



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## Growth Management Department

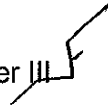
300 Sixth Street

Vicki Fisher, Urban Planner III  
Growth Management Department  
city web: [www.rcgov.org](http://www.rcgov.org)

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### MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Urban Planner III 

DATE: May 12, 2004

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

**Legal Description:** A portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course: S00°00'00"E, along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course: S07°20'00"W, along the easterly boundary of said Tract 2, common with the westerly edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course: S89°53'10"W, along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course: N00°11'53"E, along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2; Thence, fifth course: N89°52'53"E, along the



EQUAL OPPORTUNITY EMPLOYER

northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course: N89°50'57"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course: S89°10'40"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract 2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; More fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency; Thence, third course: S00°12'25"W, a distance of 108.82 feet; Thence, fourth course: S89°53'10"W, a distance of 80.00 feet; Thence, fifth course: N00°12'25"E, a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of 16°53'09", an arc length of 306.50 feet, a chord bearing of N08°38'59"E, and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course: N89°52'53"E, along the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less

A Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer, pavement and to dedicate right-of-way along a collector street and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a Section Line Highway has been submitted in conjunction with a Layout, Preliminary and Final Plat to create a 12 acre lot. 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, sidewalk, street light conduit, water, sewer, pavement and to dedicate right-of-way along a collector street and

to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a Section Line Highway as it abuts 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, pavement and to dedicate right-of-way along a collector street and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a Section Line Highway as it abuts the above legally described property.**

(File #04SV004)

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

JPL  
5-3-04

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 7<sup>th</sup> day of May, 2004, by and for 16 Plus, LLP, hereinafter called "Developer," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developer has proposed a plat to be located and developed according to the attached final subdivision plat and it is the intent of the Developer 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 \_\_\_\_\_, 2004; and

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

WHEREAS the City of Rapid City's subdivision regulations require installation of curb, gutter, street light conduit, water, sewer and pavement which in this instance would require the Developer to install curb, gutter, street light conduit, water, sewer and pavement along a collector street along the west lot line of a portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course: S00°00'00"E, along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course: S07°20'00"W, along the easterly boundary of said Tract 2, common with the westerly edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course: S89°53'10"W, along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course: N00°11'53"E, along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2; Thence, fifth course: N89°52'53"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course: N89°50'57"E, along the northerly boundary of said Tract 2, common to the section line between

to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course: S89°10'40"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract 2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency; Thence, third course: S00°12'25"W, a distance of 108.82 feet; Thence, fourth course: S89°53'10"W, a distance of 80.00 feet; Thence, fifth course: N00°12'25"E, a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of 16°53'09", an arc length of 306.50 feet, a chord bearing of N08°38'59"E, and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course: N89°52'53"E, along the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less, and to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a section line highway as it abuts the north lot line of the property; and

WHEREAS it is the intent and purpose of both the Developer and the City to enter into an agreement whereby the Developer will consent to a future assessed project for the installation of curb, gutter, street light conduit, water, sewer and pavement along a collector street along the west lot line of a portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course: S00°00'00"E, along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course: S07°20'00"W, along the easterly boundary of said Tract 2, common with the westerly edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course: S89°53'10"W, along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course:

N00°11'53"E, along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2; Thence, fifth course: N89°52'53"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course: N89°50'57"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course: S89°10'40"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract 2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency; Thence, third course: S00°12'25"W, a distance of 108.82 feet; Thence, fourth course: S89°53'10"W, a distance of 80.00 feet; Thence, fifth course: N00°12'25"E, a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of 16°53'09", an arc length of 306.50 feet, a chord bearing of N08°38'59"E, and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course: N89°52'53"E, along the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less, and installation of curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a section line highway as it abuts the north lot line of the property, 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:

A portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to

Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course: S00°00'00"E, along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course: S07°20'00"W, along the easterly boundary of said Tract 2, common with the westerly edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course: S89°53'10"W, along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course: N00°11'53"E, along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2; Thence, fifth course: N89°52'53"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course: N89°50'57"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course: S89°10'40"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract 2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency; Thence, third course: S00°12'25"W, a distance of 108.82 feet; Thence, fourth course: S89°53'10"W, a distance of 80.00 feet; Thence, fifth course: N00°12'25"E, a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of 16°53'09", an arc length of 306.50 feet, a chord bearing of N08°38'59"E, and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course: N89°52'53"E, along the Section

Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less, and installation of curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a section line highway as it abuts the north lot line of the property<sup>3</sup>.

