the life of the loan. At no time shall the amount of interest reimbursed exceed the maximum amount of financing interest identified in the Project Plan. If the Developer does not secure private financing from a financial institution, then the Developer shall not be reimbursed for any Financing Costs.

Section 3.2 Financing information. The parties agree that the City’s Finance Officer may seek relevant information from Developer’s financial institution about the loan terms and conditions and may contact and/or meet with the Developer’s financing institution as the Finance Officer deem necessary. The Developer will provide to the City Finance Officer a Tax Increment Financing proposal from a prospective lender of its choosing which addresses these loan terms and conditions:

3.2.1 Fixed or variable interest rate; if variable state frequency of pricing adjustments
3.2.2 Interest rate index;
3.2.3 Interest rate spread over/under index, if any;
3.2.4 Loan term;
3.2.5 Collateral;
3.2.6 Guaranty requirements from the Developer; and
3.2.7 All identity of interests between Developer and financial institution.

Section 3.3 Review of financing information. The City’s Finance Officer will review and analyze the proposed financing terms in order to determine that the terms are reasonable and competitive with financing available in this area. If the Finance Officer finds that the financing terms are acceptable, s/he may approve the rate to be reimbursed under this Agreement. The Finance Officer’s approval will not be unreasonably withheld. If the Finance Officer rejects the proposed financing, the Developer may appeal the Finance Officer’s decision to the City Council. If the interest rate is renegotiated or otherwise changes, Developer agrees to solicit competitive
interest rates from three or more lenders, which will be submitted to the City Finance Officer no less than 60 days prior to the refinancing being finalized.

Section 3.4  Refinancing. 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 Common Council.

3.4.1 The City further reserves the right to require Developer to refinance any existing 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.

3.4.2 The City’s right to require refinancing shall include the City’s right to require the Developer to assign and/or reassign the loan to the City or any other entity designated by the City. If the City chooses to finance or refinance a loan, the City will be eligible for reimbursement from the TID Fund for any project or financing costs it actually incurs.

Article IV.  ASSIGNMENT

Section 4.1 Assignment to financial institution. 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 Article III hereof. It is understood and agreed, by and between the parties, that any such assignment shall

4.1.1 be in writing,
4.1.2 be subject to approval by the City’s Common Council, and
4.1.3 to the extent the City makes or has made disbursement pursuant to such assignment, relieve the City of the obligations to make such disbursement to Developer.

Section 4.2 Assignee agreement. Any assignee shall agree to be bound by the terms and conditions contained in this Agreement.

Section 4.3 City right to refuse. 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 otherwise complies with the terms of Article III.

Article V.  CONSTRUCTION OF IMPROVEMENTS

Section 5.1 Developer responsible for costs. Developer agrees to construct all of the improvements described in the Project Plan at its expense. Developer is responsible for all costs to design and construct the improvements, as well as all costs to obtain necessary permits and federal, state, or other regulatory approvals for the improvements.
Section 5.2  *Time for construction.* The Developer acknowledges that the improvements must be completed and accepted by the City no later than April 15, 2024, in order to be eligible for reimbursement under this Agreement. In no event will the City reimburse the Developer for any expenditure of funds, whether for design, construction, or any other purpose if the expenditure is made by the Developer more than five years following the creation of the District.

Section 5.3  *Standards for construction.* All improvements shall be designed and constructed in accordance with the requirements of the Rapid City Municipal Code, the current edition of the City’s Standard Specifications for Public Works Construction; and the City’s Infrastructure Design Criteria Manual. Professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed by the State of South Dakota as may be appropriate. All applicable design plans shall be reviewed by the City for conformance to the City’s ordinances, regulations and design standards. No construction of any improvement shall occur without the City’s prior design plan approval.

Section 5.4  *Testing.* Developer shall employ at its sole expense a professional qualified, independent testing company to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with City standards and specifications. Developer shall furnish the City with certified copies of test results and shall release and authorize full access to the City and its designated representatives to all work-up materials, procedures, and documents used in preparing test results.

