

Document Prepared by:
CDBG Program Division
300 Sixth Street
Rapid City, SD 57701
(605) 394-4181

TWENTY YEAR FORGIVABLE PURCHASE MONEY ONE HUNDRED EIGHTY DAY REDEMPTION MORTGAGE

THIS MORTGAGE, made this _____ day of _____, 2020, by Black Hills Works, Inc., a domestic nonprofit corporation organized under the laws of the State of South Dakota, of 3650 Range Road, Rapid City, County of Pennington, State of South Dakota, hereinafter called "Mortgagor", and the City of Rapid City, 300 Sixth Street, Rapid City, County of Pennington, State of South Dakota, a municipal corporation organized under the laws of the State of South Dakota, hereinafter called "Mortgagee":

WITNESSETH, that said Mortgagor, hereby mortgages to said Mortgagee the following described premises located at 248 Curtis Street, Rapid City, South Dakota, 57701 in the City of Rapid City, County of Pennington, State of South Dakota, and legally described as:

South Seventy-Eight and Five Tenths Feet (S78.5') of the West Ninety-eight and Five Tenths Feet (W98.5') less Lot H-1 of Block Thirty-one (31) of Airport Addition to the City of Rapid City, Pennington County, South Dakota

known as the "Property," as security for the payment to said Mortgagee at the City Finance Office, 300 Sixth Street, Rapid City, South Dakota, its escrow agent for affordable housing and public facility loans, of the principal sum of **One Hundred Eighty Five Thousand Two Hundred Forty Five Dollars and 00/100 (\$185,245.00)** and interest thereon at **zero (0%) per annum** from date, according to a certain promissory note bearing even date herewith, a true and correct copy of which is attached hereto and made a part hereof, due on the **_____ day of _____, 202__**.

The Mortgagor further covenants and agrees with Mortgagee, as follows:

1. The Mortgagor will promptly pay the principal indebtedness evidenced by the Note, and all other charges and indebtedness provided therein and in this Mortgage, at the times and in the manner provided in the Note and in this Mortgage.
2. The Mortgagor will pay when due, as hereinafter provided, all taxes, assessments, water bills and other governmental charges, fines and impositions, of every kind and nature whatsoever, now or hereafter imposed on the mortgaged property, or any part thereof, and will pay when due every amount of indebtedness secured by any lien to which the lien of this Mortgage is expressly subject.
3. This Mortgage and the Note were executed and delivered to secure the transfer of legal title of the Property from the Mortgagee to the Mortgagor. Furthermore, this Mortgage and the Note were given for the price of the Property at the time of its conveyance as a purchase money mortgage.
4. No building or other structure or improvement mortgaged hereby shall be removed or demolished without prior written consent of the Mortgagee. The Mortgagor will maintain the mortgaged property in good condition and state of repair and will not suffer or permit any waste to any part thereof, and will promptly comply with all the requirements of federal, state, and local governments, or any departments, divisions or bureaus thereof, pertaining to such property or any part thereof. The Mortgagee has transferred a fee simple determinable estate in the Property to the Mortgagor by quit claim deed. That fee simple determinable

estate will automatically expire if **Twenty Thousand Dollars and 00/100 (\$20,000.00)** worth of improvements to the Property are not completed by Mortgagor by **October 31, 2020**. If Mortgagor's fee simple determinable estate automatically expires and the Property comes under ownership of Mortgagee, Mortgagor's loan in the Note will be fully forgiven.

If Mortgagor has abandoned the Property, then Mortgagee may do and pay for whatever is reasonable or appropriate to protect Mortgagee's interest in the Property and rights under this Mortgage, including securing and/or repairing the Property. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Mortgagee may take action under this section, Mortgagee does not have to do so and is not under any duty or obligation to do so. It is agreed that Mortgagee incurs no liability for not taking any or all actions authorized under this section. Any amounts disbursed by Mortgagee under this section shall become additional debt of Mortgagor secured by this Mortgage. These amounts shall bear interest at the rate of six percent (6%) per annum from the date of disbursement and shall be payable, with such interest, upon notice from Mortgagee to Mortgagor requesting payment.