2. This agreement specifically references the installation of curb, gutter, street light conduit, water, sewer and pavement along a collector street along the west lot line of a portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course: S00°00'00"E, along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course: S07°20'00"W, along the easterly boundary of said Tract 2, common with the westerly edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course: S89°53'10"W, along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course: N00°11'53"E, along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2; Thence, fifth course: N89°52'53"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course: N89°50'57"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course: S89°10'40"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract 2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency;



Thence, third course:  $S00^{\circ}12'25''W$ , a distance of 108.82 feet; Thence, fourth course:  $S89^{\circ}53'10''W$ , a distance of 80.00 feet; Thence, fifth course:  $N00^{\circ}12'25''E$ , a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of  $16^{\circ}53'09''$ , an arc length of 306.50 feet, a chord bearing of  $N08^{\circ}38'59''E$ , and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course:  $N89^{\circ}52'53''E$ , along the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less, and installation of curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a section line highway as it abuts the north lot line of the property.

3. The Developer 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 Developer agrees that if at any time in the future the City determines it is necessary or desirous to install curb, gutter, street light conduit, water, sewer and pavement which in this instance would require the Developer to install curb, gutter, street light conduit, water, sewer and pavement along a collector street along the west lot line of a portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course:  $S00^{\circ}00'00''E$ , along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course:  $S07^{\circ}20'00''W$ , along the easterly boundary of said Tract 2, common with the westerly edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course:  $S89^{\circ}53'10''W$ , along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course:  $N00^{\circ}11'53''E$ , along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2; Thence, fifth course:  $N89^{\circ}52'53''E$ , along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course:  $N89^{\circ}50'57''E$ , along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course:  $S89^{\circ}10'40''E$ , along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract

2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency; Thence, third course: S00°12'25"W, a distance of 108.82 feet; Thence, fourth course: S89°53'10"W, a distance of 80.00 feet; Thence, fifth course: N00°12'25"E, a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of 16°53'09", an arc length of 306.50 feet, a chord bearing of N08°38'59"E, and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course: N89°52'53"E, along the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less, and to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a section line highway as it abuts the north lot line of the property, through an assessed project, Developer or its 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 installation of curb, gutter, street light conduit, water, sewer and pavement which in this instance would require the Developer to install curb, gutter, street light conduit, water, sewer and pavement along a collector street along the west lot line of a portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course: S00°00'00"E, along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course: S07°20'00"W, along the easterly boundary of said Tract 2, common with the westerly edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course: S89°53'10"W, along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course: N00°11'53"E, along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2;

Thence, fifth course: N89°52'53"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course: N89°50'57"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course: S89°10'40"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract 2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, more fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency; Thence, third course: S00°12'25"W, a distance of 108.82 feet; Thence, fourth course: S89°53'10"W, a distance of 80.00 feet; Thence, fifth course: N00°12'25"E, a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of 16°53'09", an arc length of 306.50 feet, a chord bearing of N08°38'59"E, and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course: N89°52'53"E, along the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less, and to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a section line highway as it abuts the north lot line of the property. It is understood by the Developer that the City of Rapid City's primary consideration for the granting of the approval for a subdivision plat on the herein described property and forbearance from requiring Developer to install curb, gutter, street light conduit, water, sewer and pavement which in this instance would require the Developer to install curb, gutter, street light conduit, water, sewer and pavement along a collector street along the west lot line of a portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course: S00°00'00"E, along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course: S07°20'00"W, along the easterly boundary of said Tract 2, common with the westerly

edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course: S89°53'10"W, along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course: N00°11'53"E, along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2; Thence, fifth course: N89°52'53"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course: N89°50'57"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course: S89°10'40"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract 2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency; Thence, third course: S00°12'25"W, a distance of 108.82 feet; Thence, fourth course: S89°53'10"W, a distance of 80.00 feet; Thence, fifth course: N00°12'25"E, a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of 16°53'09", an arc length of 306.50 feet, a chord bearing of N08°38'59"E, and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course: N89°52'53"E, along the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less, and to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a section line highway as it abuts the north lot line of the property, is the Developer's covenant and promise to waive any right to object to the assessed project and its consent to the assessed project.

