



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Growth Management Department

300 Sixth Street

Vicki Fisher, Urban Planner III
Growth Management Department
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MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Urban Planner III

DATE: March 31, 2004

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

Legal Description: SW1/4 NE1/4; the west 66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning; said parcel contains 14.3 acres more or less

A Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the subject property has been submitted in conjunction with a Preliminary Plat to subdivide the above legally described property into two parcels, leaving an approximate 30 acre non-transferable balance. 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 installation of curb, gutter,



EQUAL OPPORTUNITY EMPLOYER

(Addressee)

(Date)

Page 2

sidewalk, street light conduit, water, sewer and pavement abutting 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 installation of curb, gutter, sidewalk, street light conduit, water, sewer and pavement abutting the above legally described property.

(File #03SV039)

(File Name)

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

JS
10-27-03

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 Galen Steen Living Trust and Gordon Howie Real Estate Inc., hereinafter called "Developers," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developers have proposed a plat to be located and developed according to the attached final subdivision plat and it is the intent of the Developers 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 Developers to obtain final approval for this subdivision plat; and

WHEREAS the City of Rapid City's subdivision regulations require construction of curb, gutter, sidewalk, street light conduit, water, sewer and pavement which in this instance would require the Developers to construct curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the north-south street and the east-west street as it abuts that portion of the SW1/4 NE1/4; the west 66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning, said parcel contains 14.3 acres more or less; and

WHEREAS it is the intent and purpose of both the Developers and the City to enter into an agreement whereby the Developers will consent to a future assessed project for the construction of curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the north-south street and the east-west street as it abuts that portion of the SW1/4 NE1/4; the west

66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning, said parcel contains 14.3 acres more or less;

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:

SW1/4 NE1/4; the west 66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning, said parcel contains 14.3 acres more or less

2. This agreement specifically references the construction of curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the north-south street and the east-west street as it abuts that portion of the SW1/4 NE1/4; the west 66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord

bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning, said parcel contains 14.3 acres more or less.

3. The Developers acknowledge 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 Developers agree that if at any time in the future the City determines it is necessary or desirous to construct curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the north-south street and the east-west street as it abuts that portion of the SW1/4 NE1/4; the west 66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning, said parcel contains 14.3 acres more or less, through an assessed project, Developers or their 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 construction of curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the north-south street and the east-west street as it abuts that portion of the SW1/4 NE1/4; the west 66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance

of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning, said parcel contains 14.3 acres more or less, is the Developers' covenant and promise to waive any right to object to the assessed project and its consent to the assessed project.

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should it or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate construction of curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the north-south street and the east-west street as it abuts that portion of the SW1/4 NE1/4; the west 66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning, said parcel contains 14.3 acres more or less, 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 Developers.

5. 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 Developers, 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.

6. 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.

7. 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.

8. 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.

9. If the Developer 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

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

GALEN STEEN LIVING TRUST

GORDON HOWIE REAL ESTATE, INC.

By: Galen Steen

By: James F. Preston
Its: Pres.

State of South Dakota)
 ss.
County of Pennington)

On this the 31st day of _____, 2003, before me, the undersigned officer, personally appeared Jim Shaw 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.

Paul Maggie

From: Fisher Vicki
Sent: Wednesday, October 22, 2003 1:31 PM
To: Paul Maggie
Subject: WORP Request

Maggie,

I need a WORP for the following:

Owners: Galen Steen Living Trust
Gordon Howie Real Estate Inc.

Legal Description: SW1/4 NE1/4; the west 66 feet of the NW1/4 NE1/4, Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota and a portion of the E1/2 of Section 25, located in the E1/2 Section 25, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at the center 1/4 corner of Section 25, a distance of 407.00 feet; thence, second course, southeasterly, on a curve curving to the right, with a radius of 2467.00 feet, a delta angle of 32°20'53", a length of 1392.82 feet, a chord bearing of N73°49'33"W, and a chord distance of 1374.04 feet, to a point on the east 16th line of Section 25; thence, third course: S00°00'00"W, along the east 1/16th line of Section 25, a distance of 24.15 feet, to the east 1/16th corner of Section 25; thence, fourth course: N90°00'00"W, along the 1/4 line of Section 25, a distance of 924.00 feet; thence, fifth course: S00°00'00"W, a distance of 624.43 feet; thence, sixth course, N90°00'00"W, a distance of 396.00 feet, to a point on the 1/4 line of Section 25; thence, seventh course: N00°00'00"E along the 1/4 line of Section 25, a distance of 624.43 feet, to the center 1/4 corner of Section 25, and the point of beginning; said parcel contains 14.3 acres more or less.

Improvements: To install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the north-south street and the east-west street as it abuts the subject property

Thanks,

Vicki

10-22-03