

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

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF PENNINGTON )

**COVENANT AGREEMENT FOR  
VARIANCE TO WAIVE TLC'S  
REQUIREMENT TO PROVIDE  
SEWER SERVICE**

This declaration of covenant and agreement ("Agreement") is entered into this \_\_\_\_\_ day of April, 2008, by and between the CITY OF RAPID CITY ("CITY"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701, TLC INVESTMENTS, INC. ("TLC"), 516 5<sup>th</sup> St., Ste. 200, Rapid City, South Dakota, 57702, F&D SHULTZ LIMITED PARTNERSHIP ("F&D"), of 2109 Skyline Drive, Box 8110, Rapid City, South Dakota 57709-8110, THE PEARL SCHMID LIMITED PARTNERSHIP ("SCHMID LP"), c/o Haven Stuck, Registered Agent, P.O. Box 8250, Rapid City, South Dakota, 57709; and THE SCHMID FAMILY, LLC("SCHMID LLC"), c/o Frank A. Schmid, Registered Agent, 8405 Black Hawk Court, Rapid City, South Dakota, 57702

F&D, SCHMID LP, and SCHMID LLC hereby acknowledge that they are the owners of record of the property located at:

A tract of land located in the SE1/4 NE1/4 of Section 27, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, more particularly described as follows: Commencing at a point which is a 5/8" rebar with survey cap LS 1019 marking the NE1/16 Corner of Section 27, T1N, R7E, BHM, and the northwest corner of proposed TLC Subdivision, Thence N89°56'17"E a distance of 162.12', more or less, to a point; Thence southeasterly on a curve to the left with a radius of 1507.85' and an arc length of 537.69', with a chord bearing of S42°56'03"E and a chord distance of 534.84', more or less, to a point; Thence S36°36'49"E a distance of 175.62', more or less, to a point; Thence S60°10'15"E a distance of

46.65', more or less, to a point; Thence  $S74^{\circ}23'41''E$  a distance of 222.70', more or less, to a point; Thence  $N20^{\circ}50'23''E$  a distance of 22.97', more or less, to a point; Thence southeasterly on a curve to the left with a radius of 1507.85' and an arc length of 291.20', with a chord bearing of  $S74^{\circ}41'35''E$  and a chord distance of 290.75', more or less, to a point; Thence  $S08^{\circ}38'06''W$  a distance of 239.52', more or less, to a point; Thence southeasterly on a curve to the left with a radius of 128.44' and an arc length of 221.34', with a chord bearing of  $S40^{\circ}42'59''E$  and a chord distance of 194.95', more or less, to a point; Thence  $S89^{\circ}53'00''W$  a distance of 1266.06', more or less, to a point; Thence  $N00^{\circ}00'21''E$  a distance of 1057.92', more or less, to the point of beginning. Said area includes 17.810 acres, more or less.

WHEREAS, F&D, SCHMID LP, SCHMID LLC, and TLC have entered negotiations whereby TLC would purchase the above-described property from F&D, SCHMID LP and SCHMID LLC and would intend to develop said property; and

WHEREAS, TLC has applied for a Variance to the Subdivision Regulations to waive the requirement to provide sewer service to the property as per Chapter 16.16 of the Rapid City Municipal Code; and

WHEREAS, a 10 inch sanitary sewer line is currently located in the Catron Boulevard right-of-way and an eight inch sanitary sewer line is located in the U.S. Highway 16 right-of-way, and both flow to an existing lift station located near the intersection of Catron Boulevard and U.S. Highway 16; and

WHEREAS, there are capacity concerns with the lift station and the receiving sewer mains downstream; and

WHEREAS, sewer also exists further west along Catron Boulevard ending near the intersection of Golden Eagle Drive and Catron Boulevard, and this sewer gravity flows to an interceptor sewer main located in the Sheridan Lake Road area; and

WHEREAS, previous analysis for other projects has shown the need for increased capacity of the interceptor sewer main; and

WHEREAS, the eight inch sewer main located between the interceptor main and the potential connection location near Golden Eagle Drive was not sized to accommodate flows from this area; and

WHEREAS, it is the intent of TLC and the City to enter into an Agreement whereby the City can support the Variance to the Subdivision Regulations if TLC agrees to certain stipulations;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is agreed by the parties as follows:

1. TLC hereby covenants and agrees that no building permits shall be issued for the property until adequate sewer capacity is demonstrated to serve the property.

2. TLC hereby covenants and agrees that prior to approval of a Final Commercial Development Plan, a sanitary sewer study and sanitary sewer construction plans shall be submitted for review and approval.

3. TLC hereby covenants and agrees that a Master Sewer Plan shall be submitted for review and approval showing sewer service to the south lot line of the property and utility easements shall be provided as needed.

4. It is understood by TLC that the City's primary consideration for the granting of the Variance to the Subdivision Regulations on the above described property is TLC's covenant and promise to complete the Agreement conditions outlined in paragraphs 1-3 above.

5. The parties agree that the terms of this agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling without regard to the principles of conflict of laws. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court for the State

of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.

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. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of TLC, 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 provisions of South Dakota statutes.

8. If any section(s), or provisions 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.

9. If the landowner 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 \_\_\_\_\_, 2008.

CITY OF RAPID CITY

\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

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

(SEAL)

TLC INVESTMENTS, INC.

By:\_\_\_\_\_

F&D SHULTZ LIMITED PARTNERSHIP

By:\_\_\_\_\_

THE PEARL SCHMID LIMITED PARTNERSHIP

By:\_\_\_\_\_

THE SCHMID FAMILY, LLC

By:\_\_\_\_\_

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Alan Hanks 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 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 \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of TLC INVESTMENTS, INC., and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of TLC INVESTMENTS, LLC by himself as \_\_\_\_\_.

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 \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of F&D SHULTZ LIMITED PARTNERSHIP, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of F&D SHULTZ LIMITED PARTNERSHIP by himself as \_\_\_\_\_.



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

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Notary Public, South Dakota

My Commission Expires:

(SEAL)