

ASSIGNMENT AGREEMENT

Agreement entered into as of the dates set forth in the acknowledgments below by and between the **City of Rapid City, State of South Dakota**, hereinafter referred to as “City”, **U.S. BANK NATIONAL ASSOCIATION** of Rapid City, South Dakota, hereinafter referred to as “Lender”, and **Villaggio, LLC** hereinafter referred to as “Developer”.

WHEREAS, City has passed a Resolution Creating Tax Increment District Sixty-One on October 2, 2006, a copy of said Resolution being attached hereto as Exhibit “A”, which by reference hereto are incorporated herein; and

WHEREAS, Developer has agreed to advance the funds necessary to accomplish the goals to be achieved by the Tax Increment Financing District Sixty-One and the revisions thereto; and

WHEREAS, Developer and City have entered into a Second Revised Contract for Private Development Tax Increment District Number Sixty-One (Developer’s Agreement), a copy of said contract being attached hereto as Exhibit “B” which by reference hereto is incorporated herein; and

WHEREAS, Lender has agreed to loan the funds to Developer to accomplish said purpose on the condition that the future real estate taxes which are collected for the Tax Increment District Sixty-One are paid directly by City to Lender, it is hereby agreed, as follows:

1. City will pay directly to Lender those real estate taxes collected which are subject to the Tax Increment District Sixty-One Developer’s Agreement between the City and Villaggio, LLC, until the loan obligation incurred between Lender and Developer for purposes relating solely to the Tax Increment Financing District Sixty-One and the Third Revised Project Plan are paid in full or the Tax Increment District is dissolved, whichever comes first. It is the specific intent of the parties that the City shall not be obligated to pay any sums to Lender other than the portion of the increment generated by Tax Increment District Sixty-One that is obligated to the Developer per the Developer’s Agreement and the Project Plan and any obligations the City has to Lender shall cease by the City’s paying to Lender said increments until the loan is satisfied or Tax Increment Financing District Sixty-One is terminated, whichever comes first. Payments will be made to U.S. BANK N.A., Attention Jody Bender, P. O. Box 90, Rapid City, South Dakota 57709, or at a different place if required by the Lender in writing.
2. Lender agrees that, provided City makes payment to Lender of all funds actually received or collected by City for Tax Increment District Sixty-One that the City has agreed to pay to the Developer in the Developer’s Agreement, subject to any conditions and requirements contained in the Developer’s Agreement and/or Project Plan, there is no liability by City for the loan obligation of Developer. Lender shall look solely to its agreement with Developer and its guarantors, for any rights of recovery upon default, it being the specific intent of the parties that in the event that Tax Increment Financing District Sixty-One is terminated before payment in full of the obligation to Lender or in

the event that the increments are insufficient to pay said obligation, Lender's sole recourse shall be against Developer and the City shall have no additional liability to Lender provided that City has made all payments required herein.

3. Upon reasonable request and notice, Lender agrees to provide financial reports to City and Developer to advise them of the on-going status of the loan obligation to Lender by Developer.
4. All parties to the Agreement acknowledge that in the event Developer makes any payments on the loan obligation to Lender for this Tax Increment District Sixty-One, said payments will not reduce the obligation of City to make the Tax Increment Financing District Sixty-One and the revised project plan payments to Lender, pursuant to this Agreement, until the entire tax increment obligation is paid in full. Said assignment shall continue until Lender has been paid in full or Tax Increment Financing District Sixty-One is dissolved, whichever comes first. Notwithstanding the foregoing, Lender, Developer and City all acknowledge the Lender shall be bound by the terms of the Developer's Agreement and the City's obligation for payment is limited to the amounts set forth in the Developer's Agreement.

Dated this ____ day of _____, 2010.

VILLAGGIO, LLC.

