

**LOAN AND INFRASTRUCTURE
DEVELOPMENT AGREEMENT**

This Agreement is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation, hereafter called the "City," and **B.E. DEVELOPMENT COMPANY, L.L.C.**, hereafter called "BE."

Recitals

WHEREAS, the City has established an Infrastructure Development Partnership Fund (hereafter called the "Fund") to assist in providing adequate public improvements in areas of new development by financing the development of public improvements where such costs shall be repaid by the developer, BE, and shall hereinafter be referred to as the "loan"; and

WHEREAS, BE is the owner and developer of certain real property known as Skyview South Subdivision (hereafter called the "Development") located on the west side of Dinosaur Hill in the City of Rapid City and more particularly described as follows:

Block One (1), Lots One (1) through Ten (10), Township One North (T1N),
Range Seven East (R7E) of the Black Hills Meridian, Pennington County, South Dakota;

and

WHEREAS, BE has made application for the use of Infrastructure Development Partnership funds in connection with the development of the real property above described and, in particular, for water line construction and a booster station upgrade; and

WHEREAS, the Rapid City Infrastructure Development Partnership Review Committee has recommended approval of the application for a loan to BE of \$126,740 from the Fund; and

WHEREAS, the parties hereto desire to enter into this Agreement to set forth the terms and conditions under which BE will borrow \$126,740 from the Fund;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed as follows:

- 1.** The City shall loan to BE and BE shall borrow from the Fund the principal sum of \$126,740. The principal sum of \$126,740 shall be interest-free for a period of three years from the date of substantial completion of the public improvements to be constructed from the loan proceeds. Thereafter and commencing at the beginning of the fourth year following substantial completion of the public improvements through year six, interest shall accrue on the unpaid balance at an annual rate of 1% above the Prime Rate determined as of the date interest commences.
- 2. Repayment.** BE shall completely repay the loan within six years from the date of substantial completion of the project. Substantial completion of the infrastructure development will be documented by an acceptance letter from the City verifying that the infrastructure is being put to its intended use and all City inspections have been successfully completed.
- 3. Loan Guaranty and Security for Repayment.** In order to assure to the City repayment of the principal and all accrued interest as herein provided, BE shall provide the City with a bank secured letter of credit. The letter of credit will be provided before loan proceeds are distributed.
- 4. Promissory Note.** The loan as herein provided shall be evidenced by a Promissory Note in the form shown on the attached Exhibit A.
- 5. Water Line and Booster Station Upgrade.** The parties shall construct in accordance with applicable City construction standards and requirements certain water lines and a booster station upgrade which will service the Development and which may also in the future service other development in the area. The parties have estimated the costs of the separate constituent parts of the entire construction projection, inclusive of design fees, and have agreed as to the

apportionment of the costs between the City and BE. The following is the agreed division of the respective costs of the water line construction and the booster station construction:

FUNDING ALLOCATION FOR WATER LINE CONSTRUCTION

	PROJECT	EST. COST	CITY	BE
A	Water main extension to Broadmoor Dr.	73,500	62.8%	37.2%
B	Sheridan Lake Rd. Water Extension	5,000	62.8%	37.2%
C	Booster Station upgrade	262,200	62.8%	37.2%
	TOTAL	\$340,700		

A, B, C - Letters refer to projects outlined on the map attached hereto as Exhibit B.

TOTAL PROJECT COST = \$340,700

The design and construction contracting will be done by the City.

6. Costs Variations. In the event the actual construction costs vary from the above construction costs estimates, the parties agree that any actual costs will be paid by the developer in proportion to the percentages described above unless otherwise agreed to by the parties. Any agreements by the parties regarding actual costs shall be confirmed in writing and approved by the Rapid City Council.

7. Easements and Rights of Way. In order for the City to accomplish the construction project, BE shall dedicate or obtain and provide to City, at no cost to the City, such easements and rights of way over, under and across private property, both permanent and for construction purposes, as may be necessary to construct and permanently locate, repair and maintain the public water line and booster station as depicted on the attached Exhibit B.

8. Project Improvements. All infrastructure project improvements constructed by the City under this Agreement shall be public in character and shall be conveyed to the City together with all easements and rights of way related thereto, upon substantial completion thereof. All such improvements and related easements and rights of way shall be conveyed and assigned to the City by deed or other appropriate conveyance, free and clear of all liens and encumbrances.

9. Further Assurances. The parties agree to execute such other and further documents and instruments, not inconsistent herewith, as may be reasonably necessary to accomplish the intent and purpose of this Agreement.

10. Modification. This Agreement may be amended only by written agreement of the parties hereto.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

DATED: _____, 2000.

CITY:

BE:

CITY OF RAPID CITY, a municipal corporation

B.E. DEVELOPMENT COMPANY, LLC

By _____
Jim Shaw, Mayor

By _____
Its: _____

ATTEST:

