

Prepared by City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

**LIEN AND AGREEMENT FOR ASSIGNMENT OF PROCEEDS OF
REAL ESTATE SALES BY RED ROCK DEVELOPMENT COMPANY, LLC
TO THE CITY OF RAPID CITY
(SDCL 44-1-4)**

This Assignment Agreement is made by and between **RED ROCK DEVELOPMENT COMPANY, LLC**, a South Dakota limited liability company, of 6520 Birkdale Drive, Rapid City, SD 57702 (hereinafter "Red Rock"), DKEA, LLC, a South Dakota limited liability company of 6520 Birkdale Drive, Rapid City, SD 57702 (hereinafter "DKEA"), and the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (hereinafter "City").

WHEREAS, DKEA owns certain real property, which has been platted as described herein;
and

WHEREAS, Red Rock f/k/a Buntrock-Graziano-Ward Development Company, LLC, has entered into a Infrastructure Development Partnership Fund ("IDPF") Agreement with the City on June 26, 2000, pursuant to which the City loaned money to Red Rock to promote economic development on the property; and

WHEREAS, Red Rock is to pay back the IDPF loan in installments upon the platting of parcels from the property; and

WHEREAS, Red Rock therefore owes the City an installment payment of principal and interest on the portion of the property recently platted; and

WHEREAS, the City has agreed to allow the installment payment owed to be satisfied from the proceeds of the sale of the portion of property to be platted and sold; and

WHEREAS, the City, DKEA, and Red Rock desire to reduce the agreement to writing.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Platted Property. DKEA owns the following property:

Lots 11 through 16, both inclusive, and Lots 18 through 22, both inclusive, all in Block 3 of Red Rock Village in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Document No. A201718227.

which is referred to hereinafter as the “Subject Property.” The plat application was assigned the File Number 17PL135 by the City. The contents of the plat file are incorporated herein by this reference.

3. Assignment of Proceeds. DKEA and Red Rock agree to assign from the proceeds of the sale of each lot platted pursuant to this Agreement, the amount of Ten Thousand Dollars (\$10,000.00) (the “Assigned Proceeds”). Any remaining proceeds from each lot shall be retained by DKEA and/or Red Rock.

4. Deferment of Principal and Interest Due. Pursuant to the Loan and Infrastructure Development Agreement between the parties, and the accompanying Promissory Note (together the “Loan Agreement”), Red Rock is required to repay a pro-rata portion of the principal and interest due on the IDPF loan prior to recording the plat for the Subject Property. The property is required to be platted prior to being sold. As such, the City agrees to defer such payment until the time of closing on the sale of each of the lots to be platted, as referenced above. DKEA and Red Rock agree to instruct the closing agent to remit the Assigned Proceeds directly to the City. In the event the Assigned Proceeds are not paid to the City by the closing agent, DKEA and Red Rock agree, jointly and severally, to immediately pay the City an amount equal to the Assigned Proceeds.

5. Lien. Each platted lot shall have a lien upon it equal to \$10,000. The City agrees to satisfy such lien upon payment of the sale proceeds. The City designates its Finance Officer as signatory for such satisfactions, and agrees to coordinate the satisfaction of liens with DKEA and/or Red Rock’s title company or closing agent, so that clear title may be gained by each buyer at closing.

6. Default. The parties agree that a breach of any term of this Assignment Agreement shall also operate as a breach of the Loan Agreement. The City at its option may, upon any default, without notice or demand, declare the entire principal sum and all accrued interest then unpaid immediately due and payable. Failure to immediately remit such sum shall be cause for the City to seek all available remedies.

7. Entire Agreement and Amendments. This Assignment Agreement, together with the Loan Agreement, constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written. This Assignment Agreement may only be amended by a written document duly executed by all parties.

8. Binding Effect. The covenants and agreements contained in this Assignment Agreement apply to, inure to the benefit of, and are binding upon the parties hereto and their respective successors administrators, executors, and assigns.

9. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Assignment Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

10. Counterparts. This Assignment Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Assignment Agreement.

11. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments as shall be necessary or convenient to effectuate the purposes contemplated by this Assignment Agreement.

12. Severability. The invalidity of all or any part of any section of this Assignment Agreement shall not render invalid the remainder of this Assignment Agreement or the remainder of such section. If any provision of this Assignment Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Assignment Agreement to the extent possible. If any one or more of paragraphs 2, 3 or 4 are held to be unenforceable and are not so modified, the entire Assignment Agreement shall be voided.

13. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Assignment Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Assignment Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Assignment Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Assignment Agreement.

14. Applicable Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota without regard to provisions on conflict of laws. All litigation under this Agreement shall be take place in the Circuit Court of Pennington County, South Dakota.

[Signature pages follow]

