

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

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

This declaration of covenant and agreement (“Agreement”) is entered into this ____ day of _____, 2011, by and between C & H PLAZA, LLC (“Landowner”), located at 2551 Kimbell, Rapid City, SD 57701, and the CITY OF RAPID CITY (“City”), a South Dakota municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, the Landowner hereby acknowledges that it is the owner of record of the following properties generally located at 1109 Omaha Street, Rapid City, South Dakota, and legally described as:

The West 1/2 of Lot 4 and all of Lots 5-13 of Block 3 of Riverside Addition located in Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota;

Lot 21-22 of Block 3 of Riverside Addition located in Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota;

WHEREAS, the Landowner does not currently have enough off street parking spaces as required by the Rapid City Municipal Code for the proposed uses on Lot 4; and

WHEREAS, the Landowner would like to use the additional off street parking provided on Lots 21 and 22 to meet the off street parking requirements for Lot 4; and

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 the required number of off street parking spaces for Lot 4; and

WHEREAS, it is the intent of the Landowner and the City to enter into an agreement whereby the City will grant a conditional use permit for the premises located on Lot 4 to allow an on-sale liquor establishment in exchange for the Landowner agreeing to enter into a shared parking agreement or granting a parking easement if the above described properties are ever transferred separately.

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 at any time one of the above described Lots is transferred so that they will no longer be under joint 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. 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 provides sufficient off street parking on the above described Lots 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. It is understood by the Landowner that the City's primary consideration for the

issuance of any conditional use permits on the above described property is the Landowner's covenant and promise to enter into a shared parking agreement or grant a parking easement if any of the above described property is transferred in such a way that it is no longer under joint ownership. It is further acknowledged by the parties that the granting of a conditional use permit to allow an on-sale liquor establishment on Lot 4, when the Lot does not currently have sufficient off street parking to comply with the RCMC, 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 Office of the Pennington County Register of Deeds 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 _____, 2011.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Pauline Sumption, Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2011, before me, the undersigned officers, personally appeared Sam Kooiker 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 official seal.

Notary Public, South Dakota

My Commission Expires:

C & H PLAZA, LLC

By:_____

Its:_____

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

On this _____ day of _____, 2011, before me, the undersigned officer, personally appeared _____, who acknowledged him or herself to be the _____ of C & H Plaza, 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.

[SEAL]

Notary Public, State of South Dakota
My Commission Expires:_____