



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724


PLANNING DEPARTMENT
300 Sixth Street

Vicki L. Fisher, Planner III
Urban Division
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MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Planner III 

DATE: April 7, 2003

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for street improvements.

Legal Description: Parcel A of Tract SB of Springbrook Acres Addition, Tract SB Revised of Springbrook Acres Addition, and Lot 19R3 of Fairway Hill PRD located in the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota

A Variance to the Subdivision Regulations to waive the requirement to improve Holiday Lane, Foothills Drive and Estates Drive to City street design standards has been submitted in conjunction with a Preliminary and Final Plat to subdivide the above legally described property into three lots. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest a future assessment for the improvement of Holiday Lane, Foothills Drive and Estates Drive to City street design standards as they abut the subject property. The document also requires the signature of the Mayor and the Finance Officer.

Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right to protest a future assessment for the improvement of Holiday Lane, Foothills Drive and Estates Drive to City street design standards as they abut the above legally described property.



EQUAL OPPORTUNITY EMPLOYER

PREPARED BY: City's Attorney Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

Red
4-4-03

AGREEMENT WAIVING RIGHT TO PROTEST
(SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this _____ day of _____, 2003, by and for Kenneth L. Kirkeby and Larry M. Lewis, hereinafter called "Owner," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Owner has proposed a plat to be located and developed according to the attached final subdivision plat and it is the intent of the Owner to meet the conditions of the subdivision regulations required for the proposed final plat of this property and approved by the Rapid City Council on _____, 2003; and

WHEREAS it is the intended purpose of the Owner to obtain final approval for this subdivision plat; and

WHEREAS the City of Rapid City's subdivision regulations require construction and extension of curb, gutter, water, sidewalk, street light conduit, sewer, and pavement along Holiday Lane, Foothills Drive and Estates Drive which in this instance would require the Owner to construct and build curb, gutter, water, sidewalk, street light conduit, sewer, and pavement along Holiday Lane, Foothills Drive and Estates Drive abutting Lot 19R2 of Fairway Hills P.R.D. and all of Tract SB of Springbrook Acres located in the SW1/4 NE1/4, NW1/4 SE1/4 and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota to be known as Parcel A of Tract SB of Springbrook Acres Addition, Tract SB Revised of Springbrook Acres Addition, and Lot 19R3 of Fairway Hills P.R.D. located in the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS it is the intent and purpose of both the Owner and the City to enter into an agreement whereby the Owner will consent to a future assessed project for the construction of curb, gutter, water, sidewalk, street light conduit, sewer and pavement along Holiday Lane, Foothills Drive and Estates Drive abutting Lot 19R2 of Fairway Hills P.R.D. and all of Tract SB of Springbrook Acres located in the SW1/4 NE1/4, NW1/4 SE1/4 and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota to be known as Parcel A of Tract SB of Springbrook Acres Addition, Tract SB Revised of Springbrook Acres Addition, and Lot 19R3 of Fairway Hills P.R.D. located in the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, as required by Rapid City Subdivision Regulations;

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

1. This agreement pertains to, and includes those properties which are designated and identified as follows:

That portion of Holiday Lane, Foothills Drive and Estates Drive abutting Lot 19R2 of Fairway Hills P.R.D. and all of Tract SB of Springbrook Acres located in the SW1/4 NE1/4, NW1/4 SE1/4 and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota to be known as Parcel A of Tract SB of Springbrook Acres Addition, Tract SB Revised of Springbrook Acres Addition, and Lot 19R3 of Fairway Hills P.R.D. located in the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the design and construction of curb, gutter, water, sidewalk, street light conduit, sewer and pavement along portions of Holiday Lane, Foothills Drive and Estates Drive abutting Lot 19R2 of Fairway Hills P.R.D. and all of Tract SB of Springbrook Acres located in the SW1/4 NE1/4, NW1/4 SE1/4 and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota to be known as Parcel A of Tract SB of Springbrook Acres Addition, Tract SB Revised of Springbrook Acres Addition, and Lot 19R3 of Fairway Hills P.R.D. located in the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

3. The City and the Owner acknowledge that further subdivision of the property is likely and that Owner retains the right to request subdivision variances to modify the requirements for curb and gutter, sidewalk or other improvements for any further subdivision of the property.

