

SECOND AMENDED CONTRACT
FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS
THROUGH PRIVATE DEVELOPER
TAX INCREMENT DISTRICT NUMBER THIRTY-EIGHT

Between

HEARTLAND RETAIL CENTER, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into by and between Heartland Retail Center, LLC, a South Dakota limited liability company located at 24054 Palmer Gulch Road, Hill City, SD 57745 (“Developer”), and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701 (“City”).

RECITALS

WHEREAS, pursuant to the power and authority granted to it under Chapter 11-9 of the South Dakota Codified Laws, the City created Tax Increment District Number Thirty-Eight by resolution dated February 17, 2003; and

WHEREAS, on February 17, 2003, the City of Rapid City approved the Project Plan for Tax Increment District Number Thirty-Eight which identifies expenditures for public improvements which qualify as project costs pursuant to SDCL 11-9-14 and SDCL 11-9-15; and

WHEREAS, on April 21, 2003, the City entered into a Contract for Private Development Tax Increment District Number Thirty-Eight with Developer (“Original Contract”); and

WHEREAS, on May 24, 2004, the parties entered into an Amendment to Contract for Private Development for Tax Increment District No. 38 providing that the City would pay Developer to construct improvements to a water main and that the City could be reimbursed out of the TIF funds once the Developer is fully paid for its project costs; and

WHEREAS, on February 6, 2017, the City adopted by resolution a Project Plan Revision #2 for Tax Increment District Number Thirty-Eight that reallocated certain costs for items to be completed in the original Project Plan; and

WHEREAS, the purpose of this Agreement is to amend the original Contract for Private Development Tax Increment District Thirty-Eight with Developer to revise the allowable payments for the cost of the improvements within the Project Plan Revision #2; and

WHEREAS, pursuant to SDCL 11-9-2(5), the City is empowered to enter into contracts or agreements necessary and convenient to implement the provisions and effectuate the purposes of the Project Plan Revision #2; and

WHEREAS, the purpose of this Agreement is to establish the conditions under which the Developer may be reimbursed from the proceeds of the tax increment district for the cost of the improvements which are included in the Project Plan Revision #2, and to establish 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.

NOW THEREFORE, the parties hereby agree as follows:

SECTION 1. The estimated project costs for which the Developer can be reimbursed from Tax Increment District Number Thirty-Eight, as set forth in the approved Project Plan Revision #2, are as follows:

TOTAL ESTIMATED PROJECT COSTS TO BE PAID BY THE DEVELOPER:

Phase I

Capital Costs:

Water Main	\$	386,962.03
Eglin Street (Phase I)	\$	589,788.35
Gravity Sewer	\$	132,000.00
Deceleration Lane	\$	30,000.00
Detention Dam (Phase I)	\$	100,000.00
Water Main Loop	\$	450,943.51
Water Main from E Anamosa	\$	75,000.00
Road Crossing at Anamosa	\$	25,000.00

Professional Services:

Engineering Design, Construction Administration	\$	187,300.71
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Financing Costs:

Financing Interest	\$	<u>1,937,299.48</u>
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Phase I Total **\$ 3,914,294.08**

Phase II

Capital Costs

Eglin Street (Phase II)	\$	1,086,055.48
Detention Dam (Phase II)	\$	235,887.09

Professional Services:

Engineering Design, Construction Administration	\$	117,713.46
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Financing Costs:

Financing Interest	\$	<u>1,456,929.02</u>
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Phase II Total **\$ 2,916,585.05**

Imputed Administrative Costs

City of Rapid City	\$	20,000.00
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The parties agree that Developer can only seek reimbursement for eligible expenses for improvements made within the geographical boundaries of Tax Increment District Thirty-Eight. The parties agree that any improvements made outside of the boundaries of Tax Increment District Thirty-Eight are not reimbursable from the Tax Increment District Thirty-Eight Fund, and Developer agrees that it will not seek reimbursement from City for any such improvements made outside of the district.

SECTION 2. The cost of constructing the improvements contained in Section 1 of this agreement is the responsibility of the Developer, and Developer agrees that it has fully constructed the improvements described in Section 1 at its own cost. The Developer acknowledges that these improvements were started or under contract for construction within 5 years of the approval of this tax increment district (i.e. by February 17, 2008), and that they have been fully completed and accepted by the City as of execution of this Agreement.

The parties acknowledge that the City will reimburse the Developer from the tax increment funds upon the Developer certifying to the Finance Office the amounts actually paid for these improvements. The parties agree that no reimbursement will exceed the specific costs listed in the Project Plan Revision #2 and in Section 1 of this Agreement without the consent of the parties. The Developer may certify those project costs listed under Phase I in the Project Plan Project Plan Revision #2 upon these improvements being completed and accepted by the City. The Developer may certify those project costs listed under Phase II in the Project Plan Revision #2 upon these improvements being completed and accepted by the City.

The Developer's reimbursement from the proceeds of Tax Increment District Thirty-Eight is subject to the following terms and conditions:

- a. The parties agree that all public improvements contemplated in the Project Plan Revision #2 have been completed and accepted by the City.
- b. Developer agrees that all public improvements being funded under this Agreement were designed and built in conformity with the City's Standard Specifications for Public Works Construction, Design Criteria Manuals and any other laws, ordinances, policies or resolutions which may be applicable.
- c. Developer agrees that it has not and will not seek any tax abatement for its property within the boundaries of Tax Increment District Thirty-Eight until the District is terminated pursuant to SDCL 11-9-46.

SECTION 3. 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 4. All positive tax increments received in Tax Increment District Number Thirty-Eight received within twenty years of creation of the District shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Thirty Eight Fund" ("Fund"). Subject to Sections 3, 6, 7, 8 and 9 of the Original Contract and the limitation that at no time shall the cumulative total of payments made to Developer from the Fund exceed the lesser of the total amount of disbursements certified pursuant to Section 6 of the Original Contract or the total of the estimated project costs set forth in Section 3 of the Original Contract and the Tax Increment District Number Thirty-Eight Project Plan Revision #2 as well as any other limitations contained herein, the City shall, generally within thirty (30) days after receipt of each tax increment payment from the Treasurer of Pennington County, disburse the total amount in the Fund to the Developer or its designee. The parties agree that this 30-day timeframe will not apply to the first payment after certification pursuant to Section 6 of the Original Contract, as such payment is approved by the Common Council through its approval process.

SECTION 5. This document along with the Contract for Private Development Tax Increment District Number Thirty-Eight, the Project Plan for Tax Increment District Thirty-Eight, the Amendment to Contract for Private Development for Tax Increment District No. 38, and the Project Plan Revision #2 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. This Agreement may only be amended or modified in writing by mutual agreement of the parties.

The parties agree that Sections 4, 5, 6, 8, 9, 10, 11, 12, and 14 of the original Contract for Private Development Tax Increment District Number Thirty-Eight between the Parties remains in full force and effect and are hereby incorporated in their entirety into this Agreement. Finally, the parties agree that the Amendment to Contract for Private Development for Tax Increment District No. 38 remains in full force and effect and is hereby incorporated into this Agreement.

Dated this ____ day of _____, 2017.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2017, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Dated this _____ day of _____, 2017.

HEARTLAND RETAIL CENTER, LLC

By _____
Its _____

State of _____)
 ss.
County of _____)

On this the _____ day of _____, 2017, before me, the undersigned officer personally appeared _____, who acknowledged himself/herself to be the _____ of Heartland Retail Center, LLC, 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.

Notary Public, _____

My Commission Expires:

(SEAL)