

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

Between

HEARTLAND RETAIL CENTER, LLC

and

CITY OF RAPID CITY, SOUTH DAKOTA

Dated as of April 21, 2003

THIS AGREEMENT, made and entered into as of this 21st day of April, 2003, between Heartland Retail Center, LLC, a South Dakota Limited Liability Company (hereafter 'Heartland') and the City of Rapid City, a municipal corporation and political subdivision of the state of South Dakota.

SECTION 1. The City of Rapid City Created Tax Increment District Number Thirty Eight by resolution dated February 17, 2003.

SECTION 2. The City of Rapid City approved the development plan for Tax Increment District Number Thirty Eight on February 17, 2003.

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

Capital Costs:

Water Main	\$300,000.00
Lift Station	\$350,000.00
Force Main	\$210,000.00
Eglin Street (Phase I)	\$460,000.00
Gravity Sewer	\$132,000.00
Deceleration Lane	\$30,000.00
Signalization Intersection	\$120,000.00
Water Main Loop	\$300,000.00
Detention Dam (Phase I)	\$100,000.00
Eglin Street (Phase II)	\$350,000.00
Detention Dam (Phase II)	\$100,000.00

Professional Service

Engineering Design, Construction and Administration (Phase I)	\$200,200.00
Engineering Design, Construction and Administration (Phase II)	\$45,000.00

Financing Costs:

Financing interest	\$3,623,279.13
Professional Fees	\$0.00

Relocation Costs: \$0.00

Organizational Costs: \$0.00

Necessary and Convenient Costs:

Phase I	\$400,400.00
Phase II	\$90,000.00

TOTAL TID NUMBER 38 PROJECT COSTS \$6,810,879.13

Imputed Administrative Costs

City of Rapid City of Rapid City \$2050.00
To be paid February 15, 2008 as described in the approved development plan.

SECTION 4. The base value of the property located in Tax Increment District Number Thirty Eight has been certified by the South Dakota Department of Revenue as Three Million Three Hundred Sixty Two Thousand Five Hundred Dollars (\$3,362,500.00).

SECTION 5. Heartland will secure private financing to fund the all the improvements, except the Lift Station (\$350,000.00) pursuant to the Tax Increment District Number Thirty Eight plan, 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. The City shall be responsible for the design, construction, bidding and project management for the lift station.

SECTION 6. Heartland, shall complete the improvements described in the approved project plan with the exception of the lift station. Upon completion, Heartland 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 Eight Plan have, in fact been disbursed in payment for the acquisition.

SECTION 7. All positive tax increments received in Tax Increment District Number Thirty Eight shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Thirty Eight Fund". The City shall, within thirty (30) days after receipt of each tax increment payment from the Treasurer of Pennington County, disburse eighty-nine percent (89%) of all amounts in the fund to Heartland, or its designee, subject to the following limitation: At no time shall the cumulative total of payments made from the fund exceed the lesser of the total amounts of disbursements certified pursuant to Section 6 of this Agreement or the total of the estimated project costs set forth in the plan for Tax Increment District Number Thirty Eight. The City shall retain eleven percent (11%) of the funds until the lesser of three hundred fifty thousand dollars (\$350,000.00) or the actual cost of the sewer lift station has been recovered from the Tax Increment District Number Thirty Eight fund. After the City has recovered the maximum amount allowed by this section, Heartland shall be entitled to receive one hundred percent (100%) the funds deposited into the Tax Increment District Number Thirty Eight Fund, subject to the limitations established by this section.

SECTION 8. It is contemplated by the parties that Heartland may assign its interest under this Agreement as security for the note or loan agreement, or other financing described in Section 5 thereof. 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 Heartland.

SECTION 9. 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 Thirty Eight received into the special fund specified in Section 7 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 Heartland, under Section 5 hereof. The parties further agree that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments to the fund created by Section 7 hereof.

SECTION 10. 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. Heartland shall provide documentation of compliance with chapter 5-18 upon the request of the City of Rapid City.

SECTION 11. Heartland 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 Eight Project Plan. Heartland 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 an additional insured. Such a policy shall remain in effect throughout the term of this agreement.


SECTION 12. Heartland 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 Heartland from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment.

SECTION 13. This document along with the Project Plan for Tax Increment District Thirty Eight 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 14. 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.

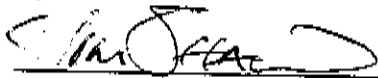
Dated this 28th day of ~~April~~^{May}, 2003.

HEARTLAND RETAIL CENTER, LLC




Managing Member

~~CITY OF RAPID CITY~~



Mayor

ATTEST:



Finance Officer

(SEAL)

State of South Dakota)
) ss.
County of Pennington)

On this the 28th day of May, 2003, before me, the undersigned officer, personally appeared Doyle Estes, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged himself to be the Managing Member of Heartland Retail Center, LLC, and acknowledged that he executed the same as on behalf of Heartland Retail Center, LLC as its Managing Member for the purposes therein contained.

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

Karen Jones
Notary Public, South Dakota

My Commission Expires: July 11, 2008

(SEAL)
State of South Dakota)
) ss.
County of Pennington)

On this 2 day of June, 2003, before me, the undersigned officer, personally appeared Jim Shaw 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.

Donna M. Winter
Notary Public, South Dakota

My Commission Expires: 4-19-2005