BY: _____
ITS: _____

U.S. BANK NATIONAL ASSOCIATION

BY: _____
ITS: _____

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, 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 himself to be the _____ of VILLAGGIO, LLC, 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 the _____ day of _____, 2010, 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 himself to be the _____ of U. S. BANK NATIONAL ASSOCIATION, 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 _____, 2010, 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)

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

**RESOLUTION CREATING TAX INCREMENT DISTRICT NUMBER SIXTY ONE AS
SUBMITTED BY THE RAPID CITY PLANNING COMMISSION**

WHEREAS the property within the following described District meets the qualifications and criteria set forth in SDCL 11-9; and,

WHEREAS the Council of the City of Rapid City finds that the aggregated assessed value of taxable property in this District, plus the assessed values of all other districts currently in effect, does not exceed ten percent (10%) of the total assessed value of taxable property in the City of Rapid City; and,

WHEREAS the Council finds that:

- (1) Not less than twenty-five percent (25%), by area, of the real property within the district is a blighted area as defined in SDCL 11-9-9 through 11-9-11; and,
- (2) The improvement of the area is likely to significantly enhance the value substantially on all of the other real property in the district.


NOW, THEREFORE, BE IT RESOLVED by the City of Rapid City that the real property legally described as:

Lot 1, Stoney Creek South #2 Subdivision; Unplatted portion of E1/2 NW1/4 SE1/4; NE1/4 SW1/4 SE1/4 and Golden Eagle Drive located in the NE1/4 SW1/4 SE1/4 including Lots H3 and H4; Lot H1 in the SE1/4 SW1/4 SE1/4; Lot H2 in the SW1/4; Lot H2 in the SW1/4 NW1/4 SE1/4 and the NW1/4 SW1/4 SE1/4; W1/2 NW1/4 SE1/4 less Springbrook Acres Subdivision and Less Lot H2; NW1/4 SW1/4 SE1/4 less Lot H2; S495 feet of NE1/4 SE1/4 less Lot 1; SE1/4 SE1/4; Lot 1, Bendert Subdivision; all located in Section 22, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; and, Lots 2, 3, 4 and 5, Owen Hibbard Subdivision and Promise Road adjacent to Lots 2, 3 and 4 of Owen Hibbard Subdivision, Section 23, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota

is hereby designated as Tax Increment District Number 61.

DATED this 20th day of October 2006.

ATTEST:


Ernest Duester
Finance Officer
(SEAL)


CITY OF RAPID CITY
Mayor

EXHIBIT "A"

SECOND REVISED
CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER SIXTY-ONE

Between

VILLAGGIO, LLC.

and

U.S. BANK NATIONAL ASSOCIATION

and the

CITY OF RAPID CITY, SOUTH DAKOTA

EXHIBIT "B"

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2010, between Villaggio, LLC, 3006 W. St. Louis Street, Rapid City, SD 57702, hereinafter referred to as the "Developer," U.S. Bank National Association, 701 St. Joseph Street, Rapid City, SD 57701, and the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701, a municipal corporation and political subdivision of the State of South Dakota, hereinafter referred to as the "City."

SECTION 1. The City created Tax Increment District Number Sixty-One by resolution on October 2, 2006.

SECTION 2. The City approved by resolution a Project Plan for Tax Increment District Number Sixty-One on October 2, 2006. The City approved by resolution a Revised Project Plan for Tax Increment District Number Sixty-One on September 17, 2007 and a Second Revised Project Plan was approved by resolution on January 22, 2008. A Third Revised Project Plan was approved by resolution on January 19, 2010.

SECTION 3. The purpose of this agreement is to allow the Developer to be reimbursed from the proceeds of the tax increment district for the cost of the improvements that are included in the 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 for which the Developer can be reimbursed from Tax Increment District #61, as set forth in the approved revised project plan, is as follows:

A. TOTAL ESTIMATED PROJECT COSTS SUBJECT TO REIMBURSEMENT FROM THE TAX INCREMENT DISTRICT:

Capital Costs:

Sewer Mains	\$ 375,426.00
Sewer Lift Stations	\$ 503,201.06
Detention Cells	\$ 100,770.10
Water Mains	\$ 16,179.59
Vineyard Lane/Golden Eagle Drive	\$ 193,689.58
Storm Sewer	\$ 17,158.25
Traffic Control	\$ 0
Turn Lane	\$ 0
Promise Road	\$ 229,540.00

Financing Costs:

Financing interest	\$ 1,056,156.77
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Contingency Costs:

	\$ 93,300.11
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Relocation Costs:	\$	0
Organizational Costs:	\$	0
Necessary and Convenient Costs:	\$	312,777.94
Civil Engineering Services	\$	75,512.25
Additional Imputed Admin Costs	\$	5,000.00
TOTAL	\$	2,978,711.65
Imputed Administrative Costs*		
City of Rapid City	\$	2,050

*The original imputed administrative costs (\$2050) are interest-free, are not included in the total project costs, and are to be paid from the balance remaining in the TID #61 fund available to the City Finance Officer on October 1, 2011.