Section 5.5  *Inspection.* During construction of the improvements and until Acceptance, Developer shall request and coordinate all inspections with the City. The City will provide to the Developer or its representative a list of the required inspections. The City will have two (2) business days in which to conduct an inspection when requested. Upon completion of the required inspection, the City will provide the Developer or their representative a notification verifying that the inspection was completed. If the Developer does not request a required inspection, the City shall have the right to require the Developer to remove and replace any improvements which were installed without the required inspection. The Developer shall reasonably cooperate and assist the City to gain access to the areas designated for inspection. The Developer shall also notify the City upon discovery that any improvements were not installed or constructed in conformance with the approved plans, or the City’s standards and specifications. Inspection and acceptance of work by the City shall not relieve Developer of any responsibility under this Agreement.

**Article VI.  ACCEPTANCE OF PUBLIC IMPROVEMENTS**

Section 6.1  *Acceptance.* The Developer agrees that the improvements constructed pursuant to the Project Plan will be dedicated to the City once they are constructed. The process for final acceptance of the improvements by the City will follow the Standard Specifications for Public Works Construction, the requirements of which are hereby incorporated into this Agreement.

Section 6.2  *Warranty.* Developer agrees to warrant the improvements constructed in accordance with the Standard Specifications for Public Works Construction (current edition). The warranty surety provided by Developer, as required by the Standard Specifications, shall not be considered as an expenditure eligible for reimbursement from the TID Fund.
Section 6.3  Easements. If any easements or rights-of-way are necessary for the City to access or maintain the improvements dedicated to the City, the Developer agrees to furnish such necessary easements or rights-of-way for the City at no cost to the City. The easements or rights-of-way shall be delivered to the City prior to Acceptance.

Article VII.  CERTIFICATION

Section 7.1  Acceptance Required. Prior to Developer certifying the costs of improvements, such improvements must be accepted by the City, warranty surety provided, and any required easements or right-of-way dedicated to the City.

Section 7.2  Certification. Upon completion and Acceptance of the improvements, the Developer shall certify to the Director of the Department of Community Development that such improvements have been completed and shall certify the amount of money disbursed therefore. Submission of the final cost certification shall be made to the Department of Community Development no later than 180 days after the City's Acceptance of the last of the public improvements within the TID boundary as provided in the Project Plan. The certification shall be a statement, sworn on oath or affirmation under penalty of perjury, made by an authorized officer or director of Developer. The certification shall be accompanied by sufficient supporting documentation as provided by Section 7.3.

Section 7.3  Supporting Documentation. The Developer shall provide sufficient documentation to certify that the terms of this Agreement are complied with. In addition to the certification statement, the Developer shall provide a spreadsheet tabulation of all project costs that includes a summary of all expenditures per Project Plan cost item. The City shall have the right to require reasonable documentation to establish that the amounts set forth have, in fact, been disbursed for the costs contemplated in the Project Plan, that state bid laws have been complied with, and that the provisions in this Agreement have been met. The Developer Professional services invoices submitted for certification shall sufficiently describe the professional activity. If an invoice references any report, study, location, design, layout, survey, or similar drawings, the referenced item shall be provided as an attachment to the invoice. All documentation provided in support of Certification shall be provided in both paper and digital (.pdf) format.

Section 7.4  City approval of Certification. Upon submittal of the Certification and supporting documentation, the City shall have 180 days to review the same for compliance with the Project Plan, state law, city ordinances, and this Agreement.

Article VIII.  REIMBURSEMENTS BY CITY TO DEVELOPER

Section 8.1  Payments. Upon Certification, the City shall within a reasonable time, generally within forty-five (45) days after the receipt of each tax increment payment from the Treasurer of Pennington County, disburse the total amount in the TID Fund to the Developer or its assignee. Payments shall be subject to the following limitations:
8.1.1 Any limitation in applicable federal, state, or local laws and regulations;
8.1.2 Articles II, VII, VIII and IX, and any other terms of this Agreement; and
8.1.3 At no time shall the cumulative total of payments made to Developer from the Fund exceed the lesser of
(a) the total amount of disbursements certified pursuant to Article VII of this Agreement, or
(b) the total of the estimated project costs set forth in the Project Plan.

