

LF081507-07

CONTRACT FOR PRIVATE DEVELOPMENT

TAX INCREMENT DISTRICT NUMBER SIXTY-THREE

Between

COPPERFIELD VISTAS, LLLP

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2007, between Copperfield Vistas, LLLP, located at 2700 West Main Street, Rapid City, SD 57702, herein after referred to as the "Developer," and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, located at 300 Sixth St., Rapid City, SD 57701, herein after referred to as the "City."

SECTION 1. The City created Tax Increment District Number Sixty-Three by resolution on June 4, 2007.

SECTION 2. The City approved a Project Plan for Tax Increment District Number Sixty-Three on June 4, 2007.

SECTION 3. The purpose of this agreement is to establish the terms and conditions by which the Developer will be reimbursed from the proceeds generated by the tax increment district for the cost of the public improvements in the project plan which are the responsibility of the Developer. It 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 improvements which are its responsibility.

SECTION 4. The project plan contains two phases. The Phase I capital improvements are the construction of Homestead Street and a drainage crossing. The Phase II capital improvements are the construction of East Anamosa Street and water mains. This agreement pertains only to the improvements that are part of Phase I. It is currently anticipated that the Developer will also fund the improvements in Phase II. In order to be reimbursed for those improvements the Developer will need to enter into a second Developer's Agreement with the City. Both parties acknowledge that if another group or entity comes forward and is prepared to pay for the upfront cost of constructing the Phase II improvements, the City may enter into a Developer's Agreement with that group or entity for reimbursement of those costs. If the City enters into a subsequent Developer's Agreement with an entity other than the Developer, the Developer will be entitled to 100% of the proceeds from the District until the Phase I project costs have been fully reimbursed unless this agreement is later amended and the Developer consents to a different reimbursement percentage. The estimated project costs to be paid by Tax Increment District Number Sixty-Three that are covered in this agreement are as follows:

PHASE I PROJECT COSTS

Capital Costs:

Homestead Street	\$	480,000.00
Drainage Crossing	\$	220,000.00

Professional Services:	\$	70,000.00
------------------------	----	-----------

Financing Costs:

Interest	\$	1,056,683.92
----------	----	--------------

Contingency Costs:	\$	70,000.00
Relocation Costs:	\$	0
Organizational Costs:	\$	0
Necessary and Convenient Costs:	\$	360,000.00
TOTAL PHASE I PROJECT COSTS:	\$	2,256,683.92
Imputed Administrative Costs*		
City of Rapid City	\$	2,050.00

*The imputed administrative costs are interest-free, are not included in the total project costs, and are to be paid from the balance remaining in the TID #63 fund available to the City Finance Officer on June 1, 2012.

SECTION 5. The Developer agrees to construct the improvements described in Section 4 of this agreement at its expense. The Developer further agrees to start constructing the improvements contemplated in this agreement by October 31, 2008. The Developer has until December 31, 2009 to complete the Phase I improvements identified in Section 4 of this agreement. If the Developer does not comply with these deadlines, the City has the option to terminate this agreement as to any improvements that have not been constructed or on which construction has not been started. Prior to the City terminating the agreement, the City shall provide at least fourteen days written notice to the Developer and/or any entity that has an assignment interest in the proceeds of the tax increment funds of the date and time of the meeting at which the City Council will consider terminating the agreement.

SECTION 6. The base value of the property located in Tax Increment District Number Sixty-Three has yet to be certified by the South Dakota Department of Revenue. Both parties understand that before any increment can be generated by the district that the base valuation of the property within the district must be certified by the Department of Revenue. It is further understood that this agreement is contingent upon certification of the value of the land in the district by the South Dakota Department of Revenue. When the certified land value has been received by the City from the Department of Revenue it will be incorporated into and become part of this agreement. The Developer assumes any and all risk that may result from entering into this agreement prior to receiving a certified land value from the Department of Revenue.

