

Prepared by:
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Community Development Director
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DEVELOPER'S AGREEMENT

THIS AGREEMENT, made on August 28, 2018, by and between the City of Brookings, a municipal corporation of the state of South Dakota and the county of Brookings called the City, and PEM Affordable Housing LLC, a South Dakota Limited Liability Company, with its principle office located at Brookings, South Dakota 57006, called the Developer, witness:

Whereas, the City of Brookings created Tax Increment District Number Eight, the legal description and map of the area are set forth on Exhibit "A", which is attached hereto; and

Whereas, Tax Increment Proceeds will be used to assist in providing for certain project costs; and

Whereas, the City wishes to place certain terms on the development in exchange for tax increment funds used for infrastructure abutting and serving affordable housing lots.

NOW, THEREFORE, in consideration of the mutual covenants contained in this agreement, the parties, for themselves, their successors and assigns, hereby agree as follows:

- 1. Agreements Relating to Installation of Roads, Curbing, Pavements, Fire Hydrants, Water and Waste Water.** The Developer shall construct, except as hereafter provided in paragraph 2, as provided for in the subdivision plats, all roads, curbing, pavement and other improvements, including all catch basins and drainage facilities, monuments, and other improvements of any nature whatsoever as set forth in the TIF #8 Project Plan, approved by the City, and accompanying construction plans reviewed and approved by the City Engineer, and in accordance with all present state and local laws, present improvement ordinances and regulations of the City of Brookings, South Dakota and in all respects complete the subdivision in accordance with all maps, plans and specifications on file with the City and local laws, ordinances and regulations.
- 2. Tax Increment District Number Eight Project Costs.** The Developer shall undertake and construct such public improvements as are set forth in Tax Increment District Number Eight project plan, with TIF reimbursement not to exceed \$1,125,000. The City of Brookings will only reimburse Developer the actual costs per itemized construction contracts, and reimbursement of construction costs with TIF proceeds not to exceed an aggregate amount of \$1,125,000.

The City shall undertake and construct such public improvements within the West 16th Avenue right-of-way and associated drainage facilities as are set forth in Tax Increment District Number Eight project plan in an amount not to exceed \$2,375,000 and shall only be reimbursed the actual costs per the itemized construction contracts.

- 3. Maximum Price of Developed Parcels.** The Developer agrees to sell forty-two (42) development ready residential lots, of which thirty-two (32) of the residential lots will be sold to Inter-Lakes Community Action Partnership (ICAP) at a per lot cost not to exceed twenty-nine thousand dollars (\$29,000). The remaining ten (10) buildable residential lots shall be made available to ICAP or Habitat for Humanity at a per lot cost not exceeding twenty-nine thousand dollars (\$29,000). Should ICAP and/or Habitat for Humanity be unable to acquire such residential lot(s), the Developer may make the remaining unimproved residential lots available on the private market for residential development provided the Developer limits the selling price of a completed home and lot in an amount not to exceed \$200,160 through December 31, 2018. The selling price after December 31, 2018 shall not exceed eighty percent (80%) of the South Dakota Housing Development Authority First-Time Homebuyer Purchase Limits. There shall be no special assessments levied against any parcel within TIF District #8 for the provision of infrastructure with the initial sale.
- 4. Covenants to run with the land.** As a condition of providing the tax increment fund proceeds, the Developer covenants and agrees to provide affordable housing consisting of not less than forty-two (42) single-family residential lots, of which thirty-two (32) single-family residential lots with a maximum lot sales price of \$29,000 per lot shall be available to Inter-Lakes Community Action Partnership (ICAP) for the Mutual Self-Help Program for construction in the subdivision of affordable housing units. The remaining 10 single-family residential lots will be available to ICAP, Habitat for Humanity, or a private contractor or contractors with a combined maximum sales price of each residential lot and residence not to exceed \$200,160, which is eighty percent (80%) of the South Dakota Housing Development Authority First-Time Homebuyer Program purchase limits for Brookings County as of the date of this agreement. The selling price after December 31, 2018 shall not exceed eighty percent (80%) of the South Dakota Housing Development Authority First-Time Homebuyer Purchase Limits. This agreement shall be recorded in the office of the Brookings County Register of Deeds as evidence of the Developer's Covenants under this Section.
- 5. Bidding of Public Improvements by Developer.** Upon review and approval by the City and Brookings Municipal Utilities of the construction plans and specifications for the public improvements as detailed in the TIF #8 Project Plan, Developer agrees to competitively bid the project improvements through Banner Associates, Developer's consulting engineer. The consulting engineer shall be responsible for advertising the project for bid, accepting sealed bids, and providing bid tabulations to the satisfaction of the City Engineer for review and approval prior to awarding such bid to the lowest responsible bidder. Consulting engineer shall provide to the City Engineer copies of advertising notices, plan holders lists, and any direct marketing efforts such as mailings, email, telephone solicitations as proof of obtaining competitive bids for the public improvements.
- 6. Bidding of Public Improvements by City.** The City will be responsible for the design, competitive bidding, construction and payment of public improvements relative to the West 16th Avenue street construction, curb and gutter, storm sewer, associated drainage facilities and any pedestrian pathways or trails deemed necessary.

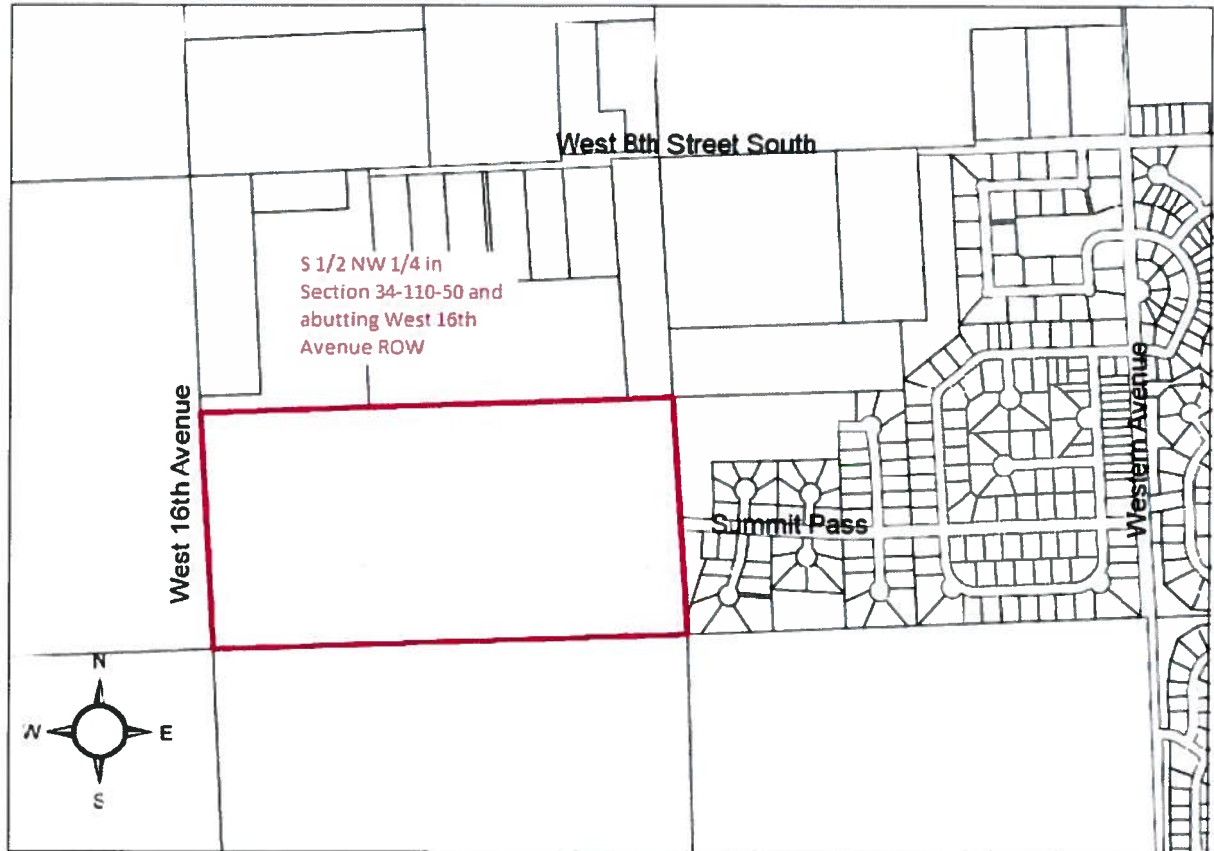
- 7. Acceptance of Improvements.** The City shall not be responsible for road or other improvements, road maintenance or care until the same shall be accepted by the City; nor shall the City exercise any control over the improvements until accepted. Upon the proper completion of these improvements and their approval by the City Engineer, and if these improvements then comply with all present State laws, City ordinances and planning board rules, regulations and requirements, the City will then accept the improvements.
- 8. Public Right-of-Ways.** The City represents that it has good title to the roads and public ways in which the Developer will install such improvements, and agrees that the roadways and easements as set out in its maps on file with the Planning Commission have been properly dedicated, and that all improvements and roads as required by the City and agreed to by the Developer in the TIF #8 Project Plan, including waste water, water mains, hydrants and other appurtenances shall, upon completion and acceptance by the City, become the property of the City.
- 9. General Requirements.** It is agreed by the Developer that Developer shall complete the work to be performed hereunder within 24 months from the date of this agreement, unless the time is extended by the City, which extension shall not be unreasonably withheld.
- 10. Run with the Land.** This agreement shall run with the land, as shall also the covenants herein contained, and shall be for the benefit of the City.
- 11. Financing Guarantee.** The Developer agrees to pay for all the public improvements, subject to reimbursement with TIF proceeds as set forth in paragraph 5 above (Bidding of Public Improvements by Developer). It is understood that if there is not sufficient Tax Increment Revenue for the Developer's debt service for the public improvements, that the City will not be responsible for any shortfall.
- 12. Tax Increment Revenue.** The Developer and the City agree to share equally in the Tax Increment Revenue, such revenue to be utilized to pay for public improvements as described in paragraphs 5 and 6 above, until such time as the improvements have been paid in full or the district is decertified per state law. The use of Tax Increment revenue to reimburse developer shall be based upon actual construction costs, with a not-to-exceed amount of \$1,125,000 for the Developer's improvements.
- 13. Payment Agent.** The City will act as the paying agent of the Tax Increment Revenue to the Developer.
- 14. Draw Down.** The City and Developer agree Tax Increment Revenue shall be drawn upon to the extent revenue is available in the Tax Increment Financing District #8 Fund once the following have been completed:

 - 14.1** Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the improvements described herein have been made consistent with the Tax Increment Financing District #8 Project Plan.
 - 14.2** Developer shall have submitted invoices showing services / improvements have been made.

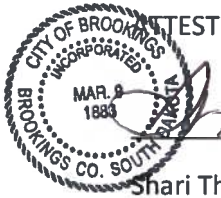
- 15. Maintenance until Acceptance.** The Developer shall maintain, clean and snowplow the roads within the District until these roads have been accepted by the City. In the event of default of these obligations by the Developer, the City without notice to the Developer, may do the same at the expense of the Developer.
- 16. Homes to be Constructed.** The Developer shall construct homes within the prescribed price range in accordance with market conditions, but shall provide variations in floor plans containing a minimum of 1,100 square feet of finished floor area on the main floor, with each home housing two or more bedrooms and one or more bathrooms, and each shall include a minimum of a double attached garage.
- 17. Owner Occupied.** The Developer agrees to require in the purchase agreement that the initial home buyer shall not rent out the house within one year of signing the purchase agreement, and this shall also be a covenant running with the land.
- 18. Mechanics Liens.** The Developer, PEM Affordable Housing LLC, agrees to immediately satisfy any and all mechanic's or material man's liens that arise as a result of the public improvements specified in paragraph 5 above. This provision shall not prevent PEM Affordable Housing LLC, from subsequently seeking compensation from a contractor, subcontractor or others who may be responsible for such liens or for such payment.
- 19. Discretionary Tax Formula.** The City agrees the Developer shall be eligible for the discretionary tax formula on platted lots with Brookings County in accordance with Brookings County discretionary tax formula policies and procedures during the duration of Tax Increment Financing District #8.
- 20. Agreement Among Parties.** This document, along with the Project Plan for Tax Increment Financing District Number Eight, shall constitute the entire agreement of the parties. Any differences between said documents will be controlled by this document. All prior discussions and negotiations are merged into the Project Plan and this Developer's Agreement. In the event of a conflict between the Project Plan and this agreement, this agreement shall be controlling. Any changes or addendums hereto shall be agreed to in writing by both parties.
- 21. Litigation.** Any dispute arising out of or related to this Agreement shall be litigated in the Third Judicial Circuit Court for the State of South Dakota, located in Brookings, Brookings County, South Dakota.
- 22. Termination of Agreement.** Should the Developer not adhere to the price restrictions of the residential lots or the homes, or violates any other part of the Developer's Agreement, the City reserves the right to terminate payments of the Tax Increment Revenue, regardless if there is any outstanding principal, together with such other legal and equitable remedies.

Exhibit A

The S½NW¼ of Section 34, Township 110 North, Range 50 West of the 5th P.M., City of Brookings, County of Brookings, State of South Dakota, together with that portion of West 16th Avenue as described in the Project Plan.



CITY OF BROOKINGS



Shari Thornes
Shari Thornes, City Clerk

Keith W. Corbett
Keith Corbett, Mayor

PEM Affordable Housing LLC

Paul E. Minerty
Member