Section 8.2 Initial Payment Exception. The parties agree that the 45-day timeframe will not apply to the first payment after Certification, as such payment is approved by the Common Council through its approval process.

Section 8.3 Limited Obligation. 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 positive tax increment from the TID received into the TID Fund. The obligation of the City to reimburse Developer pursuant to this Agreement does not constitute a general indebtedness of the City or a charge against the City's general taxing power. Developer agrees that it shall bear all risks that the positive tax increment from the TID may be insufficient to fully reimburse the Developer for the Project Costs. The provisions of SDCL 11-9-36 are specifically incorporated herein by reference.

Section 8.4 No Guarantee. It is also specifically agreed that the City has made no representation that the proceeds from such fund shall be sufficient to retire any indebtedness incurred by Developer under Articles III and IV hereof. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocation of the positive tax increment payments to the Fund to 20 years. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

Section 8.5 Overlapping TIDs. It is understood by the parties that the boundaries of the TID 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 which were generated in areas that are part of previously-created overlapping districts.

Section 8.6 Overpayment. Developer shall, upon demand by the City, promptly reimburse the TID Fund for any payment by the City to Developer that

8.6.1 exceeds the amounts actually expended for Project Plan improvements;
8.6.2 is attributable to improvements constructed outside of the District;
8.6.3 is attributable to project costs not included in the Project Plan; or
8.6.4 conflicts with the terms of this Agreement.
Article IX. COMPLIANCE WITH COMPETITIVE BIDDING LAWS

Section 9.1 Applicable Laws. As the costs for the Improvements will be reimbursed with public funds, the parties agree that the Developer’s Project is subject to the provisions of South Dakota law regarding the expenditure of public funds contained in Chapters 5-18A through 5-18D, and Chapter 5-21 of South Dakota Codified Laws. Selection of contractors and administration of the Project shall comply in all respects with such laws, and the Developer shall provide the City with documentation demonstrating such compliance.

Section 9.2 Bid Schedules. Developer shall complete the improvements described in the Project Plan consistent with the costs in the Project Plan. The engineer’s estimated bid item proposal for all developer-initiated construction projects within the TID boundary shall identify each capital cost line item as a separate bid schedule. The engineer’s estimated bid items shall also include all construction expenditures not eligible for reimbursement from TID Funds as identified on the Public Improvements Map included in the Project Plan.

Article X. AFFORDABLE HOUSING COMPONENT

Section 10.1 Justification and Consideration. The parties agree and acknowledge that the primary reason the City created the District was the Developer’s promise to provide affordable housing to the community. Without this promise, the City would not have agreed to create the District, nor would it be entering into this Agreement. As such, the parties agree that the creation of the District, the approval of the Project Plan, and the execution of this Agreement are good and sufficient consideration for Developer’s agreements as contained herein.

Section 10.2 Covenants. Immediately upon Developer signing this Agreement, Developer agrees to execute covenant agreements that are the same or substantially similar to those attached hereto as Exhibits 1 and 2, and incorporated herein by this reference. The covenant agreements shall be applicable to the property legally described in Exhibits 1 and 2. The covenant agreements shall provide, at a minimum, the following:

10.2.1 For lots upon which single family homes or townhomes will be built, the original selling price of any house in the District will be at or below the first-time homebuyer purchase price limit and meet the income limits being used by the South Dakota Housing Development Authority as of the date the house is sold;

10.2.2 For all multifamily housing units in the District, including duplexes and apartment units, the monthly rental rate of all housing units in the District will be at or below the calculated rent for the state’s eighty percent area median income, being used by the South Dakota Housing Development Authority for a minimum of five years following the date of first occupancy.
Article XI. INDEMNIFICATION AND INSURANCE

Section 11.1 Indemnification. Developer agrees to indemnify, defend, and hold harmless the City from and against any and all liability, losses, claims, damages, suits, costs, and expenses including, but not limited to, costs of defense and reasonable attorney’s fees, which the City may hereafter suffer itself or pay to another party, by reason of any claim, action, or right of action, at law or in equity, arising out of this execution of the terms of this Agreement by the Developer, its employees, consultants, contractors, subcontractors, or any other person or entity engaged by the Developer.