B. PROJECT COSTS PAID FOR BY VILLAGGIO, LLC FOR WHICH IT CAN BE REIMBURSED FROM THE TAX INCREMENT DISTRICT:

Capital Costs:		
Sewer Lift Station	\$	248,501.06
Detention Cell	\$	16,199.35
Water Mains	\$	16,179.59
Streets/Sidewalks	\$	193,689.58
Storm Sewer	\$	17,158.25
Traffic Control	\$	0
Sewer Mains	\$	25,564.18
Financing Costs:		
Financing interest	\$	478,243.38
Contingency Costs:	\$	0
Necessary and Convenient Costs:	\$	116,715.66
Civil Engineering Services	\$	75,512.25
Additional Imputed Admin Costs	\$	<u>5,000.00</u>
TOTAL	\$	1,192,763.30

SECTION 5. The Developer agrees to construct the improvements contained in Section 4 (B) of this agreement. If the Developer does not complete the improvements, 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 seven 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 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-One has been certified by the South Dakota Department of Revenue as One Million Seven Hundred Ninety-Three Thousand Eight Hundred Sixty-Five dollars (\$1,793,865.00) The Revised Project Plan, the Second Revised Project Plan and the Third Revised Project Plan have not resulted in an increase in project costs. Pursuant to SDCL 11-9-23 the base value of the property in the district does not have to be re-determined.

SECTION 7. It is anticipated that the Developer will secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Sixty-One Third 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 and One Half Percent (9.5%) 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 and One Half Percent (9.5%) per annum and that the Developer will not receive any reimbursement for interest that it pays in excess of Nine and One Half Percent (9.5%) per annum. It is further understood that should the Developer receive a loan with an interest rate of less than Nine and One Half Percent (9.5%) per annum, that the City will only reimburse the Developer for the actual amount of interest 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 Tax Increment District Number Sixty-One Revised 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 Sixty-One 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 satisfied, will the City have a duty to disburse funds under this agreement.

SECTION 10. All positive tax increment payments for Tax Increment District Number Sixty-One shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Sixty-One 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 8 of this agreement or the total of the estimated project costs set forth in the Tax Increment District Number Sixty-One Third Revised Project Plan as well as any other limitations contained herein, the City of Rapid City Finance Officer shall, within thirty (30) days after the receipt of each tax increment payment from the Treasurer of Pennington County,

make the disbursements from the fund in accordance with the Third Revised Project Plan. At such time that one of the Developers certifies costs, and the other developer and the City have not, the City shall pay that Developer one hundred percent (100%) of the revenues received into the Fund. At such time that one of the Developers and the City have certified costs, the City shall pay that Developer ninety-two percent (92%) of the revenues received into the Fund and shall pay the City eight percent (8%) for project costs incurred. At such time as both Developers and the City certify costs, forty-six percent (46%) of the revenues received will be disbursed to each developer for project costs incurred by the developers and eight percent (8%) will be disbursed to the City of Rapid City for project costs incurred by the City.

SECTION 11. 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 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 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 Sixty-One receipted 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 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. 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-One Third 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. 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 16. This document along with the project plan for Tax Increment District Sixty-One 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 _____, 2010.

VILLAGGIO, LLC.

BY: _____

ITS: _____

U.S. BANK NATIONAL ASSOCIATION

BY: _____

ITS: _____

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, 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 himself to be the _____ of VILLAGGIO, LLC, 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 the _____ day of _____, 2010, 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 himself to be the _____ of U. S. BANK NATIONAL ASSOCIATION, 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 _____, 2010, 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)