4. The Owner acknowledges the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Owner agrees that if at any time in the future the City determines it is necessary or desirous to design and construct curb, gutter, water, sidewalk, street light conduit, sewer and pavement along Holiday Lane, Foothills Drive and Estates Drive abutting Lot 19R2 of Fairway Hills P.R.D. and all of Tract SB of Springbrook Acres located in the SW1/4 NE1/4, NW1/4 SE1/4 and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota to be known as Parcel A of Tract SB of Springbrook Acres Addition, Tract SB Revised of Springbrook Acres Addition, and Lot 19R3 of Fairway Hills P.R.D. located in the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, through an assessed project, Owner or his heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate design and construction of curb, gutter, water, sidewalk, street light conduit, sewer, water and pavement along Holiday Lane, Foothills Drive and Estates Drive abutting Lot 19R2 of Fairway Hills P.R.D. and all of Tract SB of Springbrook Acres located in the SW1/4 NE1/4, NW1/4 SE1/4 and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota to be known as Parcel A of Tract SB of Springbrook Acres Addition, Tract SB Revised of Springbrook Acres Addition, and Lot 19R3 of Fairway Hills P.R.D. located in the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, is the Owner's covenant and promise to waive any right to object to the assessed project and their consent to the assessed project.

5. Owner further covenants and agrees for himself, his heirs, assigns, and successors in interest, that should he or any of his heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate design and construction of curb, gutter, water, sidewalk, street light conduit, sewer and pavement along Holiday Lane, Foothills Drive and Estates Drive abutting Lot 19R2 of Fairway Hills P.R.D. and all of Tract SB of Springbrook Acres located in the SW1/4 NE1/4, NW1/4 SE1/4 and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota to be known as Parcel A of Tract SB of Springbrook Acres Addition, Tract SB Revised of Springbrook Acres Addition, and Lot 19R3 of Fairways Hill P.R.D. located in the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4 NW1/4 of Section 15, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, which is required in the City subdivision regulations will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. Should the weather prevent immediate construction of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Owner.

6. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Owner, and be considered as a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement recorded with the Pennington County Register of Deeds' Office pursuant to the provisions of South Dakota statutes.

7. The City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or its subdivision regulations in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

8. If any section(s), or provision of this application is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

9. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

10. If the Owner is a corporation, it has the power to enter into this agreement and its officers signing for it have full power and authority to do so.

DATED this _____ day of _____, 2003.

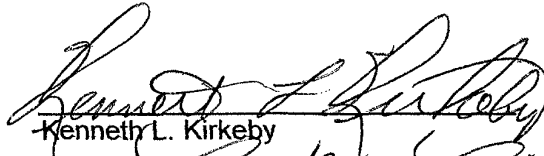
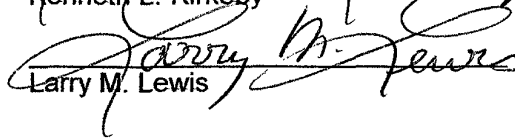
CITY OF RAPID CITY

Jerry Munson

ATTEST:

Finance Officer

(SEAL)


Kenneth L. Kirkeby

Larry M. Lewis

State of South Dakota)
)ss.
County of Pennington)

On this the _____ day of _____, 2003, before me, the undersigned officer, personally appeared Jerry Munson and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement Consenting to Assessed Project for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
)ss.
County of Pennington)

On this the 31 day of MARCH, 2003, before me, the undersigned officer personally appeared, KENNETH L. KIRKEBY, Kenneth L. Kirkeby, who acknowledged himself to be the Developer, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

On this the 31 day of MARCH, 2003, before me, the undersigned officer personally appeared, Kenneth L. Kirkeby, Kenneth L. Kirkeby, who acknowledged himself to be the Developer, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

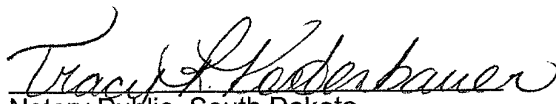

Notary Public, South Dakota

My Commission Expires: 6-4-05

(SEAL)

On this the 31 day of MARCH, 2003, before me, the undersigned officer personally appeared, LARRY M. LEWIS, Larry M. Lewis, who acknowledged himself to be the Developer, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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


Notary Public, South Dakota

My Commission Expires: 6-4-05

(SEAL)