

**ASSIGNMENT OF PROCEEDS OF REAL ESTATE PURCHASE AGREEMENT BY
DAKOTA HEARTLAND, INC. TO THE CITY OF RAPID CITY**

This Assignment Agreement is made by and between **DAKOTA HEARTLAND, INC.**, a South Dakota corporation, of 706 Saint Joseph Street, Rapid City, SD 57701 (hereinafter "DHI"), and the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (hereinafter "City").

WHEREAS, DHI owns certain real property, a portion of which is in the process of being platted; and

WHEREAS, DHI has entered into a Real Estate Purchase Agreement to sell the property to be platted; and

WHEREAS, in 2003 the City, through its Infrastructure Development Partnership Fund ("IDPF"), loaned money to DHI to promote economic development on the property; and

WHEREAS, DHI is to pay back the IDPF loan in installments upon the platting of parcels from the property; and

WHEREAS, DHI therefore owes the City an installment payment of principal and interest on the portion of the property currently in the platting process; and

WHEREAS, the City has agreed to allow the installment payment owed to be satisfied from the proceeds of the sale of the portion of property to be platted and sold; and

WHEREAS, the City and DHI desire to reduce the agreement to writing.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Assignment of Proceeds. DHI agrees to assign from the proceeds of that certain Real Estate Purchase Agreement dated November 19, 2013, between DHI and Costello L and C Family Limited Partnership ("Purchase Agreement"), the total amount of Two Hundred Eighty-one Thousand, Three Hundred Eighty-six Dollars and Sixty-four Cents (\$281,386.64) (the "Assigned Proceeds"). A copy of said purchase agreement is attached hereto as Exhibit A. This amount represents the total principal and interest due to the City upon the platting of what will become Lot 1 of Block 5 of the Big Sky Business Park, containing approximately 3.457± acres (the "Subject Property"). Any remaining proceeds shall be retained by DHI.

3. Deferment of Principal and Interest Due. Pursuant to the Loan and Infrastructure Development Agreement between the parties dated December 15, 2003, and the accompanying Promissory Note (together the "Loan Agreement") DHI is required to repay a pro-rata portion of the principal and interest due on the IDPF loan prior to recording the plat for the Subject Property. The property is required to be platted prior to being sold. As such, the City agrees to defer such payment until the time of closing on the sale of the platted lot as provided in the Purchase Agreement. DHI agrees to instruct the closing agent to remit the Assigned Proceeds directly to the City. In the event the Assigned Proceeds are not paid to the City by the closing agent, DHI agrees to immediately pay the City an amount equal to the Assigned Proceeds.

4. Default. The parties agree that a breach of any term of this Assignment Agreement shall also operate as a breach of the Loan Agreement. The City at its option may, upon any default, without notice or demand, declare the entire principal sum and all accrued interest then unpaid immediately due and payable. Failure to immediately remit such sum shall be cause for the City to seek all available remedies, including but not limited to drawing on the letter of credit securing the Loan Agreement.

5. Entire Agreement and Amendments. This Assignment Agreement, together with the Loan Agreement, constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written. This Assignment Agreement may only be amended by a written document duly executed by all parties.

6. Binding Effect. The covenants and agreements contained in this Assignment Agreement apply to, inure to the benefit of, and are binding upon the parties hereto and their respective successors administrators, executors, and assigns.

7. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Assignment Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

8. Counterparts. This Assignment Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Assignment Agreement.

9. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments as shall be necessary or convenient to effectuate the purposes contemplated by this Assignment Agreement.

10. Severability. The invalidity of all or any part of any section of this Assignment Agreement shall not render invalid the remainder of this Assignment Agreement or the remainder of such section. If any provision of this Assignment Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Assignment Agreement to the extent possible. If any one or more of paragraphs 2, 3 or 4 are held to be unenforceable and are not so modified, the entire Assignment Agreement shall be voided.

11. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Assignment Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Assignment Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Assignment Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Assignment Agreement.

12. Applicable Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota without regard to provisions on conflict of laws. All litigation under this Agreement shall be take place in the Circuit Court of Pennington County, South Dakota.

DATED this _____ day of _____, 2014.

CITY OF RAPID CITY


By _____
Sam Kooiker, Mayor

ATTEST

Pauline Sumption, Finance Officer

(seal)

DAKOTA HEARTLAND, INC.

By  _____
Doyle Estes, President

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT is entered into this 19th day of November, 2013, by and between, Dakota Heartland, Inc., a South Dakota Corporation, having an address at P.O. Box 330, Rapid City, South Dakota 57709, herein referred to as "Seller," and Costello L and C Family Limited Partnership, a South Dakota Limited Partnership, having an address at P.O. Box 2238, Sioux Falls, South Dakota 57101, herein referred to as "Purchaser."

