

Prepared by:  
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**FINAL DEVELOPMENT AGREEMENT  
FOR PHASE I  
of  
POWDER HOUSE PASS COMMUNITY IMPROVEMENT DISTRICT**

This Final Development Agreement ("FDA") for the PHASE I within the Powder House Pass Community Improvement District is entered into this 8 day of April, 2014, between the County of Lawrence, South Dakota (the "County"), a political subdivision of the State of South Dakota, with its principal place of business at 90 Sherman Street, Deadwood, South Dakota 57732 in Lawrence County, South Dakota and BH Development LLC. ("BHD"), with its principal place of business at 68 Sherman Street, PO Box 647, Deadwood, South Dakota 57732.

**INTRODUCTION**

Phase I of the Powder House Pass Community Improvement District ("District") being developed BHD is incorporating the existing Wilderness Estates Subdivision into the District. This phase of the development will involve final platting for thirty-four additional lots for residential development. The existing Wilderness Estates development already has paved roads and existing covenants. The proposed Phase I development will add a wastewater treatment facility, a collection system, and a potable water supply. Water will be purchased from the Lead-Deadwood Sanitary District and treated by a newly constructed water treatment facility. The wastewater treatment and collection system will be designed and constructed to serve Phase I and the entire development

**WITNESSETH**

**WHEREAS**, The County established the Powder House Pass Community Improvement District on November 9, 2010; and

**WHEREAS**, the parties contemplated that BHD and/or its assignee, PHP would enter into final development agreements with the County for every phase of new development to ensure that the terms, obligations and conditions identified in the General Development Agreement ("GDA") are

met and that final development agreements would be approved by the County prior to the commencement of final development and approval of any final plats; and

**WHEREAS**, on October 19, 2010, the County approved a Master Plan for the overall development of the District property for residential, retail, commercial, light industrial and recreation purposes; and

**WHEREAS**, BHD is willing to commit and bind itself, its successor and assigns to the future development in conformity with the proposed Master Plan and the GDA and this Final Development Agreement for the following described property; and

Tract of Land located in portions of Whats Left Fraction Lode M.S. 924, Some Left Fraction Lode M.S. 1101, Dickinson, Cleveland & Blaine Lodes M.S.1102, Florence Fraction Lode M.S. 1131, Silver Belt No.1, Trial No. 2& Carter Lodes M.S. 1200, All of Lots 1,2 & 3 of the Sol Star Subdivision of the Subdivision of the Guild, Golden Eagle, Mose Lyon Fraction and Sol Start Lodes M.S. 1058; the remaining portion of the unplatted portion of Golden Eagle Lode M.S. 1058 and all of Doctor Flick Fraction, Carmyllie, Robert Emet Lodes M.S. 1058, St. Just, Bryon & Specie Payment Fraction Lodes M.S. 1102, Daybreak, Cleopatra, Argenta, Overdraft, Midnight, Brandywine, Brandywine Fraction & Georgianna Lodes M.S. 1131, Bridgeport, Dr. Late, Florence, Caw, Mc.Leod, Mc.Leod No.1, Mc.Leod No.2, Stead, Stead No.1, Stead No.2, Stead No.3, Stead No.4, West Virginia, Lamplighter, Blue Danube, I.M.H, Gertrude, Copsy Fraction, Low, High, Poorman, Elsie, Monmouth, Monmouth No.1, Monmouth No.2, Monmouth No.3, Monmouth No.4, Monmouth No.5, Monmouth No.6, December & Client Fraction Lodes M.S. 1142, Syracuse, Missing Link, Cook, Colts, Cuba Fraction, Cuba NO.1 Fraction, Mc.Kinley Fraction, Linnaeus, Boone, Sound Money & Xerxes Lodes M.S. 1151, Old Bill M.S.1153, Poler Bear, Wedge & Edison, Edison No.2, Edison No.3, Lodes M.S 1169, Wild Dear NO.1 Lode M.S. 1188, Carter No.1, Ray, Ray NO.1 Ray No.2, Ray No.3, Ox, Flat, Rainbow, Albert Steele, Browning, Paragon, Charlie, Ruby Basin, Cunniff, Star, Principal Fraction No.1, Principal No.1, Principal No.2, Principal No.3, Principal No.4, Sheridan, Annie, Maggie, Amy, Waukegon, Genevieve, Little Johnny, Llama, Tumtum, King & Lucky Girl Lodes M.S. 1200, B & M Fraction, Deposit, Bengal Tiger, Lone Star, Leona Lock, Gopher No.1, Gopher No.2, Gopher NO.3 Lodes M.S. 1215, Lot 7 in Section 24, T4N, R2E and Lots 2,8,9,11,12 & 13 in Section 19, T4N, R3E, all situated in Section 24, T4N, R2E and Sections 7,8,18,19 & 20 T4N, R3E.  
Tract A of Wilderness Estates consisting of the Nile, Cairo, Cairo No.2, Cairo NO.5 & O.B. Fraction Lodes M.S. 1834, Massachusetts, Oneida, Brown & Brown Fraction Lodes M.S. 1195, Andes, Treber Fraction,

