

**RELEASE AND INDEMNITY AGREEMENT REGARDING CERTAIN PHASES
OF BIG SKY SUBDIVISION**

This Release and Indemnity Agreement (“this Agreement”) is fully effective as of the ___ day of November, 2016, and is entered into by the City of Rapid City, a South Dakota municipal corporation, on behalf of itself and its successors, assigns, and subrogees (hereinafter referred to as the “City”), and the following parties:

1. DOYLE ESTES, individually (“Estes”) and BIG SKY, LLC (“Big Sky”) each the sole owner of certain of the phases of the Big Sky Development, as identified in the Amended Complaint and further as defined herein, located in Pennington County, South Dakota, on real property specifically identified as Phases 1 through 9 and the Business Development Park, as defined in the Amended Complaint (the “Big Sky Development”);
2. RAPID CONSTRUCTION, LLC, formerly a general partnership known as Rapid Construction Co. and STEVE VAN HOUTEN and ROBERT VAN HOUTEN, general partners of Rapid Construction Co. (“Rapid Construction”), was retained by Estes or Big Sky, as applicable, to serve as the contractor on portions of the Big Sky Development, specifically Phases 5, 5B, 6, 7, 8, 9 and the Business Development Park; and
3. DREAM DESIGN INTERNATIONAL, INC. (“Dream Design”) was retained by Estes or Big Sky, as applicable, to provide engineering and design services on portions of the Big Sky Development, specifically Phases 4, 5, 5B, 6, 7, 8, 9, and the Business Development Park.

(hereinafter referred to jointly as the “Released and Indemnified Parties”).

For and in consideration of the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) paid by the Released and Indemnified Parties, the receipt of which is hereby

acknowledged, the City does hereby fully and forever release, discharge and covenant to hold harmless the Released and Indemnified Parties and their employees, agents, officers, directors, members, owners and co-owners, and insurers from any and all claims, demands, damages, costs, expenses, actions and causes of action arising out of any act or occurrence up to the present time, and particularly any act or occurrence on account of the circumstances alleged or which could have been alleged in the action entitled, CITY OF RAPID CITY v. DOYLE ESTES, individually and BIG SKY, LLC, v. RAPID CONSTRUCTION, LLC, formerly a general partnership known as Rapid Construction Co. and STEVE VAN HOUTEN and ROBERT VAN HOUTEN, general partners of Rapid Construction Co., v. DREAM DESIGN INTERNATIONAL, INC., (Civ. No. 07-599 (which has been consolidated with Civ. No. 08-194), in South Dakota State Circuit Court, Seventh Judicial Circuit, Pennington County) (said consolidated action hereafter being referred to as “the pending Big Sky Litigation”), as well as any events directly or indirectly related to the facts and circumstances alleged or which could have been alleged in the pending Big Sky Litigation, whether said events occurred prior to or subsequent to the commencement of that suit, specifically as follows:

1. Estes and Big Sky, LLC, are released and indemnified by the City with regard to Phases 5, 5B, 6, 7, 8, and 9 of the Big Sky Development and the Big Sky Business Development Park.
2. Rapid Construction is released and indemnified by the City with regard to any and all work on the Big Sky Development, including, but expressly not limited to, Phases 5, 5B, 6, 7, 8, and 9 of the Big Sky Development and the Big Sky Business Development Park.
3. Dream Design is released and indemnified by the City with regard to any and all work on the Big Sky Development, including, but expressly not limited to, Phases 4,

5, 5B, 6, 7, 8, and 9 of the Big Sky Development and the Big Sky Business Development Park.

Payment by or on behalf of either Estes or Big Sky LLC or both shall be made on or before November 30, 2016.

This Agreement is intended to fully release the Released and Indemnified Parties from any responsibility, liability, or expenses associated with the pending Big Sky Litigation as set forth herein. It is not intended to release any parties other than those that have been specifically identified as the Released and Indemnified Parties.

The undersigned City does hereby for itself, individually, as well as its successors, assigns, and subrogees agree to repay the Released and Indemnified Parties for any additional sum of money that the Released and Indemnified Parties might hereafter be compelled to pay on account of any damages awarded to the City as a result of the pending litigation.

It is agreed that the undersigned City shall hold the Released and Indemnified Parties harmless and indemnify them from any and all claims, demands, damages, costs, expenses, actions and causes of action arising advanced by any other persons, governmental entities, firms, corporations or entities arising out of any act or occurrence up to the present time, and particularly arising out of any act or occurrence on account of the circumstances alleged against, or which could have been alleged against, any of the Released and Indemnified Parties in the pending Big Sky Litigation as to Phases 5, 5B, 6, 7, 8, and 9 of the Big Sky Development and as to the Big Sky Business Development Park or that have been alleged against, or that could have been alleged against, Dream Design as to Phase 4 of the Big Sky Development, as well as any events directly or indirectly related to the facts and circumstances alleged against, or which could have been alleged against, the Released and Indemnified Parties as to Phases 5, 5B, 6, 7, 8, and 9 of the Big Sky Development and as to the Big Sky Business Development Park or that were