Section 11.2 Insurance coverage. The Developer shall maintain policies of insurance, naming the City as an additional insured, until Acceptance of all improvements by the City. The policies shall have the following minimum coverage amounts:

11.2.1 Workers’ Compensation Insurance as required by South Dakota state statute and all other insurance required by any applicable law;

11.2.2 Commercial General or Business Liability Insurance with minimum combined single limits of One Million Dollars ($1,000,000.00) for each occurrence and Two Million Dollars ($2,000,000.00) general aggregate; and

11.2.3 Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars ($1,000,000.00) for any one occurrence, with respect to each of Developer’s owned, hired or non-owned vehicles assigned to or used in connection with this Agreement.

Section 11.3 No limit of liability. The coverages and limits specified above are to be considered as minimum requirements and in no way limit the liability of the Developer or the Developer’s obligations under Section 11.1.

Section 11.4 Proof of coverages. The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the City. The Developer shall furnish the City a certificate evidencing compliance with the foregoing requirements that shall provide not less than 30 days prior written notice to the City of any cancellation or material change in the insurance.

Section 11.5 Contractor coverage. The Developer shall include the provisions of Section 11.2 in its agreements with contractors engaged to construct the Improvements, substituting the contractor for “Developer” as appropriate. Additionally, the Developer shall ensure that all engineers and architects engaged to design the improvements shall maintain professional liability insurance coverage in an amount at least as large as the amount of the architectural or engineering services contract, but in no event less than $500,000. The borrower should replace “Developer” with said engineer or architect as appropriate. Such engineers and architects shall also name the City as additional insured.
Article XII. ADDITIONAL DEVELOPER WARRANTIES

Section 12.1 Developer's Representations. Developer represents to the City as follows:

12.1.1 Developer is a corporation organized under the laws of the State of South Dakota and is, and will remain, in good standing;

12.1.2 Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement without further action;

12.1.3 Developer's performance under this Agreement will not violate any applicable judgment, order, law, or regulation, or previous obligation of Developer;

12.1.4 Developer's performance under this Agreement will not result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City; and

12.1.5 Developer has sufficient capital and financing to perform all of its obligations under this Agreement and the Project Plan.

Section 12.2 Tax Abatement Waiver. Developer agrees that it will not seek any tax abatement for its property within the boundaries of Tax Increment District Eighty-one while the district is in existence.

Section 12.3 Liens. Developer agrees to promptly satisfy or bond over any and all mechanic's liens or materialmen's liens that arise as a result of the construction of the projects described in the Project Plan. 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. Mechanic's lien waivers and materialmen's lien waivers shall be submitted as part of the certification as provided in Article VII.

Section 12.4 Examination of records. Developer agrees to keep and maintain books and records, in accordance with generally accepted accounting principles, devoted exclusively to its activities related to the design, financing, construction, and implementation of the Project Plan. Such records shall include, but not be limited to, books, ledgers, journals, accounts, bank statements, contracts, invoices, pay requests, notices, plans, applications, and federal, state, and/or local compliance reports filed on behalf of the Developer relating to the Project. The City or its authorized agent shall have the right to examine, inspect, and copy such records from time to time, upon reasonable notice to Developer and during Developer's ordinary business hours. Upon completion of the Project, or upon request, a copy of all such records shall be provided to the City. This requirement shall terminate five years following the dissolution of the District.