4. Developer further covenants and agrees for itself, its heirs, assigns, and successors in interest, that should it or any of its heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of curb, gutter, street light

conduit, water, sewer and pavement which in this instance would require the Developer to install curb, gutter, street light conduit, water, sewer and pavement along a collector street along the west lot line of a portion of Tract 2 of Pioneer Subdivision, located in the NE1/4 of the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at a point on the section line between to Sections 27 and 34, common to the northeasterly corner of said Tract 2 of Pioneer Subdivision, and the Point of Beginning; Thence, first course: S00°00'00"E, along the easterly boundary of said Tract 2 of Pioneer Subdivision, common with the westerly edge of the statutory section line right-of-way, and common with the westerly edge of U.S. Highway 16 right-of-way, a distance of 109.69 feet, to an angle point; Thence, second course: S07°20'00"W, along the easterly boundary of said Tract 2, common with the westerly edge of the right-of-way of U.S. Highway 16, a distance of 303.97 feet, to the northeasterly corner of Lot 3 of Moon Ridge Subdivision; Thence, third course: S89°53'10"W, along the northerly boundary of said Lot 3 of Moon Ridge Subdivision, a distance of 1247.37 feet, to a point on the westerly boundary of said Tract 2, common with the northwesterly corner of said Lot 3 of Moon Ridge Subdivision; Thence, fourth course: N00°11'53"E, along the westerly boundary of said Tract 2, a distance of 411.10 feet, to a point on the section line common to Sections 27 and 34, common to a point the southerly boundary of Lot 5 of Godfrey Addition, and common to the northwesterly corner of said Tract 2; Thence, fifth course: N89°52'53"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 4 and 5 of said Godfrey Addition, a distance of 796.18 feet, to an angle point; Thence, sixth course: N89°50'57"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, and common with the southerly boundary of Lots 3 and 4 of said Godfrey Addition, a distance of 466.12 feet, to an angle point; Thence, seventh course: S89°10'40"E, along the northerly boundary of said Tract 2, common to the section line between to Sections 27 and 34, a distance of 22.45 feet, to the northeasterly corner of said Tract 2, and the Point of Beginning; said parcel contains 12.000 acres more or less; and, a portion of Tract 2 of Pioneer Subdivision, and a portion of the W1/2 of the NE1/4 of Section 34, located in the NE1/4, Section 34, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; more fully described as follows: Commencing at northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; Thence, first course: N89°52'3"E, along the Section Line common to Sections 27 and 34, common with the northerly boundary of said Tract 2 of Pioneer Subdivision, and common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 48.99 feet; Thence, second course: southwesterly, curving to the left on a curve with a radius of 960.00 feet, a delta angle of 18°22'16", an arc length of 307.81 feet, a chord bearing of S09°23'33"W, and a chord distance of 306.49 feet, to a point of tangency; Thence, third course: S00°12'25"W, a distance of 108.82 feet; Thence, fourth course: S89°53'10"W, a distance of 80.00 feet; Thence, fifth course: N00°12'25"E, a distance of 109.26 feet; Thence, sixth course: northeasterly, curving to the right on a curve with a radius of 1040.00 feet, a delta angle of 16°53'09", an arc length of 306.50 feet, a chord bearing of N08°38'59"E, and a chord distance of 305.39 feet, to a point on the Section Line common to Sections 27 and 34, common with the southerly boundary of Lot 5 of Godfrey Addition; Thence, seventh course: N89°52'53"E, along the Section Line common to Sections 27

and 34, common with the southerly boundary of Lot 5 of Godfrey Addition, a distance of 35.10 feet to the northwesterly corner of said Tract 2 of Pioneer Subdivision, common to a point on the southerly boundary of Lot 5 of Godfrey Addition, and the Point of Beginning; said parcel 0.764 acres more or less, and installation of curb, gutter, sidewalk, street light conduit, water, sewer and pavement along a section line highway as it abuts the north lot line of the property, 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 Developer.

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 Developer, 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 \_\_\_\_\_, 2004.

CITY OF RAPID CITY

\_\_\_\_\_  
Jim Shaw, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

16 PLUS, LLP

By: *Keith Kushebeck*  
*Partner*

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2004, 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.

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 7th day of May, 2004, before me, the undersigned officer, personally appeared Keith Kuchenbecker who acknowledged himself to be the Partner, of 16 Plus, LLP, and that he, as such Partner, being authorized to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of 16 Plus, LLP by himself as Partner.

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

Anna M. Bates  
Notary Public, South Dakota

My Commission Expires: 1-23-2009

(SEAL)