

PARKING LOT DEVELOPMENT AGREEMENT

This Agreement is made and executed this ____ day of _____, 2005, by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, South Dakota, herein after referred to as the “City” and McCarthy Properties, LLC, herein after referred as “McCarthy.” This Agreement is made subject to the following terms and conditions:

Section 1.

AGREEMENT:

The City expressly agrees to allow McCarthy to construct a parking lot and sidewalk on city owned property located at the south east corner of the Jackson Park Disc Golf Course, legally described as Tract 8 of the Rapid City Greenway Tract located in Township One North, Range Seven East of Sections 3, 4 and 10, BHM, Rapid City, Pennington County, South Dakota, which is directly adjacent to the west of the McCarthy property located at 2834 Jackson Blvd. and is legally described as Lot 1 of Lot A of the SE ¼ of the SW ¼, Township One North, Range Seven East of Section 3, BHM, Rapid City, Pennington County, South Dakota, as shown on Exhibit “A” “Jackson Park Building – Option #2” which has been attached hereto and incorporated herein by this reference.

Such permission shall in no way be construed as a relinquishment of any ownership or interest the City has in the property. McCarthy agrees that the parking lot and sidewalk will comply with applicable city ordinances and specifications. McCarthy also agrees that the parking lot and sidewalk will not exceed the general dimensions shown on Exhibit “A” and that any substantial changes in size or configuration must be approved by a written amendment to this Agreement.

Section 2.

CONSIDERATION:

The City agrees that the mutual fulfillment of the terms and conditions set forth herein result in a direct benefit to the City, specifically an added public parking area at a municipal park. McCarthy agrees that in consideration for building and maintaining the public parking lot, McCarthy derives a direct benefit in that McCarthy shall enjoy convenient, adjacent, additional parking spaces and better traffic control.

Section 3.

PUBLIC ACCESS:

The parking lot herein described shall be designated public parking and posted as such with a closing time of 10:00 o'clock p.m. and shall be subject to all applicable rules and regulations which apply to other public, municipal parking lots.

Section 4.

LANDSCAPING:

McCarthy agrees that he will meet all landscaping requirements associated with development of the parking lot in addition to any other landscaping requirements which may be required for the property he is developing adjacent to the parking lot.

Section 5.

PARK PURPOSE:

By approving this agreement the City Council specifically finds that the parking lot serves a park purpose as required by SDCL 9-38-35.

Section 6.

MAINTENANCE:

For the duration of this agreement, McCarthy agrees to provide all maintenance to the improvements that it will install, which will consist of maintenance to the parking lot and sidewalk, including snow removal, vegetation care and control, striping, resurfacing,

and all other normal and usual maintenance of the parking lot so as to conform with the maintenance requirements of the City.

Section 7.

CHANGES TO DISC GOLF COURSE.

The construction of this parking lot will interfere with the layout of one of the holes on the disc golf course. McCarthy agrees to pay for any changes that are made to the hole so that it can accommodate this parking lot. This would include, but not necessarily be limited to, installing a concrete slab for a tee box.

Section 8.

USES ALLOWED.

This agreement is dependant on the use of the McCarthy property continuing to be consistent with the uses allowed in the Office Commercial Zoning District which are contained in Chapter 17.40 of the Rapid City Municipal Code at the time that this agreement is adopted. Under no circumstances will McCarthy allow a use on the property which includes the sale of alcohol either on-sale or off-sale. Should the use no longer be consistent with that of the Office Commercial Zoning District or should a tenant that allows the sale of alcohol be located on the premises then this agreement will terminate 60 days after the City has provided written notice to McCarthy of the violation.

Section 9.

HOLD HARMLESS AND INDEMNIFY:

McCarthy agrees to defend, indemnify and hold the City harmless from any and all claims arising out of the negligent construction or maintenance of the parking lot and sidewalk. McCarthy further agrees to obtain an insurance policy which provides liability coverage for the parking lot and which names the City of Rapid City as an additional insured. The liability policy shall not be for less than \$1,000,000 per incident. McCarthy shall forward proof of such liability coverage to the City along with any cancellation notices by McCarthy's insurance carrier.

Section 10.

OWNERSHIP:

All future improvements to the property shown on Exhibit "A" which are constructed on City property shall immediately become and remain the sole and exclusive property of the City upon execution of this Agreement.

Section 11.

COSTS:

McCarthy agrees that all costs associated with the construction and maintenance of said parking lot shall be its responsibility.

Section 12.

RIGHT TO ASSIGN:

The parties agree that McCarthy has the right to assign his interest in this agreement subject to approval of the assignment by the City.

Section 13.

FUTURE USE, TERMINATION AND DEFAULT:

The initial duration of this agreement is ten (10) years. The City agrees that so long as McCarthy fulfills all terms, conditions, and obligations of this Agreement, the City shall in no way, for a period of ten (10) years, hinder the use by McCarty or its tenants of this particular parking lot, except for the use of the general public which may occupy many or all of the parking lot's spaces. The City reserves the right to terminate this Agreement at any time in the event that McCarthy fails to fulfill any of the terms and conditions contained herein. If McCarthy is in compliance with the lease, the City agrees to automatic one-year renewal periods, under the same terms and conditions, unless the City or McCarthy gives a six-month written notice of intent to terminate this Agreement.

Section 14.

AMENDMENT

This Agreement can only be amended by a written instrument approved by both parties.

Section 15.

VENUE, GOVERNING LAW.

The parties rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be litigated, and venued, in the Circuit Court of the Seventh Judicial Circuit located in Rapid City, Pennington County, State of South Dakota.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

McCARTHY PROPERTIES, LLC.

By: _____

Its: _____

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

ACKNOWLEDGMENT

On this the ____ day of _____, 2005, before me, the undersigned officer, personally appeared _____ and _____, 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 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

(SEAL)

My Commission Expires:

State of South Dakota)
 SS.
County of Pennington)

On this ____ day of _____, 2005, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of McCarthy Properties, LLC, and that being duly authorized to do so, he executed the foregoing instrument by signing the name of McCarty Properties, LLC, by himself as its _____.

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

Notary Public, South Dakota

My Commission Expires:
(SEAL)