Article XIII. DEFAULT AND REMEDIES

Section 13.1 Developer Default. The occurrence of any one of the following events shall constitute a default of the Developer:
13.1.1 The abandonment of the Project for a period of twelve consecutive months;
13.1.2 Failure to construct the improvements, or any of them, as set out in the Project Plan without the express approval of the City's Common Council;
13.1.3 Failure to construct the improvements, or any of them, within the time provided in Section 5.2;
13.1.4 Developer dissolves or is administratively dissolved;
13.1.5 Developer enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise; or
13.1.6 Failure in the performance of any of Developer's obligations in this Agreement, which failure is not cured within sixty (60) days after notice is given;

Section 13.2 City Remedies for Developer Default. In the case of a default under Section 13.1, the City shall have the right to exercise any one or more of the following options:

13.2.1 To terminate this Agreement;
13.2.2 To construct any incomplete or unconstructed improvements;
   (a) Upon exercising such option, the City shall have the right to suspend all payments from the TID Fund to assure adequate funds are available or will be available to reimburse the City for such construction.
   (i) The City shall have the right to prioritize all remaining funds, and funds received following exercise of such option, for the reimbursement of the City's costs of designing and constructing incomplete or unconstructed Improvements.
   (ii) Funds remaining after reimbursement of the City's costs of designing and constructing incomplete or unconstructed Improvements may be used to reimburse Developer for Improvements constructed and accepted by the City.
   (b) The City shall have the right to obtain and use all bid documents, construction designs, and related plans for such Improvements.
   (c) The City shall further have the right to require Developer to assign any construction contracts for Improvements in progress.
13.2.3 To suspend reimbursement payments under Article VIII until Developer cures the default;
13.2.4 To refuse reimbursement payments under Article VIII for improvements that are not constructed, incomplete, or completed in violation of the terms of this Agreement or applicable state law; and
13.2.5 To refuse all reimbursement payments under Article VIII.

Section 13.3 Cumulative Remedies. The rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers and privileges, whether at law or in equity, under this Agreement or otherwise, that any party may have against another. No failure to exercise and no delay in exercising any right, power, or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege preclude the exercise of any other right, power, or privilege.
Article XIV. MISCELLANEOUS

Section 14.1 Entire Agreement. This Agreement and the documents referred to herein (including the TID 81 Project Plan approved on April 16, 2019 and any exhibits and schedules incorporated therein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof. 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 by a written document duly executed by all parties.

Section 14.2 Third Parties. 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 expressly allowed by 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 14.3 Waivers. Failure of a party to insist upon strict 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 strict adherence to that term, or any other term of this Agreement.

Section 14.4 Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section if it can be given effect without the invalid provisions. If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

Section 14.5 Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

Section 14.6 Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

Section 14.7 Construction. When construing the meaning of the provisions in this Agreement, the following shall govern:

14.7.1 The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party.

14.7.2 The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction, or effect of each provision.
14.7.3 Words used in this Agreement in the singular, where the context so permits, shall be deemed to include the plural, and vice versa. Words used in the masculine or the feminine, where the context so permits, shall be deemed to mean the other.

14.7.4 Any reference in this Agreement to an article or section number shall mean such article or section in this Agreement unless otherwise expressly stated.

14.7.5 The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 14.8  *Choice of Law.* This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

Section 14.9  *Jurisdiction and Venue.* The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court of Pennington County, South Dakota.

Dated this _____ day of ____________, 2022.

CITY OF RAPID CITY

By __________________________

Steve Allender, Mayor

Attest

____________________________

Pauline Sumption, Finance Director

(seal)
PARK HILL DEVELOPMENT, INC.

By _____________________________
   (signature)

ANTHONY MARSHALL
   (printed name)

Its _____________________________
   (title)

State of South Dakota )
County of Pennington ) ss.

On this the 26th day of January, 2023, before me, the undersigned officer personally appeared Anthony Marshall, who acknowledged him/herself to be the President of PARK HILL DEVELOPMENT, INC., and that as such Anthony Marshall, being duly authorized to do so, executed the foregoing for the purposes therein contained.

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

(seal)

Notary Public
My Commission Expires April 27, 2023
DECLARATION OF LAND USE RESTRICTIVE COVENANTS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this "AGREEMENT") is made by PARK HILL DEVELOPMENT, INC., of 1129 B East Oakland Street, Rapid City, SD 57701, and its successors and assigns (the "Owner") is given as a condition precedent to the disbursement of tax increment financing (the "TIF") proceeds by the CITY OF RAPID CITY, a municipal corporation of 300 Sixth Street, Rapid City, SD 57701, together with any successor to its rights, duties and obligations (the "City").