SECTION 8. It is anticipated that the Developer will secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Sixty-Three Project Plan. This private financing is anticipated to be a bond or note, at an average interest rate over the life of the loan not to exceed Nine Percent (9%) per annum. It is understood by the parties that the financing amount included in the project plan is based on an interest rate of Nine Percent (9%) per annum and that the Developer will not receive any reimbursement for interest that it pays in excess of Nine Percent (9%) per annum. It is further understood that should the Developer receive a loan with an interest

rate of less than Nine Percent (9%) per annum, that the City will only reimburse the Developer for the actual amount of interest paid.

SECTION 9. Developer shall complete the improvements described in the approved project plan. Upon completion, Developer shall certify to the City Finance Officer or their designee that such improvements have been completed and shall certify the amount of money disbursed therefore. Furthermore, the Developer shall provide sufficient documentation to certify that the terms of Section 14 of this agreement are complied with. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Sixty-Three Project Plan have, in fact, been disbursed for the costs contemplated in this agreement and state bid law has been complied with.

SECTION 10. It is understood by the parties that the boundaries of Tax Increment District Sixty-Three 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 completely 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 11. It is understood by the parties that it will not be possible to determine what the positive increment is until the Dept. of Revenue determines the certified land valuation for the property within the district. It is further understood that until the Dept. of Revenue determines the certified land value, no obligation to make deposits into the "Fund" will arise. Once the certified land value of the district is received from the State, all positive tax increment payments for Tax Increment District Number Sixty-Three shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Sixty-Three Fund," hereinafter referred to as the "Fund." Subject to Sections 9, 10, 13 and 14 of this agreement and the limitation that at no time shall the cumulative total of payments made from the fund exceed the lesser of the total amount of disbursements certified pursuant to Section 9 of this agreement or the total of the estimated project costs set forth in the revised Tax Increment District Number Sixty-Three Project Plan as well as any other limitations contained herein, the City shall, within thirty (30) days after the receipt of each tax increment payment from the Treasurer of Pennington County, disburse all amounts in the "Fund" to the Developer or their designee.

SECTION 12. It is contemplated by the parties that Developer may assign its interest under this agreement as security for the note or loan agreement, or other financing described in Section 8 hereof. It is understood and agreed, by the parties, that any such assignment shall be in writing and that if the City shall make disbursement pursuant to such assignment that it shall, to the extent of such disbursement, relieve the City of the obligations to make such disbursement to Developer. Any assignee shall agree to be bound by the terms and conditions contained in this agreement.

SECTION 13. 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 proceeds of the positive tax increment from Tax Increment District Number Sixty-Three received into the "Fund" specified in Section 11 hereof. The obligation of the City to pay pursuant to this agreement does not constitute a general indebtedness of the City or a charge against the City's general taxing power. The provisions of SDCL 11-9-36 are specifically incorporated herein by reference. It is also specifically agreed that the City has made no representation that the proceeds from such fund shall be sufficient to retire the indebtedness incurred by Developer under Sections 8 and 12 hereof. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments to the fund created by Section 11 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 14. 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. The Developer shall provide documentation of compliance with Chapter 5-18 upon the request of the City.

SECTION 15. Developer agrees to defend, 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 Sixty-Three Project Plan. The Developer shall maintain a policy of liability insurance, acceptable to the City, with liability limits of at least one million dollars (\$1,000,000.00) that names the City of Rapid City as an additional insured. Such a policy shall remain in effect until the City accepts the improvements.

SECTION 16. Developer 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 Developer from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment.

SECTION 17. This document along with the project plan for Tax Increment District Sixty-Three shall constitute the entire agreement of the parties. No other promises or consideration form a part of this agreement. All prior discussions and negotiations are merged into these documents or intentionally omitted. In the event of a conflict between the project plan and this agreement, this agreement shall be controlling.

SECTION 18. This agreement shall be construed and the parties' actions governed by the laws of the State of South Dakota. 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 2nd day of August, 2007.

