



Item No. 83A

CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724


Growth Management Department
300 Sixth Street

Vicki Fisher, Planning Manager
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, Planning Manager 

DATE: July 28, 2010

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for street improvements for File #10SV011

Legal Description: Lots 3 and 4 of Marlin Industrial Park, Section 20, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota

A Variance to the Subdivision Regulations to waive the requirement to install water and sewer along Elk Vale Road has been submitted in conjunction with a Preliminary Plat to consolidate two lots into one lot. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest any future assessment for the installation of water and sewer along Elk Vale Road. 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 any future assessment for the installation of water and sewer along Elk Vale Road as it abuts the property.

(File #10SV012)



EQUAL OPPORTUNITY EMPLOYER

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

6/18/10 MCS

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 8th day of July, 2010, by and for RCS STORAGE, LLC, 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 submitted a proposed subdivision plat; 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 curb, gutter, sidewalk, street light conduit, water and sewer, which in this instance would require the Developer to install curb, gutter, sidewalk, street light conduit, water, and sewer along Elk Vale Road as it abuts Lots 3 and 4 of Marlin Industrial Park, City of Rapid City, as shown by the plat recorded in Book 34 of Plats on Page 61 in the Office of the Register of Deeds, Pennington County, South Dakota; 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 curb, gutter, sidewalk, street light conduit, water, and sewer along Elk Vale Road as it abuts the subject property in exchange for the City not requiring immediate installation of the improvements 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:

Lots 3 and 4 of Marlin Industrial Park, City of Rapid City, as shown by the plat recorded in Book 34 of Plats on Page 61 in the Office of the Register of Deeds, Pennington County, South Dakota.

2. This agreement specifically references the installation of curb, gutter, sidewalk, street light conduit, water and sewer along Elk Vale Road as it abuts the subject property.

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 curb, gutter, sidewalk, street light conduit, water, and sewer along Elk Vale Road as it abuts the subject property 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 curb, gutter, sidewalk, street light conduit, water and sewer along Elk Vale Road as it abuts the subject property. 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 immediately install curb, gutter, sidewalk, street light conduit, water and sewer along Elk Vale Road as it abuts the subject property 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 curb, gutter, sidewalk, street light conduit, water and sewer along Elk Vale Road as it abuts the subject property, 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 installation 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

