



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

Phone: 605-394-4120
Fax: 605-394-6636
e-mail: vicki.fisher@rcgov.org

MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Urban Planner III 

DATE: April 13, 2005

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

Legal Description: Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E, Pennington County, South Dakota

A Variance to the Subdivision Regulations to waive the requirement to install sidewalks along both sides of Dogleg Drive, Hacker Loop, Birdie Court, and Mulligan Mile as they abut the subject property has been submitted. 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 sidewalks along both sides of Dogleg Drive, Hacker Loop, Birdie Court, and Mulligan Mile 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 installation sidewalks along both sides of Dogleg Drive, Hacker Loop, Birdie Court, and Mulligan Mile as they abut the above legally described property.

(File #04SV073)



EQUAL OPPORTUNITY EMPLOYER

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

ga
11/10/05

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 5th day of April, 2005, by and for Steven G. Frost, Leland Schempp and Dorothy Schempp, husband and wife, Keith T. Carlyle, Kirk S. Allison, Darrel K. Wangen and Judith Wangen, husband and wife, Randall A. Long and Jan Lockridge-Long, husband and wife, Hart Ranch Development Co., Gary J. Hoekman and Carolee Hoekman, husband and wife, Michael J. Borscheid and Elizabeth Borscheid, husband and wife, Kathryn A. Barrett, Larry Von Wald, Kenneth A. Schroeder, Jr. and Lois Schroeder, husband and wife, Roger R. Meyer and Karen Meyer, husband and wife, Victor A. Toscana and Dixie Toscana, husband and wife, Karen A. Cunningham, Donald L. Des Jarlais and Ramona Des Jarlais, husband and wife, Darleen Tysdal, and James N. Menzel, hereinafter called "Developers," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the City of Rapid City's subdivision regulations require installation of sidewalk which in this instance would require the Developers to install sidewalk along Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E, Pennington County, South Dakota; 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 installation of sidewalk along Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E, Pennington County, South Dakota, as required by Rapid City Subdivision Regulations in consideration for the City not requiring the immediate installation of sidewalks;

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:

Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E,

Pennington County, South Dakota.

2. This agreement specifically references the installation of sidewalk along Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E, Pennington County, South Dakota.

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 install sidewalk and along Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E, Pennington County, South Dakota, 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 City not requiring the immediate installation of sidewalk along Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E, Pennington County, South Dakota. It is understood by the Developers that the City of Rapid City's primary consideration for not immediately requiring the installation of sidewalks along Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E, Pennington County, South Dakota, is the Developers' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project.

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of sidewalk along Lot 1, 2R, 17R, 19, 20, 21R, 22R, 24R, 25, 26, 31A, 31B, 32A, 32B, 33A, 33B, 34A, 34B, Village on the Green #2 Subdivision, Section 12 and 13, T1S, R7E, 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 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 _____, 2004⁵

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

See Page 4

Steven G. Frost

Dorothy Schempp

Dorothy Schempp

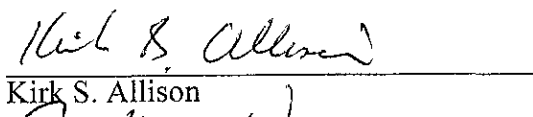
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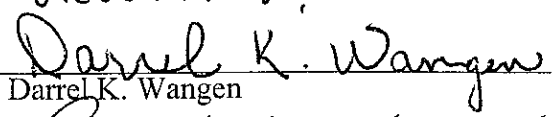
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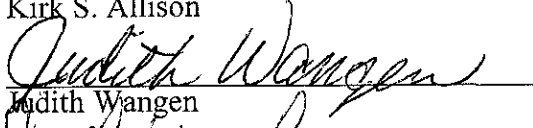
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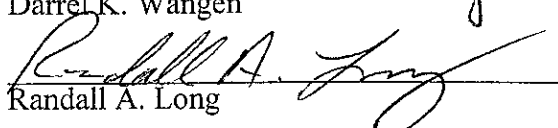
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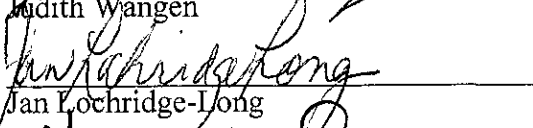