Bonapart & Bismark Lodes M.S. 1159, all located in the SE1/4 of Section 7, W1/2 of Section 8, NW1/4 of Section 17, T4N, R3E.

Lots 1, 4, 9, 10, 11, 12, 14, 25, & 26 of Wilderness Estates Being a Subdivision of Tract A, consisting of the Nile, Cairo, Cairo No.2, Cairo No.5 & O.B. Fraction Lodes M.S. 1834, Massachusetts, Oneida, Brown & Brown Fraction Lodes M.S. 1195, Andes, Treber Fraction, Bonapart & Bismark Lodes M.S. 1159, all located in the SE1/4 of Section 7, W1/2 of Section 8, NW1/4 of Section 17, T4N, R3E.

All located in B.H.M, Lawrence County, South Dakota.

**WHEREAS**, this Final Development Plan is specific and relates solely to Phase I of development in the District, and is identified as Phase I for Powder House Pass Community Improvement District.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

### **SECTION 1. ZONING**

That the development shall be developed and built in conformity with and subject to the terms of the GDA, the approved Master Plan and this Final Development Agreement with respect to any zoning requirements.

### **SECTION 2. FINAL PLAN**

That this Final Development Plan for Phase I is intended to and insures that all development within the proposed area shall comply with all applicable Lawrence County Ordinances and Buildings Codes, as contemplated by the General Development Agreement unless a variance or exception are approved by the appropriate Lawrence County official, board, or commission.

### **SECTION 3. FINAL DEVELOPMENT PLAN**

This Final Development Plan shall set forth in detail the terms, conditions, obligations and proposed detailed development plans of BHD, its successors and assignees and the County which addresses all of the requirements under the approved GDA and as referenced and agreed to in Section 2 above.

### 3A. MASTER PLAN REQUIREMENTS

BHD pursuant to and in conformity with the approved Master Plan provides the following information in fulfillment and for the counties review and consideration, and agrees to construct and build Phase I of the PHP CID in accordance and in compliance as follows:

- A. Location map-Attached hereto and incorporated herein by this reference is the map identified as Exhibit 1 showing the overall details and layout of the proposed Phase I of the Development.
- B. List of Landowners in Master Plan.
- C. This phase of the overall development is identified as Phase I within the District.
- D. The map is to a scale of 1"-200'. By using this scale the overall layout and design plan for Phase I can be included in prospective on a single map.
- E. Existing topography is shown on Exhibit 1, which is the preliminary plat map for Phase I.
- F. Jurisdiction-Phase I development is entirely within the County of Lawrence and is subject to the jurisdiction of the Lawrence County Commission for approval of this phase of the development and any future construction within the development.
- G. Map with roads-All of the proposed roads or roadways are already constructed and hard-surfaced in this phase of the development. The roads and roadways are shown along with the right-of-ways for said roads on Exhibit 1. All roads have been constructed in accordance and compliance with existing County requirements.
- H. All roads are shown on the preliminary plat. All primary service roads have a 66' right-of-way and are already constructed, in place, and paved. All secondary roads have 50' right-of-ways and are presently constructed, paved and also in place.  
Any new roads shall be constructed in compliance with the existing Lawrence County ordinances in place at the time unless otherwise approved or granted a variance for the road construction by the Lawrence County Commission.
- I. Lots layout-Attached to this FDA is a copy of the preliminary plat map. The preliminary plat map sets forth the legal description of the Phase I development. The map identifies the proposed lot layouts for Phase I. All specific lot location lines and lot and block numbers are identified and shown on the preliminary plat, Exhibit 1.

- J. All dimensions are to nearest 1/10 of one foot.
- K. The location of all proposed utility easements and right-of-ways are within road right-of-ways as shown on Exhibit 1 for the design layout of Phase I.

### **3B. GENERAL DEVELOPMENT PLAN REQUIREMENTS**

BHD will construct and develop the Phase I for District in compliance with the GDA requirements as provided in Section 5 of the GDA and set forth as follows:

- A. All building construction within Phase I shall be in compliance with existing international building codes requirements adopted by Lawrence County and any existing amendments thereto.
- B. The proposed collection and treatment of any wastewater will be through a wastewater treatment and collection system designed, constructed and paid for by the Developer BHD. The proposed waste water treatment facility including the location and construction of any waste water treatment shall be designed and constructed in accordance with all applicable requirements, standards, rules and regulations and be approved by the South Dakota State Department of Environment, Water and Natural Resources.  
Upon completion and becoming fully operational, the wastewater treatment facility and the collection system will be transferred to the District.
- C. The potable water supply will be supplied through the construction and operation of a water treatment facility. The proposed water treatment and distribution system will be designed, constructed, and paid for by the Developer BHD and upon becoming operational will be transferred to the District. BHD will build and construct a water treatment plant for water purchased from the Lead-Deadwood Sanitary District. In addition, an adequate storage tank will be constructed to ensure good and adequate supply water to the initial 42 residences contemplated within Phase I.
- D. Parking-There is no retail or commercial development proposed for Phase I. All parking will be residential parking.
- E. Road layout and design is shown on Exhibit 1, attached hereto and by such reference incorporated herein. All roads and roadways are already in place

and are hard-surfaced and will be maintained by the District.

- F. Signage-No additional signage is proposed for this Phase of the development. All signage within the Development will be in compliance with applicable county and state laws, rules and regulations. Regulation of any signage within the development will be by the District Board of Supervisors until such time as a homeowners association is established.
- G. No performance bond to guarantee the completion of road construction is necessary because all of the roads and roadways are already constructed and in place.  
Once fully operational, all water works and supply infrastructure for Phase I shall be transferred to the District. The District is a local unit of special purpose government with taxing authority and with the power to borrow money, and issue bonds itself, certificates, warrants, notes or other evidence of indebtedness and similar revenue generating power enumerated in SDCL 7-25A-7, and shall exercise said authority to insure compliance with the proposed construction, making it unnecessary to require bonding for such infrastructure construction. Fully operational means the systems are proven to be able to provide potable water to all lots and accept wastewater and receive final approval of construction and operation by the SD Department of Environment and Natural Resources.
- H. Covenants- There presently exist covenants for Wilderness Estates Subdivision in Phase 1. The Covenants shall be adopted and enforced by the Board of Supervisors for the District until such time as a homeowners association is created. The responsibility for enforcing the covenants and any amendments thereto shall be the responsibility of the Board of Supervisors until such time as a homeowners association is formed.
- I. Construction all buildings shall be in conformity and compliance with the existing International Building Code and amendments thereto adopted by Lawrence County.
- J. All contracts with contractors or subcontractors shall be bid and awarded in compliance with all applicable laws, rules, and regulations.
- K. General liability insurance policy for the proposed development is already in place. BHD shall secure

and maintain general liability insurance on the land described above.

