

#LF121405-35

AMENDED CONTRACT FOR PRIVATE DEVELOPMENT  
TAX INCREMENT DISTRICT NUMBER FIFTY ONE  
CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

Between

KATELAND DEVELOPMENT CO.  
and the

CITY OF RAPID CITY, SOUTH DAKOTA

Dated as of December 19, 2005

THIS AGREEMENT, is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2005, between Kateland Development Co., a South Dakota Corporation, hereinafter referred to as the "Developer," and the City of Rapid City, 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 Fifty-One by a resolution dated January 17, 2005.

SECTION 2. The City approved the Project Plan for Tax Increment District Number Fifty-One on February 7, 2005.

SECTION 3. The estimated project costs to be paid by the district, as set forth in the plan, are as follows:

Capital Costs:

Phase I

Country Road and interior loop road	\$ 225,000.00
Water and Sewer infrastructure	\$ 190,000.00
Drainage Improvements	\$ 85,000.00

Phase II

Public Improvements	\$ 350,000.00
---------------------	---------------

Professional Service Costs: \$ 0

Financing Costs:

Financing Interest	\$ 705,484.13
--------------------	---------------

Contingency Costs: \$ 0

Relocation Costs: \$ 0

Organizational Costs: \$ 0

Necessary and Convenient Costs (Phase II): \$ 350,000.00

TOTAL: \$ 1,905,484.13

Imputed Administrative Costs\*

City of Rapid City	\$ 2,050.00
--------------------	-------------

\*The imputed administrative costs are interest-free, are not included in the total project costs, and are to be paid from the balance remaining in the TID #51 fund available to the City Finance Officer on February 15, 2010.

SECTION 4. As set forth in the project plan, the project costs are to be divide between the City and Developer as follows:

Phase I Project Costs (Developer)

Capital Costs:

Country Road interior loop road	\$ 225,000.00
Water and Sewer infrastructure	\$ 190,000.00
Drainage improvements	\$ 85,000.00
Professional Service:	\$ 0
Financing Costs:	
Financing Interest	\$ 247,820.47
Contingency Costs:	\$ 0
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0
Other Necessary and Convenient Costs:	\$ 0

TOTAL: \$ 747,820.47

Phase II Project Costs (City)

Capital Costs:

Public Improvements	\$ 350,000.00
Professional Service:	\$ 0
Financing Costs:	
Financing Interest	\$ 457,663.66
Contingency Costs:	\$ 0
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0
Other Necessary and Convenient Costs:	
Other	\$ 350,000.00

TOTAL: \$ 1,157,663.66

SECTION 5. The base value of the property located in Tax Increment District Number Fifty-One has yet to be properly certified by the South Dakota Department of Revenue. Both parties understand that before Tax Increment District Number Fifty-One can legally exist the base valuation of the property within the district must be certified by the Department of Revenue. It is further understood that this agreement is contingent upon certification of the value of the land in the district by the South Dakota Department of Revenue. When the certified land value has been received by the City from the Department of Revenue it will be incorporated into, and become part of, this Agreement. The Developer assumes any and all risk that may result from entering into this Agreement prior to receiving a certified land value from the Department of Revenue.

SECTION 6. Developer will secure private financing to fund improvements pursuant to the Tax Increment District Number Fifty-One approved project plan, anticipated to be a

bond or note, at an average interest rate over the life of the loan not to exceed Six Percent (6%) per annum. It is understood by the parties that should the Developer receive a loan for an amount less than Six Percent (6%) per annum that the City will only reimburse the actual amount of the loan.

SECTION 7. 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. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Fifty-One Project Plan have, in fact, been disbursed for the project.

SECTION 8. It is understood by the parties that the boundaries of Tax Increment District Fifty-One overlaps the boundaries of Tax Increment District Thirty-Six. Any increments generated from areas within this district that overlap with the boundaries of other districts will first be used to pay for the improvements in the previously created districts in the order that they were created. Only after the disbursements required of the City in the developer's agreements for the previously created districts have been satisfied will the City have a duty to disburse funds under this Agreement for any area that is in both districts.

SECTION 9. All positive tax increments received in Tax Increment District Number Fifty-One, subject to the conditions set forth in Section 8, shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Fifty-One Fund," hereinafter referred to as the "Fund." It is understood by the parties that it will not be possible to determine what the positive increment is until the City receives the certified land valuation for the property within the district from the Dept. of Revenue. It is further understood that until the City receives the certified land value from the Dept. of Revenue no obligation to make deposits into the Fund will arise. Subject to the preceding conditions, 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 to the Developer or their designee, subject to 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 6 of this agreement or the total of the estimated project costs set forth in the Tax Increment District Number Fifty-One Project Plan.

SECTION 10. 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 5 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.

SECTION 11. It is understood by the parties that one of the purpose in creating Tax Increment District Fifty-One is to provide low income housing for the City. To receive

disbursements from the "Fund" described in Section 9, the Developer agrees to meet the following criteria:

1. A minimum of 51% of the dwelling units within the Kateland Subdivision will be occupied by residents at or below 115% of the HUD median income for the area;
2. The housing in the Kateland Subdivision that meets the criteria established in subsection 1 is required to remain affordable as defined in that subsection for a period of (10) years.

In order to insure that the above criteria are met, for all dwelling units the Developer wishes to have counted toward the 51% requirement, the Developer further agrees to submit to the City, at the time of sale, documentation, acceptable to the City, that confirms that the buyer complies with the criteria in subsection 1. In addition the Developer will provide to the City a copy of a covenant or mortgage that contains the following provisions:

1. That the house will be sold only to those buyers that meet the criteria in subsection 1 for a period of Ten (10) years;
2. That should the home be sold to a resident not meeting the requirements within the 10 year period, the seller agrees to pay to the City \$18,240 which is the approximate per lot share of the TIF funds paid to the Developer for the infrastructure improvements. This amount may be reduced by 10% per year until the 10 year period has expired;
3. That the house will not be used as a rental property.

Should the Developer not comply with the above criteria then he will not be eligible to receive disbursements from the "Fund" described in Section 9 of this Agreement. The Developer may supply the necessary documentation himself or may partner with a non profit housing organization to provide the documentation.

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-One receipted into the 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 Developer under Section 5 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 7 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 13. It is a condition and 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 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 Fifty-One Project Plan. 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 Fifty-One 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 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 \_\_\_\_\_, 2005.

KATELAND DEV. CO.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

State of South Dakota )

ss.

County of Pennington )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2005, 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 Kateland Development Co. and acknowledged that he executed the foregoing instrument for the purposes therein contained on behalf of Kateland Development Co., by signing such as \_\_\_\_\_ of Kateland Development Co.

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 \_\_\_\_\_, 2005, 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.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

(SEAL)