STEVEN ERNEST


Kirk S. Allison

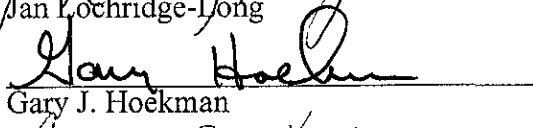

Darrel K. Wangen

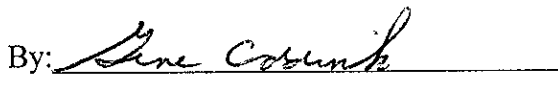

Judith Wangen

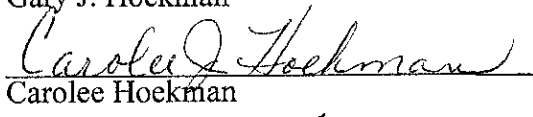

Randall A. Long

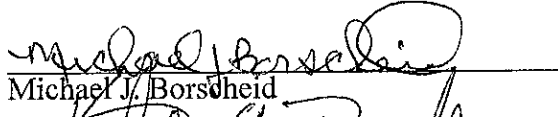

Jan Lochridge-Long

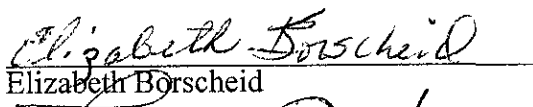
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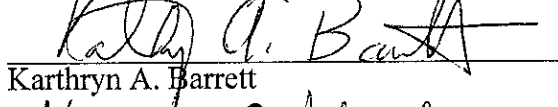

Gary J. Hoekman

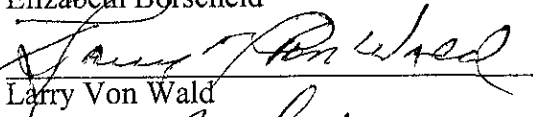
By: 

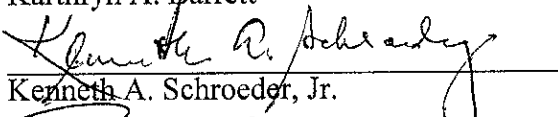

Carolee Hoekman

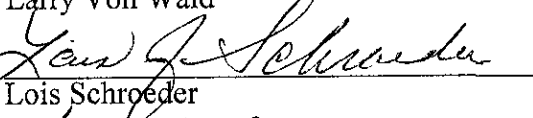

Michael J. Borscheid

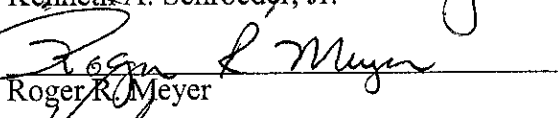

Elizabeth Borscheid

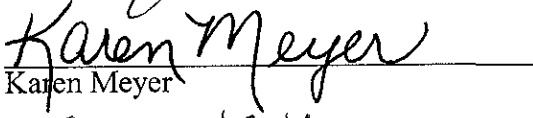

Karthryn A. Barrett

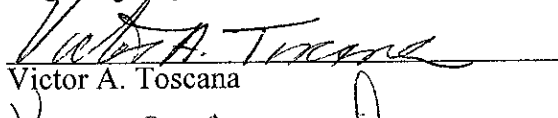

Larry Von Wald


Kenneth A. Schroeder, Jr.

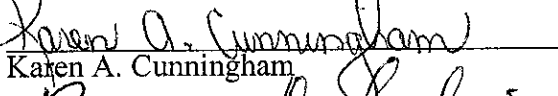

Lois Schroeder

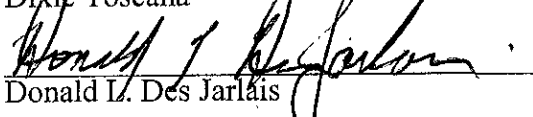

Roger R. Meyer

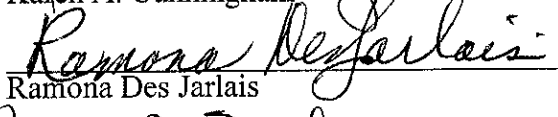

Karen Meyer

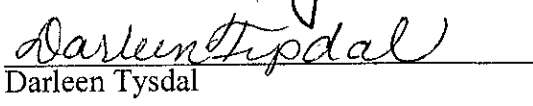

Victor A. Toscana

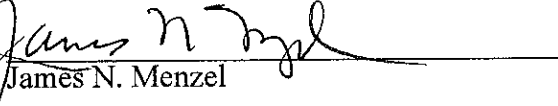

Dixie Toscana


Karen A. Cunningham


Donald L. Des Jarlais


Ramona Des Jarlais


Darleen Tysdal


James N. Menzel

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 200⁵, 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 3rd day of MARCH, 2004⁵, before me, the undersigned officer personally appeared Steven G. Frost, 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.