alleged against, or could have been alleged against, Dream Design as to Phase 4 of the Big Sky Development, in the pending Big Sky Litigation, whether said events occurred prior to or subsequent to the commencement of that suit, including but not limited to claims for contribution or indemnity advanced against the Released and Indemnified Parties by such other persons, governmental entities, firms, corporations or entities. It is specifically understood that there shall be no obligation on the part of the Released and Indemnified Parties to defend or prosecute any matters further in connection with any claims, including, but not limited to, any third-party claims or cross-claims for contribution or indemnity. Such obligation on the part of the City does not extend to any claims asserted in its Amended Complaint in relation to Phases 1, 2, 3, and 4 of the Big Sky Development, except to the extent of the City's agreement as stated herein to release Dream Design as to Phase 4 of the Big Sky Development and to indemnify Dream Design and to hold Dream Design harmless from any and all claims against it arising out of Phase 4 of the Big Sky Development, including but not limited to claims for contribution and indemnity against Dream Design as to Phase 4.

The undersigned City claims or may claim that additional parties are liable or obligated to it, or may be liable to it, arising out of any damages and expenses incurred by them, which liability may be joint and several under South Dakota law. This release is given by the City pursuant to the South Dakota Uniform Contribution Among Tortfeasors Law, SDCL 15-8-11 through 22. Thus, it is specifically agreed that this release does, and shall be construed to, release the Released and Indemnified Parties as stated above, in full, as contemplated herein, and further, that any sums or damages recovered against any other parties who may be claimed to be joint tortfeasors and who may be claimed to be liable to the undersigned City as to Phases 5, 5B, 6, 7, 8, and 9 of the Big Sky Development or as to the Big Sky Business Development Park shall be reduced in the sum of \$250,000, or alternatively, in such sum as shall be the extent of the pro-

rata share of any fault or liability on the part of the Released and Indemnified Parties for damages to the City, in whichever sum shall be the larger.

The undersigned City agrees that, in the event a judgment should be recovered in the pending litigation against any of the Released and Indemnified Parties, other than against either Estes or Big Sky relating to Phases 1, 2, 3, and/or 4 of the Big Sky Development, then and in that event the undersigned City agrees to, hold the Released and Indemnified Parties harmless and indemnify them completely therefor and the undersigned City shall be solely responsible for obtaining, and shall obtain, a satisfaction of any judgment against any of the Released and Indemnified Parties forthwith. In the event that the Released and Indemnified Parties, or any of them, shall be required to defend in any manner whatsoever any claim associated with the pending Big Sky Litigation, or any separate action arising out of the pending Big Sky Litigation or arising out of the facts and circumstances associated therewith, the undersigned City shall indemnify the Released and Indemnified Parties from any reasonable attorneys' fees, costs, expenses, and disbursements that the Released and Indemnified Parties incur, including expert witness fees. However, it is recognized that agents, representatives, and employees of the Released and Indemnified Parties may have to be called as witnesses at trial and the Released and Indemnified parties agree to cooperate in making witnesses available to testify, as needed, at the time of trial.

The undersigned City also agrees that the payment and satisfaction of any and all subrogation claims or liens and any and all claims in the nature of indemnity or contribution against the Released and Indemnified Parties shall be the sole responsibility of the undersigned City. The undersigned City shall hold the Released and Indemnified Parties harmless and indemnify them from any claims or actions by any other persons or firms whomsoever arising from the injuries, damages, or equitable remedies of the undersigned City alleged to have been

sustained in conjunction or association with the design or construction of the public infrastructure improvements on Phases 5, 5B, 6, ,7 ,8, or 9 of the Big Sky Development or on the Big Sky Business Development Park and also, as to Dream Design only, claims alleged to have been sustained in conjunction or association with the design or construction of the public infrastructure improvements on Phase 4 of the Big Sky Development, including all attorneys' fees, costs, expenses, and disbursements, including expert witness fees, incurred by the Released and Indemnified Parties, or any of them, as a result of such claims, liens, or actions thereon.

It is understood and agreed that this settlement is in compromise of a doubtful and disputed claim and that the payment and settlement herein is not to be construed as an admission of liability on the part of the Released and Indemnified Parties, by whom liability is expressly denied. It is recognized that this payment is simply being made in recognition of the costs of defense as opposed to any acknowledgement of fault or liability.

It is further declared by the undersigned City that it realizes that the damages sustained at this time are uncertain and indefinite and they realize that any liability or fault of Released and Indemnified Parties, and each of them, is indefinite and questionable. In making this Agreement, the undersigned City understands that it relies upon its judgment, belief and knowledge concerning the nature and extent of their problems, their damages, and the liability therefore, and further, that the City has not been influenced to any extent whatsoever making this release by any representations or statements regarding the Released and Indemnified Parties. The undersigned City has had the assistance of its attorney in reaching this settlement. The undersigned City acknowledges that this release and Agreement shall apply to all unknown and unanticipated damages, directly and indirectly, as well as any resulting costs or expenses incurred by the undersigned City.

This is the entire Agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital.

The undersigned have carefully read this Agreement and understand the contents thereof.

Executed this ____ day of November 2016.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

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