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of certain single family and/or townhome lots as described in Exhibit A, within a subdivision development known as or to be known as Park Hill Subdivision No. 7 (the "Project") located on lands in the City of Rapid City, Pennington County, State of South Dakota; and

WHEREAS, Owner has applied to the City for tax increment financing for portions of the Project; and

WHEREAS, the Owner has represented to the City that within the Project it will provide twenty-eight (28) lots in Phase 1 for affordable homes; and

WHEREAS, as a condition precedent to the disbursement of the TIF proceeds, the City requires that the Owner execute this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of that certain Contract for Construction of Public Improvements by Private Developer for Tax Increment District Number Eighty-One; and

WHEREAS, the Owner intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of lots described in Exhibit A, shall be and are covenants running with the land described in Exhibit A for the term stated herein and binding upon all subsequent owners of the land described in Exhibit A for such term, and are not merely personal covenants of the Owner; and

WHEREAS, the City represents, warrants, and covenants that a partial release of this Agreement shall be provided to the Owner for each home sold upon the closing of the sale.
NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

SECTION 1 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

(a) Upon execution and delivery by the Owner, this Agreement and all amendments hereto shall be recorded and filed in the office of the Pennington County Register of Deeds.

(b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use of the lots described in Exhibit A: (i) shall be and are covenants running with the lots described in Exhibit A, encumbering those lots for the term of this Agreement, binding upon the Owner's successors in title and all subsequent Owners and Operators of the land described in Exhibit A; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of South Dakota to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land.

(c) The Owner covenants to obtain the consent of any present or prior recorded lienholder on the Project, still in effect, to this Agreement and such consent shall be a condition precedent to the disbursement of the TIF proceeds.

SECTION 2 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants and warrants as follows:

(a) The Owner (i) is a corporation duly organized under the laws of the State of South Dakota, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project.

(d) There is no action, suit or proceeding at law or in equity by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.

(e) The Owner may sell, transfer, or exchange the land described in Exhibit A at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the land described in Exhibit A or any interest therein that such acquisition is subject to the requirements of this Agreement. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the land described in Exhibit A. The Owner agrees that the City may void any sale, transfer, or exchange of the land described in Exhibit A if the buyer or successor or other person fails to assume in writing the requirements of this Agreement.

(f) The Owner agrees to notify the City in writing of any sale, transfer or exchange of the land described in Exhibit A, or any portion thereof.

(g) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 3 – AFFORDABLE HOME PURCHASE PRICE RESTRICTIONS

(a) The Owner represents, warrants and covenants, that throughout the term of this Agreement that the land described in Exhibit A will meet the following requirements:

(i) The land described in Exhibit A will consist of a new subdivision, which will provide building lots for the construction of single family homes and/or townhomes. Within the land described in Exhibit A, the Owner will ensure the development of fourteen of the following type of affordable homes (including lot) at purchase prices at or below the first-time homebuyer purchase price limit set by the South Dakota Housing Development Authority as of the date the house is sold:
   a. Single family homes;
   b. Townhomes; or
   c. A combination of single family homes and townhomes.
(ii) All income limits required by the South Dakota Housing Development Authority for first-time homebuyer purchases shall be required for the purchasers of the homes mentioned in Subsection 3(a)(i).

(b) The City represents, warrants, and covenants that a partial release of this Agreement shall be provided to the Owner for each constructed home sold upon the closing of the sale.

SECTION 4 - TERM OF AGREEMENT

(a) The term of this Agreement shall begin upon execution and run until all single family and/or townhome lots have been built out and sold or transferred by Owner per Subsection 3(a).

SECTION 5 - ENFORCEMENT

(a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City, to inspect any books and records of the Owner regarding the land described in Exhibit A which pertain to compliance with the requirements specified in this Agreement.

(b) The Owner shall submit any other information, documents or certifications requested by the City which the City shall deem reasonably necessary to substantiate the Owner's compliance with the requirements of this Agreement.