Steven G. Frost

Notary Public, South Dakota
My Comm Exp 11-6-09

My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the 23 day of March, 2004⁵, before me, the undersigned officer personally appeared Leland Schempp and Dorothy Schempp, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

Melita Carpenter

Notary Public, South Dakota

My Commission Expires: October 19, 2010

(SEAL)



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

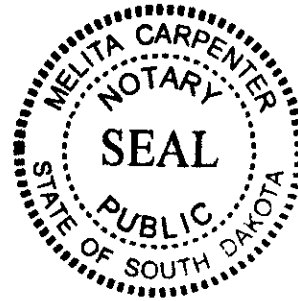
On this the 1st day of March, 200~~4~~⁵, before me, the undersigned officer personally appeared Keith Carlyle, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Melita Carpenter
Notary Public, South Dakota

My Commission Expires: October 19, 2010

(SEAL)



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

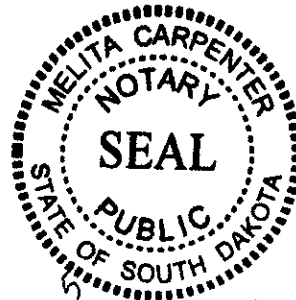
On this the 24 day of January, 200~~4~~⁵, before me, the undersigned officer personally appeared Kirk S. Allison, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Melita Carpenter
Notary Public, South Dakota

My Commission Expires: October 19, 2010

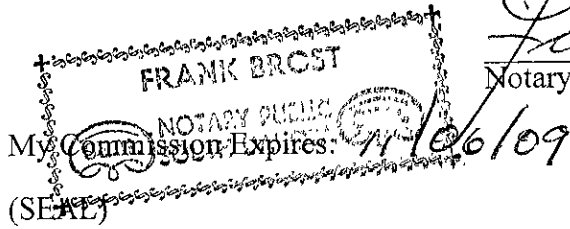
(SEAL)



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

On this the 15th day of March, 200~~4~~⁵, before me, the undersigned officer personally appeared Darrel K. Wangen and Judith Wangen, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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



Frank Brost

Notary Public, South Dakota

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

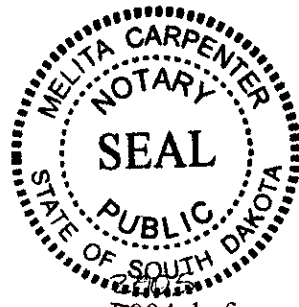
On this the 27 day of January, ²⁰⁰⁵2004, before me, the undersigned officer personally appeared Randall A. Long and Jan Lochridge-Long, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

Melita Carpenter

Notary Public, South Dakota

My Commission Expires: October 19, 2010
(SEAL)



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

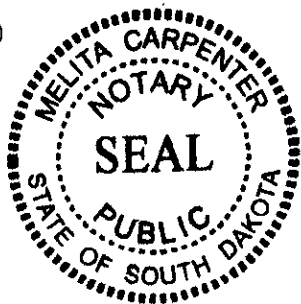
On this the 21 day of January, 2004, before me, the undersigned officer, personally appeared Gene Addink who acknowledged himself to be the Treasurer General Manager, of HART RANCH DEVELOPMENT CO., and that he, as such Treasurer General Manager, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of the corporation by himself as Gene Addink.

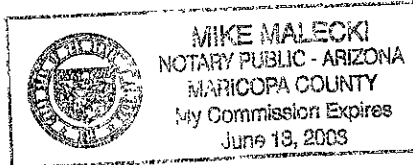
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Melita Carpenter

Notary Public, South Dakota

My Commission Expires: October 19, 2010
(SEAL)





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

Mike Malecki
Notary Public, South Dakota

My Commission Expires: June 13, 2008

(SEAL)

State of ~~South Dakota~~ ARIZONA)
County of ~~Pennington~~ PINAL)
ss.

On this the 25th day of March, 2005, before me, the undersigned officer personally appeared Donald L. Des Jarlais and Ramona Des Jarlais, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

Marjorie A. Serna
Notary Public, South Dakota ARIZONA

My Commission Expires: September 04, 2005

(SEAL)
Notary Public State of Arizona
Pinal County
Marjorie A Serna
Expires September 04, 2005

State of South Dakota)
County of Pennington)
ss.

On this the 24 day of January, 2005, before me, the undersigned officer personally appeared Darleen Tysdal, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

Melita Carpenter
Notary Public, South Dakota

My Commission Expires: October 19, 2010

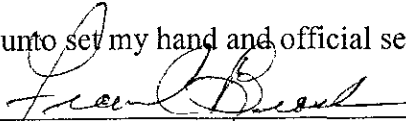
(SEAL)



State of South Dakota)
 ss.
County of Pennington)

On this the 3rd day of March, 2004⁵, before me, the undersigned officer personally appeared James N. Menzel, 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

