

**ASSIGNMENT AGREEMENT FOR TAX INCREMENT
FINANCING DISTRICT NUMBER EIGHTY-SIX**

THIS ASSIGNMENT AGREEMENT FOR TAX INCREMENT FINANCING DISTRICT NUMBER EIGHTY-SIX (“Agreement”) is entered into by **BLACK HILLS INDUSTRIAL CENTER, LLC**, a South Dakota limited liability company, of 520 Kansas City Street, Suite 101, Rapid City, SD 57701 (“Developer”), the **CITY OF RAPID CITY**, a municipal corporation and political subdivision of the State of South Dakota, of 300 Sixth Street, Rapid City, SD 57701 (“City”), and **BANKWEST, INC.**, a South Dakota banking corporation, of 420 South Pierre Street, Pierre, SD 57501 (“Lender”). The above-referenced parties may be collectively referred to herein as the “Parties.”

WHEREAS, the Common Council of the City of Rapid City approved Resolution 2022-034 on May 16, 2022, creating Tax Increment Financing District Number Eighty-six pursuant to Chapter 11-9 of the South Dakota Codified Laws. A copy of Resolution 2022-034 is attached hereto as Exhibit A and is incorporated herein by reference; and

WHEREAS, on May 16, 2022, the City also adopted Resolution 2022-035, which approved a Project Plan for Tax Increment Financing District Number Eighty-six, identifying the project costs payable from the tax increment generated, pursuant to SDCL 11-9-14 and SDCL 11-9-15; 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; and

WHEREAS, on September 22, 2022, Developer and City entered into a Contract for Construction of Public Improvements by Private Developer for Tax Increment Financing District Number Eighty-six between Black Hills Industrial Center, LLC and City of Rapid City (“Original Contract”), attached hereto as Exhibit B; and

WHEREAS, Developer has agreed to advance the funds necessary to construct the public improvements in the Tax Increment Financing District Number Eighty-six Project Plan as further explained in the Original Contract; and

WHEREAS, Lender has agreed to loan the funds to Developer to accomplish the purposes set forth in the Original Contract on the condition that the Developer assign its interest in both the Original Contract and all future positive tax increments owed to Developer pursuant to the Original Contract.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties set forth herein, the Parties agree as follows:

1. City’s Payment to Lender. City will pay directly to Lender those positive tax increments which are collected by the City and deposited in the Fund described in Section 1.3 of the Original Contract and which are due to Developer pursuant to the Original Contract until

Developer's loan obligation to Lender is paid in full or the Tax Increment Financing District is dissolved, whichever comes first. It is the specific intent of the Parties that the City is not obligated to pay any sums to Lender other than the amounts due to Developer under the Original Contract. Any obligation the City has to Lender shall cease by the City's paying to Lender the tax increments due to Developer until Developer's loan obligation is satisfied or Tax Increment Financing District Eighty-six is terminated, whichever comes first. Payments will be made to Lender at the address above, or at a different address upon written notice by Lender.

2. Insufficient Increments to Pay Developer's Loan Obligation. Lender agrees that, if City makes payment to Lender of all funds due to Developer under the Original Contract, there is no liability by City for Developer's loan obligation and Lender shall look solely to its loan agreement(s) with Developer and Developer's guarantors, if any, for any rights of recovery upon default. If Tax Increment Financing District Eighty-six is terminated before Lender is paid in full for Developer's loan obligation or if the increments are insufficient to pay Developer's loan obligation, Lender's sole recourse shall be against Developer and its guarantors, and the City shall have no liability to Lender, provided, however, the City has made all prior payments to Lender required herein.

3. Exchange of Information. Upon reasonable request and notice, Lender agrees to provide financial reports to City and Developer to advise them of the ongoing status of the loan obligation by Developer to Lender. Upon reasonable request and notice, City agrees to provide information to Lender to advise about the completion of public improvements and the certification of costs of improvements made in Tax Increment Financing District Eighty-six.

4. Developer's Payments to Lender. All Parties to this Agreement acknowledge that City's obligation to pay pursuant to this Agreement remains even if Developer makes payments to Lender for Developer's loan obligation. The Parties agree that City's obligation to pay Lender continues regardless of payments Developer makes to Lender until Lender has been paid in full for Developer's loan obligation or until Tax Increment Financing District Eighty-six is dissolved, whichever comes first. City will make payments to Lender at 311 Omaha Street, Rapid City, South Dakota 57701, or at a different place if requested by the Lender in writing.

5. Lender Bound by Original Contract. Lender agrees to be bound by the terms of the Original Contract between City and Developer relating to payment. The Parties agree that City's obligation for payment in this Agreement is limited to those amounts set forth in the Original Contract.

6. Security Interest. Developer hereby grants Lender a security interest in all funds actually received or collected by City to support any properly approved or revised project plan for Tax Increment Financing District Eighty-six, as such District may also be revised, expanded, or otherwise supplemented to support the Project, and that the City is obligated to pay to Developer under the Original Contract.

