

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND CAPITAL
DEVELOPMENT INC. FOR THE RELOCATION OF PHILADELPHIA STREET
ADJACENT TO THE PROPOSED LAVILLA VISTA DEVELOPMENT.**

This agreement is entered into on this ___ day of November, 2007, by and between the City of Rapid City (“City”), located at 300 Sixth Street, Rapid City, SD 57701, and Capital Development Inc. (“Capital”), located at 1301 Omaha Street, Suite 207, Rapid City, SD 57702.

RECITALS

WHEREAS, Capital is constructing a residential town home development called La Villa Vista which is generally located at 1400 Philadelphia Street and legally described as:

The North 327.2 feet of the North Half of the Southeast Quarter (N ½ SE ¼) of Section 35, Township Two North (T2N), Range Seven East (R7E), Black Hills Meridian, Rapid City, Pennington County, State of South Dakota; excepting therefrom the West Half of the Northwest Quarter of the Southeast Quarter (W ½ NW ¼ SE ¼) and excepting therefrom Lot 1 of Lot B of the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) as shown on the plat filed in Plat Book 3, Page 103; and excepting therefrom North Boulevard Addition; and excepting therefrom Lot RU-302A of the Original Townsite of Rapid City as shown on the plat filed in Plat Book 14, Page 53; and excepting therefrom Lot RU-302B of the Original Townsite of Rapid City as shown on the plat filed in Plat Book 14, Page 94; and excepting therefrom any street or highway right-of-ways; and

WHEREAS, Philadelphia Street is currently constructed along the southern boundary of the above described property and physically separates it from the City owned Executive Golf Course; and

WHEREAS, the Major Street Plan component of the City’s Comprehensive Plan calls for the alignment of Philadelphia Street to be north of its current alignment; and

WHEREAS, Capital has proposed vacating the current Philadelphia Street right-of-way and relocating the street to the north side of the above described property in conjunction with construction of the LaVilla Vista town home development; and

WHEREAS, relocating Philadelphia Street to the north side of the above described property will bring the alignment of the street into conformity with the City’s Major Street Plan and make for a more aesthetically pleasing development by allowing the town homes to be built adjacent to the Executive Golf Course; and

WHEREAS, in addition to bringing the location of Philadelphia Street into conformity with the Major Street Plan, the City believes that this development will

benefit the Executive Golf Course and as well as being a significant improvement for a blighted area in the community; and

WHEREAS, based on the foregoing recitals, the City is willing to allow the portion of Philadelphia Street adjacent to the above described property to be relocated at Capital's expense.

NOW THEREFORE, the parties agree as follows:

1. Capital agrees to relocate Philadelphia Street to the north side of the above described per its approved development plans. Capital further agrees to demolish the current section of Philadelphia Street which is being relocated upon completion of the new street section and construct a pedestrian/bike path in the location of the current Philadelphia Street right-of-way. All such work will be done at Capital's expense and shall conform to the City's design criteria manuals and the most recent development/engineering plans which have been approved by the City.
2. Capital agrees that it will not demolish the current section of Philadelphia Street until the new street section has been completed and has been accepted by the City.
3. The City agrees to vacate the current section of Philadelphia Street and accept the right-of-way for the new alignment along the northern edge of the above described property. The City's obligation to vacate the right-of-way for the current street section is conditioned on Capital providing the City with a surety, in a form acceptable to the City Attorney's Office, which includes sufficient money to complete the construction of Philadelphia Street along its new alignment, including the cost of the pedestrian/bike path, and the demolition of the current street section in addition to covering the cost of any other required subdivision improvements for which surety is required. Upon submittal of an acceptable surety, the City shall approve the vacation of the current right-of-way.
4. The current right-of-way for Philadelphia Street was platted out of property owned in fee by the City. Once vacated, this right-of-way will revert to City ownership in fee. The current right-of-way is being vacated prior to the completion of the new alignment to facilitate the platting of the property without waiving the requirement to improve the current street. The City and Capital agree to keep the current street open for public use until such time as the new street is in place and has been accepted by the City. Once the new street is in place and has been accepted by the City, Capital will be required to demolish the street section along the old alignment, and to construct a pedestrian/bike path in the location of the former street. The construction of the pedestrian/bike path includes grading, planting of grass seed and ensuring that the grass takes hold in the area that is vacated.
5. Capital acknowledges that without the promises it has made in this agreement the City would not approve the relocation of Philadelphia Street. Capital further

acknowledges that the City's approval of the relocation of Philadelphia Street benefits its development and is sufficient consideration for this agreement.

6. Capital has Eighteen (18) months from the date of this agreement to complete the relocation of Philadelphia Street and the demolition of the current street section, as well as the pedestrian/bike path/restoration of existing Philadelphia Street right-of-way. If Capital fails to meet its obligations with respect to these improvements within eighteen (18) months, the City can draw on the surety and complete the improvements contemplated in this agreement.

7. If any section(s), or provision of this agreement are declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this agreement if they can be given effect without the invalid section(s) or provisions.

8. This agreement can only be amended in writing by the consent of all the parties hereto.

9. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

Dated this ___ day of _____, 2007.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

CAPITAL DEVELOPMENT INC.

By: _____
Its: _____

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 they, 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.

[SEAL]

Notary Public, State of South Dakota
My Commission Expires:_____

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this ____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Capital Development Inc. and that 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.

[SEAL]

Notary Public, State of South Dakota
My Commission Expires:_____