

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “*Assignment*”) is made and entered into as of \_\_\_\_\_, 2023, by and between **C.R. LLOYD ASSOCIATES, INC.**, a South Dakota corporation (“*Assignor*”), and **BLOCK 5, LLC**, a South Dakota limited liability company, including, without limitation its wholly owned subsidiaries (collectively, the “*Assignee*”).

### RECITALS:

**WHEREAS**, the City of Rapid City, a South Dakota municipal corporation (the “*City*”) and Assignor are parties to certain Development Agreement dated on or about April 4, 2022, which is attached hereto and incorporated herein by reference (the “*Development Agreement*”) (capitalized terms used herein without definition shall have the meanings ascribed to them in the Development Agreement), pursuant to which, among other things, Assignor agreed to develop the Property to certain standards described therein in consideration of certain economic assistance from the City as well as acquisition and ownership of the real property itself;

**WHEREAS**, Assignor has formed an affiliated single purpose entity under common control with Assignor, which entity is intended to own and operate the Property, and will be syndicated through private placement in order to raise sufficient funds for the equity portion of the financing package required to develop the Property; and

**WHEREAS**, Assignor desires to assign all of its right, title, and interest in and to the Development Agreement to Assignee and, in consideration thereof, Assignee is willing to assume all of Assignor’s duties and obligations under the Development Agreement from Assignor, all of which may be relied upon by the City.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Assignment, and for other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, the parties hereto agree as follows:

1. **ASSIGNMENT.** Subject to the express written consent of the City, Assignor assigns, transfers and conveys to all of Assignor’s right, title and interests in and to the Development Agreement, to the extent such Development Agreement are assignable under any applicable laws and the terms and conditions of such Development Agreement, including, without limitation the ability to acquire the Property and to receive the economic incentives contemplated thereunder. Assignor will be solely liable to the City for any and all obligations as the Developer under the Development Agreement arising prior to the date of the City’s express written consent to the assignment and assumption contemplated under this Agreement (the “*Effective Date*”).

2. **ASSUMPTION.** Subject to the express written consent of the City, Assignee assumes and undertakes the duties and obligations of Assignor under the Development Agreement, including, without limitation, to develop the Property and facilitate the construction of the public improvements contemplated thereunder. Assignee will be solely liable to City for any and all obligations as the Developer under the Development Agreement arising on and after the Effective Date.

3. **ASSIGNOR’S INDEMNIFICATION.** Assignor agrees to defend, indemnify, and hold harmless Assignee from any liability, loss, damage, costs or expenses, including reasonable attorneys’ fees and costs Assignee may suffer as a result of claims, demands, costs or judgments against Assignee arising out of or related to Assignor’s failure to perform any of the terms, covenants, or conditions of the

Development Agreement prior to the Effective Date.

4. **ASSIGNEE'S INDEMNIFICATION.** Assignee agrees to defend, indemnify, and hold harmless Assignor from any liability, loss or damage, including reasonable attorneys' fees Assignor may suffer as a result of claims, demands, costs or judgments against Assignor arising out of or related to Assignee's failure to perform any of the obligations assumed by Assignee and arising out of the Development Agreement on and after the Effective Date.

5. **FURTHER ACTIONS.** Assignor covenants and agrees, to execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, assurances and such other action as Assignee may reasonably request to more effectively consummate the transactions contemplated by this Assignment.

6. **BINDING EFFECT.** This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, agents, successors and assigns, provided that no party may assign their interests under the terms of this Assignment without the express written consent of the other party and the City. This Assignment shall be for the benefit of the parties hereto as well as the City, but shall not benefit any other third parties without the written consent of the parties hereto and the City.

7. **MODIFICATION.** No amendment, modification, change or waiver of any term or provision contemplated under this Assignment shall be valid unless in writing and duly executed by the parties hereto and the City. Any waiver shall be limited to the circumstances or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term or provision hereof or of the same circumstance or event upon any recurrence thereof.

8. **CHOICE OF LAW; JURISDICTION.** This Assignment shall be construed and enforced in accordance with the laws of the State of South Dakota excluding its conflict of laws provisions. Any dispute under or in connection with this Assignment or any of the transactions contemplated herein shall be subject to, and the parties hereby submit to, the exclusive jurisdiction of, and personal jurisdiction within, the state and federal courts located within Pennington County, South Dakota.

9. **INCORPORATION.** The Recitals set forth above and any exhibits or schedules attached hereto are substantive to this Assignment and are incorporated herein as if fully set forth in this section.

10. **COUNTERPARTS.** This Assignment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Assignment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Assignment and of signature pages by facsimile transmission or electronically by the parties hereto or such parties' respective attorneys, will constitute effective execution and delivery of this Assignment as to the parties and may be used in lieu of the original Assignment for all purposes. Signatures of the parties hereto transmitted by facsimile or electronically will be deemed to be their original signatures for any purpose whatsoever.

*The remainder of this page is intentionally left blank*

*Signatures follow on the next page*

**IN WITNESS WHEREOF**, the undersigned parties have caused this Assignment to be executed as of the date first written above.

**ASSIGNOR:**  
C.R. LLOYD ASSOCIATES, INC.

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Chris Thorkelson  
Its: President/CEO

**ASSIGNEE:**  
BLOCK 5, LLC

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Jake Quasney  
Its: Vice President

**CITY CONSENT**

City hereby consents to the foregoing Assignment and Assumption Agreement and agrees to be bound by all its terms.

**CITY OF RAPID CITY**

\_\_\_\_\_  
By: Steve Allender  
Its: Mayor

Attest:

\_\_\_\_\_  
By: Tracy Davis  
Its: Finance Director

Dated: \_\_\_\_\_

(seal)

**EXHIBIT A**  
*The Development Agreement*

[See attached]