7. Conditions. Developer hereby assigns to Lender all of Developer's right, title, and interest in and to the Original Contract as additional security for Developer's loan obligation. Until and unless there is a default by Developer with respect to Lender, as described in the

applicable loan documents, Developer may and shall continue to act as Developer under the terms of the Original Contract and shall have all rights, duties, and obligations associated therewith.

8. Notice of Default. In the event of Developer's default with respect to Lender, as described in the applicable loan documents, Lender may, upon written notice to the City and without further consent from the Developer, assume the rights, duties, and obligations of the Developer under the Original Contract. In such event and upon written notice to the City, Lender shall, contingent upon Lender's cure of all then-existing defaults by the Developer under the Original Contract, have all the rights, duties, and obligations of Developer under the Original Contract. City shall thereafter continue in a manner provided for in the Original Contract as if Lender were originally a party thereto as developer.

9. Lender's Consent. The City agrees it will not enter into, accept, or perform any material change or modification of the Original Contract without the prior written consent of Lender. The right, title, and interest of Lender under the Original Contract pursuant to this Assignment shall not be modified in any material way without the prior written consent of Lender.

10. Definitions. The term "Original Contract" as used in this Agreement includes the Contract for Construction of Public Improvements by Private Developer for Tax Increment Financing District Number Eighty-six between Black Hills Industrial Center, LLC and City of Rapid City and any subsequent revisions or amendments thereto approved by the Parties, including any properly approved revised project plan incorporated into the Original Contract pursuant to its Section 2.1. The term "Developer's loan obligation" as used in this Agreement is Developer's debt to Lender for public improvements approved as Project Costs in any Project Plan for Tax Increment Financing District Eighty-six; Developer's loan obligation does not include debt of Developer to Lender for improvements which are not Project Costs within any Project Plan approved for Tax Increment Financing District Eighty-six.

11. Counterparts. This Agreement may be executed in counterparts and by different parties on different counterparts with the same effect as if the signatures thereto were on the same instrument. This Agreement shall be effective and binding upon the Parties as of the date in which all parties have executed a counterpart of this Agreement ("Effective Date").

12. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, personal representatives, successors and assigns.

13. Entire Agreement. This Agreement, together with the related written agreements specifically referred to herein, represents the only agreement among the parties concerning the subject matter of this contract and supersedes all prior agreements, whether written or oral, relating to the subject matter of this agreement.

14. Modification and Waiver. No purported amendment, modification, or waiver of any provision hereof shall be binding unless set forth in a written document signed by all Parties (in

the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.

15. Notice to Terminate and Cure. City will not terminate the Original Contract without first giving fifteen (15) days prior written notice to Lender, which notice shall set forth the alleged defaults by the Developer upon which the notice is based. City agrees upon the giving of such notice, Lender shall have the right during such fifteen (15) day period to exercise Lender's rights under this Agreement and cure the defaults by Developer that the City asserts as grounds for the notice of termination.

16. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of South Dakota, and venue for any dispute arising hereunder shall be exclusively in a court of competent jurisdiction in Pennington County, South Dakota.

17. Invalid Provisions and Waiver. If any term, restriction, or covenant of this Agreement is deemed illegal or unenforceable, all other terms, restrictions and covenants hereof shall remain unaffected to the extent permitted by law. No waiver by any party of any default, misrepresentation or breach of any representation, warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of any representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any default, misrepresentation or breach of any representation, warranty or covenant prior to or subsequent to such occurrence.

18. Construction. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in the manner appropriate to each as of the Effective Date.

Dated this _____ day of _____, 2022.

CITY OF RAPID CITY

Attest

Steve Allender, Mayor

Tracy Davis, Interim Finance Director

(seal)

State of South Dakota)
) ss.
County of Pennington)

On this the _____ day of _____, 2022, before me, the undersigned officers, personally appeared Steve Allender and Tracy Davis, who acknowledged themselves to be the Mayor and Interim Finance Director, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Interim Finance Director, 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 Interim Finance Director.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Dated this ___ day of _____, 2022.

BANKWEST, INC.

By: _____

Printed Name: _____

Its: _____

State of South Dakota)
) ss.
County of _____)

On this the _____ day of _____, 2022, before me, the undersigned officer personally appeared _____, who acknowledged himself/herself to be the _____ of BankWest, Inc., and that as such _____, being duly authorized so to do, he executed the foregoing instrument for the purposes herein contained.

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

(seal)

Notary Public
My Commission Expires _____

Dated this ____ day of _____, 2022.

BLACK HILLS INDUSTRIAL CENTER, LLC

By _____
Hani Shafai, Its Manager and Sole Member

State of South Dakota)
) ss.
County of Pennington)

On this the ____ day of _____, 2022, before me, the undersigned officer personally appeared Hani Shafai, who acknowledged himself to be the Manager and Sole Member of BLACK HILLS INDUSTRIAL CENTER, LLC, and that as such Manager and Sole Member, being duly authorized to do so, executed the foregoing for the purposes therein contained.

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

(seal)

Notary Public
My Commission Expires _____