

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

Between

MARKET SQUARE, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

Dated as of December 7, 2009

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2009, between Market Square, LLC, a South Dakota limited liability corporation, herein after referred to as the “Developer,” and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, herein after referred to as the “City.”

SECTION 1. The City created Tax Increment District Number Fifty-Two by a resolution dated May 2, 2005.

SECTION 2. The City approved the Project Plan for Tax Increment District Number Fifty-Two on May 2, 2005.

SECTION 3. The City agreed to amend the Developer’s Agreement on December 7, 2009 by changing the name of the Developer to “Market Square, LLC” and by removing the cost of “Reclamation of City Owned Property” for a reduction of \$150,000 from the project costs to be paid by the district.

SECTION 4. The estimated project costs to be paid by the district, as set forth in the plan, are as follows:

Capital Costs:

E. St. Charles Street Improvements	\$ 60,000.00
Storm Sewer Improvements	\$ 245,000.00

Professional Service Costs:

Engineering and Design Fees	\$ 60,000.00
-----------------------------	--------------

Financing Costs:

Financing Interest	\$ 655,106.68
--------------------	---------------

Contingency Costs:

\$ 80,000.00

Relocation Costs:

\$ 0

Organizational Costs:

\$ 0

Necessary and Convenient Costs:

\$ 0

TOTAL:

\$ 1,100,106.68

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 #52 fund available to the City Finance Officer on May 15, 2010.

SECTION 5. The base value of the property located in Tax Increment District Number Fifty-Two has been certified by the South Dakota Department of revenue as Six Hundred and Fifty Thousand Dollars (\$650,000).

SECTION 6. Developer will secure private financing to fund the improvements contemplated in the Tax Increment District Number Fifty-Two approved project plan. Such private financing is anticipated to be a bond or note, at an average interest rate over the life of the loan not to exceed Eight Percent (8%) per annum. It is understood by the parties that should the Developer receive a loan for an amount less than Eight Percent (8%) 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-Two Project Plan have, in fact, been disbursed for the project.

SECTION 8. All positive tax increments received in Tax Increment District Number Fifty-Two shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Fifty-Two Fund," hereinafter referred to as the "Fund." 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 7 of this agreement or the total of the estimated project costs set forth in the Tax Increment District Number Fifty-Two Project Plan.

SECTION 9. 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 6 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 obligation to make such disbursement to Developer.

SECTION 10. 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-Two receipted into the Fund specified in Section 8 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 6 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 8 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 11. 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 12. 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-Two 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 13. 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 14. This document along with the Project Plan for Tax Increment District Fifty-Two 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 15. 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 _____, 2009.

MARKET SQUARE, LLC

By: _____

Jim Letner

Its: _____

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2009, before me, the undersigned officer personally appeared Jim letner, who acknowledged himself to be the _____ of MARKET SQUARE, LLC, and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of MARKET SQUARE, LLC by himself as _____.

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 _____, 2009, 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, a municipal corporation, 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 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)