(c) THE OWNER IN CONSIDERATION FOR RECEIVING THE BENEFITS OF TAX INCREMENT FINANCING FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE CITY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS IN A COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the City.

SECTION 6 - MISCELLANEOUS

(a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to
the parties hereto at the addresses set forth above, or to such other place as a party may from time to time designate in writing.

(c) **Amendment.** This Agreement may only be amended by a written document duly executed by all parties.

(d) **Governing Law.** This Agreement shall be governed by the laws of the State of South Dakota and, where applicable, the laws of the United States of America.

(e) **Survival of Obligations.** The obligations of the Owner as set forth herein shall survive the disbursement of the TIF proceeds, and shall not be deemed to terminate or merge with the disbursement of such.

(f) **Recitals.** The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth as agreements of the parties.

IN WITNESS WHEREOF, the Owner has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first written above.

**PARK HILL DEVELOPMENT, INC.**

By __________________________________________

(signature)

ANTHONY MARSHALL

(printed name)

Its ___________________________

(title)

State of South Dakota, ss.

County of Pennington, ss.

On this the 26th day of January, 2022, before me, the undersigned officer personally appeared Anthony Marshall, who acknowledged him/herself to be the President of PARK HILL DEVELOPMENT, INC., and that as such Anthony Marshall, being duly authorized to do so, executed the foregoing for the purposes therein contained.

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

______________________________

Notary Public
My Commission Expires April 27, 2023

Page 5 of 6
EXHIBIT A
LEGAL DESCRIPTION

Lots 2-15 of Block 2, Park Hill Subdivision No. 7, located in the NE¼SE¼ and SE¼NE¼, Section 7, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.
DECLARATION OF LAND USE RESTRICTIVE COVENANTS – MULTIFAMILY

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (such document hereafter referred to as “Declaration”) is made by PARK HILL DEVELOPMENT, INC., a South Dakota corporation (hereinafter "Owner"), of 1129 B East Oakland Street, Rapid City, SD 57701 and is binding upon the Owner's successors and assigns in interest, and is granted to the CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (“City”) as a condition precedent to the Owner receiving proceeds of tax increment financing.

WHEREAS:

(i) Owner is the owner of a multifamily rental housing project for property located in Pennington County, South Dakota, more particularly described in Exhibit A (the “Land”), which Exhibit is by this reference made a part hereof as though here fully set forth. The housing project development is a portion of the property more commonly referred to as Park Hill Subdivision No. 7, hereafter the “Project”; and

(ii) Owner has applied to City for tax increment financing of improvements for the Project (the “TIF”); and

(iii) The Contract for Construction of Public Improvement by Private Developer for Tax Increment District Number Eighty-one between the parties (the “TIF Agreement”) requires that as a condition precedent to the reimbursement of project costs through the TIF that Owner execute this Declaration in order to create certain covenants running with the Land for the purpose of enforcing certain requirements which regulate and restrict the use, occupancy, and transfer of the Land as set forth herein; and

(iv) Owner, under this Declaration, intends, declares, and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy, and transfer of the Land shall be and are covenants running with the Land, for the term stated herein and binding upon all subsequent owners of the Land for such term, and are not merely personal covenants of the Owner. Therefore, in consideration of the premises, and of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Owner declares, covenants and agrees as follows:
Section 1 - Term.

The term of these covenants shall be five (5) years. The five-year term shall apply to each structure separately, from and after the date a certificate of occupancy is issued by the City’s Building Services Division.

Section 2 - Recording and Filing These Covenants Which Run with the Land.

Upon execution and delivery of this Declaration by the Owner, this Declaration shall be recorded with the Pennington County Register of Deeds. Owner intends, declares, and covenants, on behalf of Owner and all future owners and operators of the Project during the term of this Declaration, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy, and transfer of the Land shall be and are covenants running with the Land, encumbering the Land for the term hereof, binding upon the Owner's successors in title and all subsequent owners of the Land, and are not merely personal covenants of the Owner, and shall bind the Owner, and the benefit shall inure to the City and any past, present, or prospective tenants of the Land, and the City’s successors and assigns during the Term hereof. The Owner agrees that any and all requirements of the laws of the State of South Dakota to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to have been satisfied in full, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. For the term hereof, each and every contract, deed, or other instrument hereafter executed, encumbering or conveying the Land or any portion thereof shall expressly provide that such agreement is subject to this Declaration, provided however, that covenants contained herein shall survive and be effective regardless of whether such document provides that such instrument is subject to this Declaration.

