

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

THIS ASSIGNMENT AGREEMENT FOR TAX INCREMENT FINANCING DISTRICT NUMBER EIGHTY-FIVE (“Agreement”) is entered into by **BLOCK 5, LLC** a South Dakota limited liability company, of 101 S. Reid Street, Suite 201, Sioux Falls, SD 57103 (“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 **PIONEER BANK & TRUST**, of 2001 West Omaha Street, Rapid City, SD 57702 (“Lender”). The above-referenced parties may be collectively referred to herein as the “Parties.”

RECITALS:

WHEREAS, on April 6, 2022, the Common Council of the City of Rapid City approved Resolution 2022-009 creating Tax Increment Financing District Number Eighty-Five (“TIF District 85”) pursuant to Chapter 11- 9 of the South Dakota Codified Laws, a copy of which is attached hereto as Exhibit A and is incorporated herein by reference; and

WHEREAS, on April 6, 2022, the Common Council of the City of Rapid City also adopted Resolution 2022-010, approving a Project Plan for Tax Increment Financing District Number Eighty-Five that identifies expenditures for public improvements that qualify as project costs pursuant to SDCL 11-9-14 and SDCL 11-9-15, a copy of which is attached hereto as Exhibit B and is incorporated herein by this reference (the “Project Plan”); 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 April 4, 2022, C.R. Lloyd Associates, Inc. (“Lloyd”) and City entered into that certain Development Agreement Between the City of Rapid City and CR Lloyd Associates for the Development of a Mixed-Use Project and for the Payment of Funds from the Revenue Generated by Tax Increment Financing District Eighty-Five, a copy of which is attached hereto as Exhibit C and is incorporated herein by this reference (“Original Contract”); and

WHEREAS, Lloyd has assigned, transferred and conveyed all of its rights, titles and interest under the Original Agreement to Developer, and Developer has agreed to assume and undertake all of the duties and obligations of Lloyd under the Original Agreement; and

WHEREAS, Developer has agreed to advance the funds necessary to construct the public improvements in the 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 City directly pays Lender 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 2 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 TIF District 85 is dissolved, whichever comes first. "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 TIF District 85; 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 TIF District 85. 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 TIF District 85 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 TIF District 85 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.

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 TIF District 85.

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 the 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 TIF District 85 is dissolved, whichever comes first.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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 _____, 2023.

CITY OF RAPID CITY

Attest

Steve Allender, Mayor

Tracy Davis, Finance Director
(seal)

EXHIBIT A
Resolution Creating TIF District 85

[See attached]

EXHIBIT B

Resolution Approving Project Plan for TIF District 85

[See attached]

EXHIBIT C
Development Agreement

[See attached]