RECITALS:

Whereas, Seller owns real estate in Pennington County, South Dakota, as further described in this Agreement in "Exhibit A" and illustrated in "Exhibit B";

Whereas, Seller agrees to sell and Purchaser agrees to purchase the real estate described herein upon the terms and conditions set forth in this Agreement:

THE SELLER AND PURCHASER AGREE AS FOLLOWS:

1. Seller agrees to sell to Purchaser approximately 3.49 acres of the 32.29 acres of real estate described in Exhibit A and illustrated in Exhibit B (the "subject property") upon the conditions as follows:
 - a. Purchaser shall pay One Thousand Dollars (\$1,000.00) to Seller's realtor, Jeri Perrett of The Real Estate Group, Inc., Rapid City, South Dakota, as an earnest money deposit, which shall be applied toward the purchase price at closing. Said earnest money shall be deposited in a Trust bank account of said realtor's firm.
 - b. Purchaser shall pay to Seller the balance of the purchase price of Three Hundred Forty-One Thousand Fifty Four Dollars and Ninety Cents (\$341,054.90) for the real estate described in Exhibit A, at date of closing. The purchase price is based upon the subject property being 3.49 acres in size. If the final plat contains a size different from 3.49 acres, the final purchase price shall be adjusted accordingly, as the agreed price per square foot is \$2.25.
 - c. Seller shall transfer free and clear title of the subject property to Purchaser at closing.
 - d. Seller shall provide title insurance from First American Title Company in the amount of the purchase price, insuring marketable title of the subject property.
 - e. Seller has provided a soil report of the subject property to Purchaser.
 - f. The subject property is to be platted on or before February 14, 2014, at the sole cost of Seller. Completion of platting shall be the date the City of Rapid City gives final approval of the plat on the subject property.
 - g. Purchaser shall pay for an architectural and engineering site plan to be used as illustration in the process of platting the subject property.
 - h. The property taxes for the subject property shall be prorated at date of closing, with Seller being responsible for all real estate taxes accrued to that date.


- i. At date of closing, Seller shall pay a brokerage fee in the amount of three (3) percent of the purchase price stated in Paragraph 1(b) above, plus applicable sales tax on said brokerage fee, to Steve Anderson of ReMax, Rapid City, South Dakota, Purchaser's real estate agent.
2. In the event of default by either Seller or Purchaser of any material covenant, condition, or reservation herein, the aggrieved party shall have the immediate right to protect its interest herein by pursuing remedies, either at law or in equity for breach of contract.
3. **Notices.** All notices, offers, requests and other communications from one party to the other shall be in writing and shall be considered to have been duly given or served if sent by first class mail, return receipt requested, postage prepaid, to the party at its address set forth below, or to such other address as such party may hereafter designate by written notice to the other party:
 - a. If to **Seller**, to: **Dakota Heartland, Inc.**
Attn: Doyle Estes
P.O. Box 330
Rapid City, SD 57709
 - b. If to **Purchaser**, to: **Costello L and C Family Limited Partnership**
Attn: Daniel Costello
P.O. Box 2238
Sioux Falls, SD 57101
4. **Entire Agreement: Modification.** This Agreement constitutes the complete agreement between Seller and Purchaser and supersedes any prior oral or written agreements between them regarding the Real Estate. There are no verbal agreements that change this Agreement, and no amendment of any of its terms will be effective unless in writing and executed by both Seller and Purchaser.
5. **Binding Effect.** This Agreement binds and benefits the Seller and Purchaser and their respective successors.
6. **Controlling Law.** This Agreement has been made under, and will be interpreted and controlled by, the laws of the State of South Dakota.
7. **Real Estate Agents.** Purchaser warrants that it is represented by real estate agent Steve Anderson in this transaction. Seller warrants that it is represented by real estate agent Jeri Perrett in this transaction.
8. **Closing / Fees.** This transaction shall close on or before February 14, 2014. The closing fees shall be shared equally by the parties.

