

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

11/19/09 MCS

STATE OF SOUTH DAKOTA)
) SS. **COVENANT AGREEMENT**
COUNTY OF PENNINGTON)

This declaration of covenant and agreement (“Agreement”) is entered into this ____ day of _____, 2009, by and between HDRK PROPERTIES, LLC (“Landowner”), located at 516 5th Street, Rapid City, SD 57701, and the CITY OF RAPID CITY (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, the Landowner hereby acknowledges that it is the owner of record of the following property generally located at 1520 Luna Avenue legally described as:

Tract C of Rushmore Center as shown by the Plat recorded in Book 35 of Plats on Page 62, Rapid City, Pennington County, South Dakota; and

WHEREAS, the above-described property is served by private water lines; and

WHEREAS, the water service valve for the above-described property is located on the property; and

WHEREAS, the City would like to ensure that the City has the right of ingress and egress to the water service valves allowing the City to control the use of all water by the Landowner on the property without obstructing the flow of water to apparatus used for fire control and containment; and

WHEREAS, it is the intent of the Landowner and the City to enter into an agreement whereby the City will approve a final plat for the above described property in exchange for the

Landowner agreeing to enter into a Covenant Agreement ensuring the City's right to ingress and egress on the property for the purpose of controlling the use of all water by the Landowner.

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

1. The Landowner hereby covenants and agrees that the City shall have the permanent right of ingress and egress to the water service valves on the property allowing the City to control the use of all water on the property without obstructing the flow of water to apparatus used for fire control and containment. Such water service valves shall be maintained by the Landowner and shall be kept free of any and all obstacles so as to allow continued unobstructed access to such valves for the purposes stated herein. This covenant shall inure to the benefit of the parties and shall run with the land.

2. It is understood by the Landowner that the City's primary consideration for the final plat approval on the above described property is the Landowner's covenant and promise to allow the City the right to ingress and egress on the property for the purpose of controlling the use of all water by the Landowner on the property without obstructing the flow of water to apparatus used for fire control and containment. It is further acknowledged by the parties that the approval of the final plat is sufficient consideration for this agreement.

3. 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 Landowner, and shall 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.

4. 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.

5. 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.

6. This agreement shall be construed according to the laws of the State of South Dakota and any action concerning this agreement shall be venued in the Circuit Court for the Seventh Judicial Circuit, Rapid City, Pennington County, South Dakota.

7. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

8. 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 _____, 2009.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer
(SEAL)

HDRK PROPERTIES, LLC

By: Hani Shafai
Its: member

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, 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 duly authorized to do so, executed the foregoing agreement 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 23 day of November, 2009, before me, the undersigned officer, personally appeared Hani Shafai, who acknowledged himself to be the Member of HDRK PROPERTIES, LLC, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Renee Catron

Notary Public, South Dakota

My Commission Expires: 10/11/2012