5. The Mortgagor will not voluntarily create, permit or suffer to be created or to exist, on or against the mortgaged property, or any part thereof, any lien superior to the lien of this Mortgage.
6. The Mortgagor shall carry sufficient insurance coverage to protect the Property from loss due to theft, fraud, and or undue physical damage in accordance with 2 CFR 200, as may be amended from time to time. The Mortgagor will keep all buildings, other structures and improvements, now existing or which may hereafter be erected or installed on the land mortgaged hereby, insured against loss by fire and other hazards, casualties and contingencies, in such amounts and manner, and for such periods, all as may be required from time to time by the Mortgagee. In the event of loss or damage to the mortgaged property, the Mortgagor will give to the Mortgagee immediate notice thereof by mail.
7. Any improvements and all plans and specifications therefore shall comply with all applicable Federal and municipal ordinances, regulations, and rules made or promulgated by lawful authority, and upon their completion shall comply therewith.
8. Upon any failure by the Mortgagor to comply with or perform any of the terms, covenants or conditions of this Mortgage requiring the payment of any amount of money by the Mortgagor, other than the principal amount of the loan evidenced by the Note, interest and other charges, as provided in the Note, the Mortgagee may at its option make such payment. Every payment so made by the Mortgagee (including reasonable attorney's fees incurred thereby), with interest thereon from the date of such payment, at the rate of six percent (6%) per annum except any payment for which a different rate of interest is specified herein, shall be payable by the Mortgagor to the Mortgagee on demand and shall be secured by this Mortgage. This Mortgage with respect to any such amount and the interest thereon shall constitute a lien on the mortgaged property prior to any other lien attaching or occurring subsequent to the lien of this Mortgage.
9. The principal amount owing on the Note together with interest thereon and all other charges, as therein provided, and all other amounts of money owing the Mortgagor to the Mortgagee pursuant to and secured or intended to be secured by this Mortgage, shall immediately become due and payable without notice or demand if there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Mortgage (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Mortgage or to enforce laws or regulations).

The principal amount owing on the Note together with interest thereon and all other charges, as therein provided, and all other amounts of money owing the Mortgagor to the Mortgagee pursuant to and secured or intended to be secured by this Mortgage, shall become fully due and payable without notice or demand upon the happening of any of the following events within **twenty (20) years** of the date of execution of this instrument:

- (a) The Property is no longer a public facility meeting the national objective of **benefitting low- and moderate-income persons, specifically a group home for low- and moderate-income individuals with disabilities**;
- (b) Nonperformance by the Mortgagor of any covenant, agreement, term or condition of this Mortgage, or of the Note (except as otherwise provided in subdivision (a) hereof) or of any other agreement heretofore, herewith or hereafter made by the Mortgagor with the Mortgagee in connection with such indebtedness;
- (c) Failure of the Mortgagor to perform any covenant, agreement, term or condition in any instrument creating a lien upon the mortgaged property, or any part thereof, which shall have priority over the lien of this Mortgage;
- (d) The Mortgagee's discovery of the Mortgagor's failure in any application of the Mortgagor to the Mortgagee to disclose any fact deemed by the Mortgagee to be material or of the making therein or in any other agreements entered into by the Mortgagor with the Mortgagee (including, but not limited to, the Note and this Mortgage) of any misrepresentation by, on behalf of, or for the benefit of, the Mortgagor;
- (e) Ownership of the Property is transferred to another person or entity, unless the transferee signs a promissory note and mortgage binding the transferee to all of the original terms (or alternative terms approved by the City of Rapid City) in the Note and this Mortgage and prior to a transfer the Community Development Block Grant Program Division Manager for the City of Rapid City grants written approval of the transfer;
- (f) The Property is refinanced for any reason other than rate reduction, term reduction, or term increase;
- (g) The enactment after the day of this Mortgage of any law of the State of South Dakota deducting from the value of the mortgaged property (or any part thereof), for the purpose of taxation, any lien thereon, or changing in any way its laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of collection of any such tax, so as to affect this Mortgage; or
- (h) Failure to pay the amount of principal and interest, or other charges payable on the Note or this Mortgage, which shall have become due, prior to the date of maturity.

