

CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER FIFTY

Between

CAPITAL DEVELOPMENT INC.

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2007, between Capital Development, Inc., located at 1301 Omaha Street, Suite 207, Rapid City, SD 57702, hereinafter 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, hereinafter referred to as the "City."

SECTION 1. The City created Tax Increment District Number Fifty by resolution on December 20, 2004.

SECTION 2. The City approved a Revised Project Plan for Tax Increment District Number Fifty on November 7, 2005.

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 improvements that are included in the Revised Project Plan. 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.

SECTION 4. The estimated project costs to be paid by Tax Increment District Number Fifty, as set forth in the approved Revised Project Plan, are as follows:

TOTAL ESTIMATED PROJECT COSTS TO BE PAID BY THE TAX INCREMENT DISTRICT FOR PHASE I:

Developer Project Costs Phase I:

Capital Costs:

Philadelphia Street Improvements	\$ 600,000.00
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Financing Costs:

Financing interest	\$ 720,860.88
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Contingency Costs:

\$ 0

Relocation Costs:

\$ 0

Organizational Costs:

\$ 0

Necessary and Convenient Costs:

\$ 0

TOTAL PROJECT COSTS

DEVELOPER -- PHASE I	\$ 1,320,860.88
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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 December 31, 2007. The Developer has until November 6, 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 Fifty has been certified by the South Dakota Department of Revenue at Nine Million Two Hundred Fifty-Seven Thousand One Hundred Dollars and No Cents \$9,257,100.00.

SECTION 7. It is anticipated that the Developer will secure private financing to fund the improvements contained in the approved Tax Increment District Number Fifty Revised 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 amount of interest actually paid.

SECTION 8. Developer shall complete the improvements described in the approved project plan. Upon completion, Developer shall certify to the City Finance Officer 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 13 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 revised Tax Increment District Number Fifty Project Plan have, in fact, been disbursed for the costs contemplated in the project plan and that state bid law has been complied with.

SECTION 9. It is understood by the parties that the boundaries of Tax Increment District Number Fifty 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 10. All positive tax increment payments for Tax Increment District Number Fifty shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Fifty Fund," hereinafter referred to as the "Fund." Subject to Sections 8, 9, 12 and 13 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 Fifty Revised 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" as follows: Fourteen Percent (14%) to the Developer or their designee, Nine Percent (9%) to the City for the City's costs, and 77% to Founder's Park, LLC or their designee. Once the City's Phase I expenses are paid, the balance of the funds will be distributed at Eighty-four Percent (84%) for Founder's Park, LLC and Sixteen Percent (16%) for this Developer. Once both developers are paid off, One Hundred Percent (100%) of balance goes to the City for Phase II project costs.

SECTION 11. 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 Section 7 hereof. It is understood and agreed, by and between 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 the Developer. Any assignee shall agree to be bound by the terms and conditions contained in this agreement.

SECTION 12. 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 Fifty received into the "Fund" specified in Section 10 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 the Developer under Sections 7 and 11 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 10 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 13. 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 14. The 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 Number Fifty Revised 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 15. The 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 the Developer from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment.

SECTION 16. This document along with the Revised Project Plan for Tax Increment District Number Fifty 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 revised project plan and this agreement, this agreement shall be controlling.

SECTION 17. 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 ____ day of _____, 2007.

CAPITAL DEVELOPMENT,
INC.

BY: _____

ITS: _____

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be the _____ of Capital Development, Inc. and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Notary Public, South Dakota

My Commission Expires:
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this _____ day of _____, 2007, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

Notary Public, South Dakota

My Commission Expires:
(SEAL)