Section 3 - Representations, Further Covenants and Warranties of the Owner.

The Owner hereby represents, covenants and warrants as follows:

(A) The Owner is a corporation formed under the laws of the State of South Dakota and is qualified to transact business under the laws of South Dakota. That Owner has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Declaration.

(B) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by the Declaration) or would materially adversely affect its financial condition.
Section 4 - Rental Limitations and Restrictions.

The Owner represents, warrants and covenants that throughout the Term hereof each and every rental unit on the Land shall be subject to the rent limitations herein. The monthly rent of all housing units on the Land shall be at or below the rental rate for the state’s eighty percent area median income, as calculated by the South Dakota Housing Development Authority.

Section 5 - Termination.

Every rental unit on the Land will remain affordable as provided herein, and in the other TIF Documents, for not less than the term provided above, without regard to transfer of ownership. These covenants shall expire at the end of the term; however, upon request of the Owner, or its successor in interest, the City agrees to provide a release of these covenants.

Section 6 - Default.

(A) Enforcement and Remedies. If Owner defaults in the performance of any of its obligations under this Declaration or breaches any covenant, agreement, or restriction set forth herein or in the TIF Agreement, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given, the City shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of the Declaration, for an injunction against any violation of the Declaration, for the appointment of a receiver to take over and operate the Land in accordance with the terms of this Declaration, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. The City shall be entitled to its reasonable attorneys' fees in any such judicial action in which it shall prevail.

(B) Remedies Cumulative. Each right, power, and remedy of the City provided for in this Declaration now or hereafter existing at law or in equity by statute or in the TIF Agreement or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Declaration or not, or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the City of any one or more of the rights, powers, or remedies provided for in this Declaration or now or hereafter existing at law in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the City of any or all such other rights, powers or remedies.

Section 7 - Miscellaneous.

(A) Successors Bound. This Declaration and the covenants and conditions contained herein shall run with the Land and shall bind, and the benefits shall inure to, respectively, the Owner and the City and their respective grantees, heirs, personal representatives, successors, and assigns of all or any of them, or any interest(s) therein for the term as specified herein above in Section 1.
(B) **Additional Documents.** The Owner shall submit any other information, documents or certifications requested by the City which the City deems reasonably necessary to substantiate the Owner's continuing compliance with this Declaration.

(C) **Severability.** The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

(D) **Notices.** All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses herein above set forth, or to such other place as a party may from time to time designate in writing to the other(s).

(E) **Recitals.** The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth as agreements of the parties.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first above written.

**PARK HILL DEVELOPMENT, INC.**

By __________________________

(signature)

ANTHONY MARSHALL

(printed name)

Its __________________________

(President)

State of South Dakota )

ss.

County of Pennington )

On this the 24th day of January, 2023, before me, the undersigned officer personally appeared Anthony Marshall, who acknowledged him/herself to be the President of PARK HILL DEVELOPMENT, INC., and that as such being duly authorized to do so, executed the foregoing for the purposes therein contained.

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

__________________________

Notary Public
My Commission Expires April 27, 2023

Page 4 of 5
EXHIBIT A
LEGAL DESCRIPTION

Lots 1-8 of Block 1, Park Hill Subdivision No. 7, located in the NE¼SE¼ and SE¼NE¼, Section 7, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota;

and

Lot 1 of Block 2, Park Hill Subdivision No. 7, located in the NE¼SE¼ and SE¼NE¼, Section 7, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota;

and

Lots 16-20 of Block 2, Park Hill Subdivision No. 7, located in the NE¼SE¼ and SE¼NE¼, Section 7, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.