



# 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: August 11, 2004

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

Legal Description: Commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1878.59 feet at a bearing S89°27'22"E to a point; thence travel 59.93 feet at a bearing N00°32'38"E to the Point of Beginning; travel 213.89 feet at a bearing N34°24'28"W to a point on a curve; thence travel 38.11 feet along a 210.00 foot radius Concave Northwesterly curve with a chord bearing N39°36'25"W to a point; thence travel 166.06 feet at a bearing N44°48'23"W to a point on a curve; thence travel 333.97 feet along a 190.00 foot radius Convex Northeasterly curve with a chord bearing N05°32'55"E to a point; thence travel 219.73 feet at a bearing N55°19'07"E to a point; thence travel 267.59 feet at a bearing S34°35'20"E to a point; thence travel 300.18 feet at a bearing S45°00'00"W to a point; thence travel 303.00 feet at a bearing S34°24'28"E to a point; thence travel 108.34 feet at a bearing of S45°10'38"W the Point of Beginning; said parcel contains approximately 3.23 acres more or less

A Variance to the Subdivision Regulations to waive the requirement to install pavement and sidewalk improvements along the southern 300 feet of Fairmont Boulevard has been submitted in conjunction with a Layout Plat to create one commercial 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 pavement and sidewalk improvements along the southern 300 feet of Fairmont Boulevard as it abuts the subject



EQUAL HOUSING  
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

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 pavement and sidewalk improvements along the southern 300 feet of Fairmont Boulevard as it abuts the above legally described property.**

(File #04SV031)

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

JPL  
8-10-04

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 \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and for Web Real Estate Holdings Company, 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 pavement and sidewalk improvements, which in this instance would require the Developer to install pavement and sidewalk improvements (associated earthwork, drainage, and public utilities are excluded from this agreement) along the southern 300 feet of Fairmont Boulevard as it abuts the property described as commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 164.96 feet at a bearing N45°10'32"E to a point; thence travel 301.36 feet at a bearing N45°24'39"E to a point; thence travel 210.28 feet at a bearing N54°45'23"E to a point; thence travel 48.86 feet at a bearing S15°57'26"W to a point; thence travel 406.85 feet at a bearing S00°46'13"W to a point; thence travel 484.47 feet at a bearing N89°27'22"W to the Point of Beginning; and, commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 484.47 feet at a bearing S89°27'22"E to a point; thence travel 121.99 feet at a bearing S00°46'13"W to a point; thence travel 282.52 feet at a bearing S75°51'59"W to a point on a curve; thence travel 420.51 feet along a 437.22 foot radius Concave Southwesterly curve with a chord bearing S65°50'38"W to a point; thence travel 27.01 feet at a bearing N54°20'05"W to a point on a curve; thence travel 173.71 feet along a 100.00 foot radius Convex Northwesterly curve with a chord bearing N04°34'14"W to a point; thence travel 273.99 feet at a bearing N45°10'32"E to the Point of Beginning; said parcel contains approximately 5.60 acres more or less; 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 pavement and sidewalk improvements (associated earthwork, drainage, and public utilities are excluded from this agreement) along the southern 300 feet of Fairmont Boulevard as it abuts the

property described as commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 164.96 feet at a bearing N45°10'32"E to a point; thence travel 301.36 feet at a bearing N45°24'39"E to a point; thence travel 210.28 feet at a bearing N54°45'23"E to a point; thence travel 48.86 feet at a bearing S15°57'26"W to a point; thence travel 406.85 feet at a bearing S00°46'13"W to a point; thence travel 484.47 feet at a bearing N89°27'22"W to the Point of Beginning; and, commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 484.47 feet at a bearing S89°27'22"E to a point; thence travel 121.99 feet at a bearing S00°46'13"W to a point; thence travel 282.52 feet at a bearing S75°51'59"W to a point on a curve; thence travel 420.51 feet along a 437.22 foot radius Concave Southwesterly curve with a chord bearing S65°50'38"W to a point; thence travel 27.01 feet at a bearing N54°20'05"W to a point on a curve; thence travel 173.71 feet along a 100.00 foot radius Convex Northwesterly curve with a chord bearing N04°34'14"W to a point; thence travel 273.99 feet at a bearing N45°10'32"E to the Point of Beginning; said parcel contains approximately 5.60 acres more or less, 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:

Commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 164.96 feet at a bearing N45°10'32"E to a point; thence travel 301.36 feet at a bearing N45°24'39"E to a point; thence travel 210.28 feet at a bearing N54°45'23"E to a point; thence travel 48.86 feet at a bearing S15°57'26"W to a point; thence travel 406.85 feet at a bearing S00°46'13"W to a point; thence travel 484.47 feet at a bearing N89°27'22"W to the Point of Beginning; and, commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 484.47 feet at a bearing S89°27'22"E to a point; thence travel 121.99 feet at a bearing S00°46'13"W to a point; thence travel 282.52 feet at a bearing S75°51'59"W to a point on a curve; thence travel 420.51 feet along a 437.22 foot radius Concave Southwesterly curve with a chord bearing S65°50'38"W to a point; thence travel 27.01 feet at a bearing N54°20'05"W to a point on a curve; thence travel 173.71 feet along a 100.00 foot radius Convex Northwesterly curve with a chord bearing N04°34'14"W to a point; thence travel 273.99 feet at a bearing N45°10'32"E to the Point of Beginning; said parcel contains approximately 5.60 acres more or less.

2. This agreement specifically references the installation of pavement and sidewalk improvements (associated earthwork, drainage, and public utilities are excluded from this agreement) along the southern 300 feet of Fairmont Boulevard as it abuts the property described as commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel

164.96 feet at a bearing N45°10'32"E to a point; thence travel 301.36 feet at a bearing N45°24'39"E to a point; thence travel 210.28 feet at a bearing N54°45'23"E to a point; thence travel 48.86 feet at a bearing S15°57'26"W to a point; thence travel 406.85 feet at a bearing S00°46'13"W to a point; thence travel 484.47 feet at a bearing N89°27'22"W to the Point of Beginning; and, commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 484.47 feet at a bearing S89°27'22"E to a point; thence travel 121.99 feet at a bearing S00°46'13"W to a point; thence travel 282.52 feet at a bearing S75°51'59"W to a point on a curve; thence travel 420.51 feet along a 437.22 foot radius Concave Southwesterly curve with a chord bearing S65°50'38"W to a point; thence travel 27.01 feet at a bearing N54°20'05"W to a point on a curve; thence travel 173.71 feet along a 100.00 foot radius Convex Northwesterly curve with a chord bearing N04°34'14"W to a point; thence travel 273.99 feet at a bearing N45°10'32"E to the Point of Beginning; said parcel contains approximately 5.60 acres more or less.

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 pavement and sidewalk improvements (associated earthwork, drainage, and public utilities are excluded from this agreement) along the southern 300 feet of Fairmont Boulevard as it abuts the property described as commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 164.96 feet at a bearing N45°10'32"E to a point; thence travel 301.36 feet at a bearing N45°24'39"E to a point; thence travel 210.28 feet at a bearing N54°45'23"E to a point; thence travel 48.86 feet at a bearing S15°57'26"W to a point; thence travel 406.85 feet at a bearing S00°46'13"W to a point; thence travel 484.47 feet at a bearing N89°27'22"W to the Point of Beginning; and, commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 484.47 feet at a bearing S89°27'22"E to a point; thence travel 121.99 feet at a bearing S00°46'13"W to a point; thence travel 282.52 feet at a bearing S75°51'59"W to a point on a curve; thence travel 420.51 feet along a 437.22 foot radius Concave Southwesterly curve with a chord bearing S65°50'38"W to a point; thence travel 27.01 feet at a bearing N54°20'05"W to a point on a curve; thence travel 173.71 feet along a 100.00 foot radius Convex Northwesterly curve with a chord bearing N04°34'14"W to a point; thence travel 273.99 feet at a bearing N45°10'32"E to the Point of Beginning; said parcel contains approximately 5.60 acres more or less, 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 pavement and sidewalk improvements (associated earthwork, drainage, and public utilities are excluded from this agreement) along the southern 300 feet of Fairmont Boulevard as it abuts the property described as commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of