9. **Contingencies.**

- a. **Review of Soils Report.** Purchaser shall have 30 days from the date of this Agreement to review the soils report provided by Seller. If no written objection thereto is received by Seller within said 30-day period, it shall be deemed that the soils report is acceptable, and this contingency shall be deemed satisfied.
- b. **Platting.** The subject property is to be platted on or before February 14, 2014, at the sole cost of Seller.
- c. **Zoning.** Seller shall provide verification to Purchaser in the form of a letter from the City of Rapid City that the subject property is zoned for the Purchaser's proposed use of constructing a 62-unit multi-family project consisting of two three-story buildings.
- d. **Variance.** Seller shall provide to Purchaser a variance from the Board of Adjustments of the City of Rapid City for the height of the buildings referenced in Paragraph 9(c) above.
- e. **Special Assessments.** Seller shall make all payments due on special assessments and cost recoveries levied against the subject property which are due and/or delinquent if not paid prior to the closing date.
- f. **Utilities.** Seller shall provide verification to Purchaser in the form of a letter from each applicable utility company, stating that utilities are available to the subject property which include water, sanitary sewer, electric, gas and telecom, and Seller shall certify that the Purchaser will have access to the source of such utilities on the subject property.
- g. **Environmental.** Seller shall provide verification to Purchaser that the site is free of wetlands and underground tanks.
- h. **Mineral Rights.** Seller shall certify to Purchaser that mineral rights, if any, are to be transferred to the Purchaser and that there are no other agreements to mine minerals, including sand and gravel, with any other third party.

IN WITNESS WHEREOF, the parties hereto have executed this Real Estate Purchase Agreement as of the date first written above.

DAKOTA HEARTLAND, INC.



By: Doyle Estes
Its: President

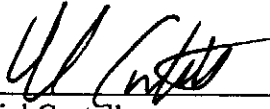
COSTELLO L AND C
FAMILY LIMITED PARTNERSHIP



By: Daniel Costello
Its: General Partner

Personal Guarantee:

Guarantor guarantees the obligations of Costello L and C Family Limited Partnership as set forth above.



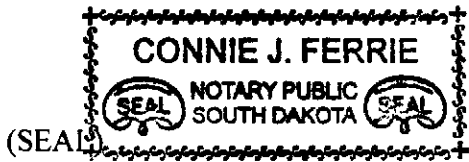
Daniel Costello
503-58-6085

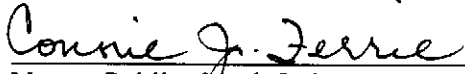
SSN

STATE OF SOUTH DAKOTA,)
 Lincoln)SS.
COUNTY OF ~~MINNEHATA~~)

ON THIS DAY, November 18, 2013, before me, the undersigned officer, personally appeared Daniel Costello as Personal Guarantor, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

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





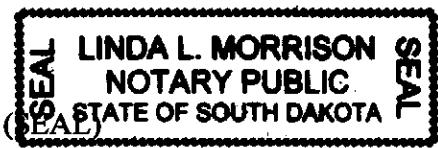
Notary Public, South Dakota
My Commission Expires: March 22, 2018

(Notary acknowledgments continue on next page.)

STATE OF SOUTH DAKOTA,)
)SS.
COUNTY OF PENNINGTON)

ON THIS DAY, November 21, 2013, before me, the undersigned officer, personally appeared Doyle Estes, President of Dakota Heartland, Inc., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

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

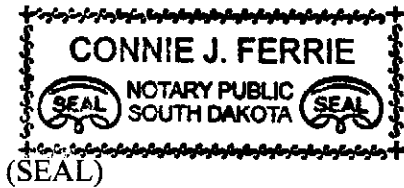


Linda L. Morrison
Notary Public, South Dakota
My Commission Expires: 2-28-19

STATE OF SOUTH DAKOTA,)
)SS.
COUNTY OF ~~MINNEAPOLIS~~ Lincoln)

ON THIS DAY, November 18, 2013, before me, the undersigned officer, personally appeared Daniel Costello, General Partner of Costello L and C Family Limited Partnership, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

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



Connie J. Ferrie
Notary Public, South Dakota
My Commission Expires: March 22, 2018

EXHIBIT A

Legal Description:

S1/2 GL 3 LESS BIG SKY SUB AND LESS ROW; S1/2 GL 4 LESS BIG SKY BUSINESS PARK, LESS LOT H1, H2 AND ROW, SECTION 3, T1N, R8E, B.H.M., CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA.

NEEL STREET

PROPOSED PARCEL
3.49± ACRES

BERNIECE STREET

DEGEEST STREET

EXHIBIT
B



DREAM DESIGN
INTERNATIONAL, INC.
ENGINEERING, LANDSCAPE ARCHITECTURE,
LAND PLANNING, CONSTRUCTION ADMINISTRATION
1509 KANSAS CITY CENTER BUILDING, SUITE 400, KANSAS CITY, MO 64101
PHONE: (816) 348-0538 FAX: (816) 348-0545 WWW.DREAMDESIGNINC.COM

PROPOSED PARCEL EXHIBIT
OPTION 3
RAPID CITY, SOUTH DAKOTA
NOVEMBER 1, 2013