- L. Lighting-Presently there is no signage lighting, nor is there any proposed. Any lighting in Phase I for residential homes will be regulated and enforced by the Board of Supervisors until such time as a homeowners association is formed. All lighting within Phase I will be directed away from any other residence and directed towards the ground.
- M. Location of all fire hydrants within Phase I shall be in compliance with applicable rules, regulations, and ordinances of the County-Subdivision Ordinance.
- N. Until a homeowners association is formed, the District shall be responsible for the enforcement of the Declaration of Covenants, Conditions, Restrictions, and Reservations for Phase I.
- O. Utilities will be provided by reputable well established utility providers (Black Hills Power and Lighting, Knology, Midcontinent, Montana Dakota Utility, etc.) Utility Service's lines will be located in the road right of ways. The proposed layout of the utility easements to the appropriate lot lines, access and right-of-ways is shown on the preliminary plat, Exhibit 1.
- P. Open space-BHD shall establish and keep open space within Phase I in compliance with applicable county rules, regulations, and ordinances. All open space shall be transferred and conveyed to the District.
- Q. Fire plan-Attached hereto and by such reference incorporated herein is the Powder House Pass Development Community Assessment/Fire Plan specific for Phase I, Exhibit 2. Until a homeowners association is formed, the District Board of Supervisors shall insure that all the construction and development within Phase I is in conformity with the proposed Fire Plan.
- R. Wet lands-There are no wet lands presently located with in the proposed Phase I development.
- S. Weeds-Noxious weed control within the Phase I development shall be under the control and enforcement of the District Board of Supervisors until a homeowners association is formed, and shall be in compliance with all applicable County Weed Board standards for noxious weeds.
- T. Erosion control-Roads within the proposed Phase I development are already in place and grading and

ditches have already been re-vegetated. Sediment and erosion control provisions will be controlled and enforced in compliance with applicable county and state laws, rules, and regulations, by the District Board of Supervisors until a homeowners association is formed, with respect to the construction on individual lots. Sediment and erosion control enforcement will be by the District Board of Supervisors until a homeowners association is formed and enforced to prevent sediment erosion control due to home construction from entering any of the ditches or common areas within the proposed Phase I development. Additionally, no filling of any ditches or major drainage areas shall be allowed.

- U. A wastewater treatment facility will be a mechanical wastewater treatment facility located in the northeast corner of the District. This facility is located in a 14.88 acre area to be designated as open space. The proposed wastewater treatment facility previously approved by the Commission will be a facility also approved by the South Dakota Department of Water and Natural Resources and designed and constructed in accordance with all applicable requirements, standards, rules and regulations of the South Dakota Department of Environment, Water and Natural Resources. Any major changes to the location or design of the facility shall be approved by the Lawrence County Commission.

### **ASSIGNABILITY**

This agreement is made and entered into between Lawrence County and BH Development, LLC with the full knowledge and understanding that all of the terms, obligations and conditions referenced herein shall be and are totally assignable to the District. The parties hereto understand and agree that the requirements for the General Development Agreement, Master Plan and the Final Development Agreement are binding on the successors, assigns and transferees of BH Development.

- A. BH Development, its assigns, or transferees, shall provide a copy of this Final Development Agreement to any future buyer of property or properties within Phase 1 of the District.



**AMENDMENTS**

This Final Development Agreement for Phase I within the Powder House Pass Community Improvement District shall only be amended in writing and by mutual agreement of the parties.

Dated this 8 day of April, 2014.

**IN WITNESS WHEREOF**, the undersigned have executed this Development Agreement the day and year first written above.

COUNTY OF LAWRENCE

BH DEVELOPMENT

By Richard D. Sleep

By [Signature]

Its: CHAIRMAN

Its: Managing Member

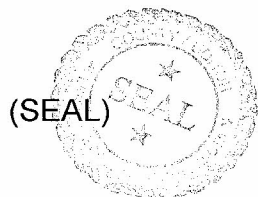
STATE OF SOUTH DAKOTA )

) SS.

COUNTY OF LAWRENCE )

On this 8 day of April, 2014, before me, the undersigned officer, personally appeared Richard D. Sleep known to me or satisfactorily proven to be the Chairman of the Lawrence County Commission, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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



Robin Luercio Depuy  
Notary Public  
My commission expires MARCH 1, 2015