Beginning; travel 164.96 feet at a bearing N45°10'32"E to a point; thence travel 301.36 feet at a bearing N45°24'39"E to a point; thence travel 210.28 feet at a bearing N54°45'23"E to a point; thence travel 48.86 feet at a bearing S15°57'26"W to a point; thence travel 406.85 feet at a bearing S00°46'13"W to a point; thence travel 484.47 feet at a bearing N89°27'22"W to the Point of Beginning; and, commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 484.47 feet at a bearing S89°27'22"E to a point; thence travel 121.99 feet at a bearing S00°46'13"W to a point; thence travel 282.52 feet at a bearing S75°51'59"W to a point on a curve; thence travel 420.51 feet along a 437.22 foot radius Concave Southwesterly curve with a chord bearing S65°50'38"W to a point; thence travel 27.01 feet at a bearing N54°20'05"W to a point on a curve; thence travel 173.71 feet along a 100.00 foot radius Convex Northwesterly curve with a chord bearing N04°34'14"W to a point; thence travel 273.99 feet at a bearing N45°10'32"E to the Point of Beginning; said parcel contains approximately 5.60 acres more or less. 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 pavement and sidewalk improvements (associated earthwork, drainage, and public utilities are excluded from this agreement) along the southern 300 feet of Fairmont Boulevard as it abuts the property described as commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 164.96 feet at a bearing N45°10'32"E to a point; thence travel 301.36 feet at a bearing N45°24'39"E to a point; thence travel 210.28 feet at a bearing N54°45'23"E to a point; thence travel 48.86 feet at a bearing S15°57'26"W to a point; thence travel 406.85 feet at a bearing S00°46'13"W to a point; thence travel 484.47 feet at a bearing N89°27'22"W to the Point of Beginning; and, commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 484.47 feet at a bearing S89°27'22"E to a point; thence travel 121.99 feet at a bearing S00°46'13"W to a point; thence travel 282.52 feet at a bearing S75°51'59"W to a point on a curve; thence travel 420.51 feet along a 437.22 foot radius Concave Southwesterly curve with a chord bearing S65°50'38"W to a point; thence travel 27.01 feet at a bearing N54°20'05"W to a point on a curve; thence travel 173.71 feet along a 100.00 foot radius Convex Northwesterly curve with a chord bearing N04°34'14"W to a point; thence travel 273.99 feet at a bearing N45°10'32"E to the Point of Beginning; said parcel contains approximately 5.60 acres more or less, 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 pavement and sidewalk improvements (associated earthwork, drainage, and public utilities are excluded from this agreement) along the southern 300 feet of Fairmont Boulevard as it abuts the property described as commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 164.96 feet at a bearing N45°10'32"E to a point; thence travel 301.36 feet at a bearing

N45°24'39"E to a point; thence travel 210.28 feet at a bearing N54°45'23"E to a point; thence travel 48.86 feet at a bearing S15°57'26"W to a point; thence travel 406.85 feet at a bearing S00°46'13"W to a point; thence travel 484.47 feet at a bearing N89°27'22"W to the Point of Beginning; and, commencing at the SW corner of the NW1/4 of the SE1/4 of Section 11, T1N, R7E, BHM; thence travel 1819.43 feet at a bearing S89°27'22"E to a point to the Point of Beginning; travel 484.47 feet at a bearing S89°27'22"E to a point; thence travel 121.99 feet at a bearing S00°46'13"W to a point; thence travel 282.52 feet at a bearing S75°51'59"W to a point on a curve; thence travel 420.51 feet along a 437.22 foot radius Concave Southwesterly curve with a chord bearing S65°50'38"W to a point; thence travel 27.01 feet at a bearing N54°20'05"W to a point on a curve; thence travel 173.71 feet along a 100.00 foot radius Convex Northwesterly curve with a chord bearing N04°34'14"W to a point; thence travel 273.99 feet at a bearing N45°10'32"E to the Point of Beginning; said parcel contains approximately 5.60 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 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)

WEB REAL ESTATE HOLDINGS COMPANY

By: Patrick H. Wysz

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 10 day of August, 2004, before me, the undersigned officer, personally appeared Patrick H. Wysz who acknowledged himself to be the President, of Web Real Estate Holdings Company, and that he, as such president, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of Web Real Estate Holdings Company by himself as president.



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

*Laurie Cullingford*  
\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires: 5-6-08

(SEAL)