All the events in this section enumerated are in this Mortgage are considered events of default.

10. In case of default, the Mortgagee may send Mortgagor a written notice telling Mortgagor that Mortgagor is in default and that Mortgagor must by a certain date pay the full unpaid amount of principal owing on the Note together with interest thereon and all other charges, as provided in the Note, and all other amounts of money owing the Mortgagor to the Mortgagee pursuant to and secured or intended to be secured by this Mortgage. That certain date must be at least 30 days after the date on which the notice is mailed to Mortgagor or delivered by other means to Mortgagor. If the full unpaid amount of principal owing on the Note together with interest thereon and all other charges, as provided in the Note, and all other amounts of money owing the Mortgagor to the Mortgagee pursuant to and secured or intended to be secured by this Mortgage are not paid by the certain date, this Mortgage may be foreclosed by action or by advertisement as provided by statute or the rules of practice relating thereto, and this section shall be deemed as authorizing and constituting the power of sale as mentioned in such statutes or rules and any amendatory thereto. If the Mortgagee has required Mortgagor to pay as described above, the Mortgagee will have the right to be paid back by Mortgagor for all of Mortgagee's costs and expenses in enforcing the Mortgage, including but not limited to Mortgagee's costs and expenses in a foreclosure by action or by advertisement, to the extent not

prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees. The Mortgagee's failure to exercise any of its rights hereunder shall not constitute a waiver thereof.

11. In case of a foreclosure by action, the holder of the certificate of sale may apply to the court for reduction of the redemption period, if the Property has been abandoned by the Mortgagor. If, after notice to the party(ies) as the court directs, the court finds the Property has been abandoned, the redemption period may be reduced. The redemption period may not be reduced to less than 60 days from the date of the recording of the certificate of sale.
12. **NOTICE. THE PARTIES AGREE THAT THE PROVISIONS OF THE ONE HUNDRED EIGHTY DAY REDEMPTION MORTGAGE ACT GOVERN THIS MORTGAGE.**
13. The Mortgagor will give immediate notice by registered or certified mail to the Mortgagee of any fire, damage or other casualty affecting the mortgaged property, or of any conveyance, transfer, or change in ownership of such property, or any part thereof.
14. Any notice, demand, or request by Mortgagee or Mortgagor in connection with this Mortgage must be in writing. Any notice that must be given to Mortgagor under this Mortgage will be given by delivering it or by mailing it by first class mail to Mortgagor at the Property's address listed above or at a different address if Mortgagor gives the Mortgagee a notice of Mortgagor's different address. Any notice that must be given to the Mortgagee under this Mortgage will be given by delivering it or by mailing it by first class mail to the Mortgagee at the address stated in Section 3 of the Note or at a different address if Mortgagor is given a notice of that different address. Any notice to Mortgagor or Mortgagee in connection with this Mortgage shall be deemed to have been given when mailed by first class mail or when actually delivered to or posted at the relevant address.
15. In case of a foreclosure of the mortgaged property it may be sold in one parcel.
16. Mortgagor waives all rights of homestead exemption in the Property.
17. This Mortgage and all covenants, agreements, terms and conditions herein contained shall be binding upon and inure to the benefit of the Mortgagor and the heirs, legal representatives and assigns of the Mortgagor, and, to the extent permitted by law, every subsequent owner of the mortgaged property; and shall be binding upon and inure to the benefit of the Mortgagee and its assigns.
18. This Mortgage shall be governed by South Dakota law. All rights and obligations contained in this Mortgage are subject to any requirements and limitations of South Dakota law. In the event that any provision or clause of this Mortgage or the Note conflicts with South Dakota law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision.
19. Civil Rights Compliance by Mortgagor and Personnel
 - (a) Compliance
Mortgagor hereby agrees to comply with all applicable state, local and civil rights laws and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.
 - (b) Nondiscrimination
Mortgagor hereby agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in 42USC 5309(a) are still applicable. Mortgagor must comply with state and

local civil rights laws proscribing housing discrimination based on sexual orientation and gender identity. The Mortgagor in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

(c) Section 504

Mortgagor agrees to comply with all federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program.

20. Affirmative Action

(a) Approved Plan

The Mortgagor hereby agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in Executive Order 11246 of September 24, 1966.

(b) Women and Minority Owners Businesses (W/MBE)

Mortgagor will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Mortgage. As used in this Mortgage, the terms, "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51%) percent owned and controlled by minority group members or women. The Mortgagor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

(c) Access to Records

The Mortgagor shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Mortgagee, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

(d) Notifications

The Mortgagor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Mortgagor, advising the labor union or worker's representative of the Mortgagor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Mortgagor will, in all solicitations or advertisements for employees placed by or on behalf of the Mortgagor, state that it is an Equal Opportunity or Affirmative Action employer.

21. "Section 3" Clause

(a) Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended (12 USC 1701u), and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Mortgage, shall be a condition of the federal financial assistance provided under this Mortgage and binding upon the Mortgagor and any of the Mortgagor's subcontractors, their successors and assigns, to those sanctions specified by this Mortgage through which federal assistance is provided. The Mortgagor certifies and hereby agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Mortgagor further agrees to comply with these Section 3 requirements and to include the following language in all subcontracts executed under this Mortgage:

“The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Mortgagor further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), or housing construction, are given to low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), or housing construction, to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located and to low- and very low-income participants in other HUD programs. The Mortgagor certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

(b) Subcontracts

The Mortgagor will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

22. Subcontracts

(a) **Inclusion of Terms in Subcontracts**

The Mortgagor will include the provisions of Sections “19. Civil Rights” and “20. Affirmative Action” in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors. The Mortgagor will include the provisions of Section “21. ‘Section 3’ Clause” in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Mortgagee.

(b) Monitoring

The Mortgagor will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(c) Selection Process

The Mortgagor shall undertake to insure that all subcontracts let in the performance of this Mortgage shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Mortgagee along with documentation concerning the selection process.

23. Hatch Act

The Mortgagor hereby agrees that no funds provided, nor personnel employed under this Mortgage, shall in any way or to any extent engage in the conduct of political activities in violation of (5 USC 7323).

24. Conflict of Interest

The Mortgagor hereby agrees to abide by the provisions of 2 CFR 200, as now in effect and as may be amended from time to time, and 24 CFR 570.611, which include (but are not limited to) the following:

- (a) The Mortgagor shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds;
- (b) No employee, officer or agent of the Mortgagor shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved;
- (c) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes but is not limited to any person who is an employee, agent, consultant, officer, or elected or appointed official of the Mortgagor, or any designated public agency; and
- (d) The Mortgagor covenants that neither it nor any member of its Board of Directors, officers, or employees presently have any interest in any project to be financed, and shall not acquire any interest therein which would conflict with the performance of the project required under this Mortgage or applicable statute, rule or regulation. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm/household selected for award. The Mortgagor's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements during office tenure or for one year after the closeout of the grant. This stipulation must be included in all other contracts and subcontracts to this grant.

25. Lobbying

The Mortgagor certifies, to the best of its knowledge and belief, that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the Mortgagor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The Mortgagor shall require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and co-operative agreements) and that all Mortgagors shall certify and disclose accordingly.
- (d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a

prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

26. Religious Activities

The Mortgagor hereby agrees that funds provided under this Mortgage will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

27. Environmental Conditions

(a) Air and Water

The Mortgagor hereby agrees to comply with the following requirements insofar as they apply to the performance of this Mortgage:

1. Clean Air Act, 42 U.S.C., 7401, et seq.;
2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 308, and all regulations and guidelines issued thereunder; and
3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

(b) Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Mortgagor shall assure that the activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

(c) Lead-Based Paint

The Mortgagor agrees that any construction or rehabilitation of residential structures with assistance provided under this Mortgage shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35.100 et seq. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

(d) Historic Preservation

The Mortgagor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Mortgage. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

(e) Environmental Review

The Mortgagee will conduct the environmental review and provide documentation of the findings to the Mortgagor upon its completion. The Mortgagor cannot commit or expend any money for until receipt of written notification of an acceptable environmental review finding and "Notice to Proceed" by the Mortgagee.

