

CONTRACT FOR PRIVATE DEVELOPMENT  
TAX INCREMENT DISTRICT NUMBER THIRTY SIX  
CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

Between

5 STAR REAL ESTATE, INC.

and

CITY OF RAPID CITY, SOUTH DAKOTA

Dated as of August 4, 2003

THIS AGREEMENT, made and entered into as of this 17th day of March, 2003, between 5 Star Real Estate, Inc., a South Dakota corporation (hereinafter "5 Star") and the City of Rapid City, a municipal corporation and political subdivision of the state of South Dakota (hereinafter "City").

SECTION 1. The City Created Tax Increment District Number Thirty-Six by resolution dated October 16, 2002.

SECTION 2. The City approved the development plan for Tax Increment District Number Thirty-Six on October 16, 2002.

SECTION 3. The estimated project costs, as set forth in the plan, are as follows:

Capital Costs:

Road Construction and Water/Sewer Extension (Phase I)	\$759,537.00
Road Construction, Storm Drainage and Water/Sewer Extension (Phase II)	\$1,044,500.00
Landscaping Buffer	\$12,000.00

Professional Service

Engineering Design, Construction and Administration (Phase I)	\$16,079.00
Engineering Design, Construction and Administration (Phase II)	\$180,176.00
Legal (Phase I)	\$8160.00

Financing Costs:

Financing interest:	\$832,410.70
Professional Fees:	\$0.00

Relocation Costs (Phase I): \$123,638.00

Organizational Costs: \$0.00

Necessary and Convenient Costs:

Contingency (Phase I)	\$85,880.00
Contingency (Phase II)	\$156,675.00
Other	\$0.00

TOTAL TID NUMBER 36 PROJECT COSTS       \$3,219,055.70

Imputed Administrative Costs

City of Rapid City of Rapid City               \$2050.00  
To be paid October 15, 2007 as described in the approved development  
plan.

SECTION 4. The base value of the property located in Tax Increment District Number Thirty-Six has been certified by the South Dakota Department of Revenue as Seventeen Million Nine Hundred Eleven Thousand Six Hundred Fifteen dollars (\$17,911,615.00).

SECTION 5. 5 Star owns property located within the TIFD district and currently has a plat of the property pending before the City. As a condition of the plat approval, 5 Star will be required to provide access to the property. To do so, 5 Star has proposed to construct and extension to an existing City street, know as Disk Drive. The extended Disk Drive will have frontage to additional property not owned by 5 Star.

SECTION 6. Phase I of the Tax Increment District Number Thirty-Six approved project plan identifies funding sources that will be used to repay the costs of construction of a portion of the extension of Disk Drive. The total Disk Drive extension will add 2,394.57 linear feet to Disk Drive which results in a total new frontage of 4789.14 linear feet. The costs of the extension have been apportioned among the property owners that will have frontage along the extended portion of Disk Drive. 5 Star's portion is 1133.36 linear or 23.67%. Property owned by Larry D. Henderson, Gayle R. Bunn, David L. Henderson, and Eldene K. Henderson, Trustee of the Eldene K. Henderson Revocable Trust (collectively hereinafter "Hendersons") will have frontage on the extended portion of Disk Drive of 764.7 linear feet or 15.97% of the total. The cost for the remaining total of 2891.08 linear feet or 60.37% of the total frontage is the responsibility of the City of Rapid City.

SECTION 7. The Hendersons' portion of the cost for the extension of Disk Drive is anticipated to be funded through an Infrastructure Development Partnership Fund (IDPF) loan from the City. It is a condition precedent to each and every obligation of the City under this agreement that the Hendersons' fully and completely execute such an IDPF loan agreement with the City. Failure of Hendersons to fully and completely execute such an agreement fully and absolutely relieves the City of all obligations under the agreement.

SECTION 8. 5 Star shall manage the construction of the extension of Disk Drive from its current eastern terminus to Howard Street in accordance with the City's *Street Design Criteria Manuel* and the City's *Standard Specifications for Public Works Construction*. In addition, of the requirements of state law relating to the expenditure of public funds shall be followed and documented. In addition, the provisions of SDCL chapter 5-18 are specifically incorporated herein. Compliance by 5 Star with the state law on the expenditure of public funds is a condition precedent to each and every obligation of the City under this agreement.

SECTION 9. Upon completion of the construction of Disk Drive and acceptance thereof by the City, 5 Star may submit to the City a request for reimbursement of its costs incurred, not to exceed the following amounts:

Capital Costs:	
Road Construction and Water/Sewer Extension (Phase I)	\$759,537.00
Landscaping Buffer	\$12,000.00
Professional Service	
Engineering Design, Construction and Administration (Phase I)	\$16,079.00
Legal (Phase I)	\$8160.00
Relocation Costs (Phase I):	\$123,638.00
Necessary and Convenient Costs:	
Contingency (Phase I)	\$85,880.00
Other	\$0.00
<b>TOTAL PHASE I TID 36 PROJECT COSTS</b>	<b>\$1,005,294.00</b>

Of these amounts, 5 Star shall be reimbursed by the City for up to \$160,545.45 (15.97% of the total cost) from the amount held under the IDPF loan agreement with Hendersons and up to \$606,795.46 (60.36% of the total costs) for the City's portion of the costs. 5 Star shall not be reimbursed for its share of the costs \$237, 953.09 (23.67% of the total cost).

SECTION 10. 5 Star Real Estate, Inc., shall complete the improvements described in the approved project plan as Phase I improvements. Upon completion, 5 Star Real Estate, Inc. shall certify to the Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Thirty-Six Plan have, in fact been disbursed in payment for the acquisition.

SECTION 11. All positive tax increments received in Tax Increment District Number Thirty-Six shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Thirty-Six Fund". The City shall reimburse the City's IDPF fund to replace the amounts advanced from that fund to finance the City's portion of the costs of this project.

SECTION 12. It is a condition of this agreement that all provisions of South Dakota law regarding the expenditure of public funds are incorporated herein. Specifically, the requirements of chapter 5-18 of the South Dakota Codified Laws are an integral part of this agreement. 5 Star Real Estate, Inc. shall provide documentation of compliance with chapter 5-18 upon the request of the City of Rapid City.

SECTION 13. 5 Star Real Estate, Inc. agrees to indemnify and hold harmless the City of Rapid City from obligations or liability, including reasonable attorney's fees, arising out of this agreement or the construction of the improvements contemplated by the Tax Increment District Thirty Six Project Plan. 5 Star Real Estate, Inc. shall maintain a policy of liability insurance, acceptable to the City, with liability limits of at least two million dollars (\$2,000,000.00) from the time a bid is awarded until the City accepts the improvements.

SECTION 14. 5 Star Real Estate, Inc. agrees to immediately satisfy any and all mechanic's liens or material man's liens that arise as a result of this project. This provision shall not prevent 5 Star Real Estate, Inc. from subsequently seeking compensation from subcontractors or other who may be responsibility for such liens.

SECTION 15. This document along with the Project Plan for Tax Increment District Thirty-Six constitute the entire agreement of the parties. No other promises or consideration form a part of this agreement. All prior discussions and negotiations are merged into these documents. In the event of a conflict between the Project Plan and this agreement, this agreement shall be controlling.

SECTION 16. Any dispute arising out of or related to this agreement shall be litigated in the Seventh Judicial Circuit Court for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.

Dated this 17th day of March, 2003.

5 Star Real Estate, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:  
  
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