

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

9/14/10 MCS

STATE OF SOUTH DAKOTA )  
  )SS  
COUNTY OF PENNINGTON )

**COVENANT AGREEMENT**

This declaration of covenant and agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **ATLANTIS LLC** ("Landowner"), 502 West Boulevard, Rapid City, South Dakota 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 located at 1314 North Elk Vale Road, and legally described as:

Lot 1 Revised of Atlantis Subdivision,  
Rapid City, Pennington County, State of South Dakota; and

**WHEREAS**, the Landowner hereby acknowledges that it is the owner of record of the following described property located at 1416 North Elk Vale Road, and legally described as:

Lots 1 and 2 of Davis Subdivision,  
Box Elder, Pennington County, State of South Dakota; and

**WHEREAS**, on September 7, 2010, Rapid City Zoning Board of Adjustment granted a variance to the zoning ordinance for 79 off street parking spaces for Lot 1

Revised of Atlantis Subdivision, with the stipulation that Landowner enter into this Agreement;

**WHEREAS**, the City would like to ensure that if the above-described properties are ever transferred separately, a shared parking agreement or parking easement is entered into to maintain an adequate number of off street parking spaces for Lot 1 Revised of Atlantis Subdivision; and

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

1. The Landowner does hereby covenant and agree that at anytime one of the above-described Lots is transferred so that they will no longer be under common ownership, a shared parking agreement will be entered into, or a parking easement will be granted and filed on the above-described property simultaneously with the transfer of the property, said agreement or easement to reserve 79 off street parking spaces for the current and future use of Lot 1 Revised of Atlantis Subdivision. The agreement or easement shall be in a form that is acceptable to, and which has been approved by the City Attorney's Office. At such time as the Landowner of Lot 1 Revised of Atlantis Subdivision provides sufficient off street parking on said property to meet the requirements of the Rapid City Municipal Code, this agreement can be released and the above-described properties may be transferred without having to enter into an agreement for parking or the granting of an easement. This covenant shall inure to the benefit of the parties and shall run with the land.

2. 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.

3. 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.

4. If any section(s), or provision of this agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this agreement if they can be given effect without the invalid section(s) or provisions.

5. 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.

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

7. If the Landowner is a corporation or limited liability company, 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 \_\_\_\_\_, 2010.

CITY OF RAPID CITY

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

ATTEST:

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

(SEAL)

ATLANTIS, LLC

BY: \_\_\_\_\_  
Paul J. Bradsky

ITS: Managing Member

STATE OF SOUTH DAKOTA:  
  :SS  
COUNTY OF PENNINGTON :

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared **Alan Hanks** and **Pauline Sumption**, 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 seal.

My Commission Expires:  
  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public, South Dakota

(SEAL)

STATE OF SOUTH DAKOTA:  
  :SS  
COUNTY OF PENNINGTON :

On this the \_\_\_\_\_ day of \_\_\_\_\_. 2010, before me, the undersigned officer, personally appeared, **Paul J. Bradsky**, who acknowledged himself to be the Managing Member of ATLANTIS LLC, a South Dakota limited liability company, and that he, as such Member, being authorized so to do, executed the foregoing agreement for the purposes therein contained by signing the name of the company by himself as said Member.

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

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

\_\_\_\_\_  
(SEAL)