

Prepared by:  
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COVENANT FOR CROSS-USE AGREEMENT

This Covenant for Cross-Use Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between ATLANTIS, LLC, a South Dakota limited liability company, of 502 West Boulevard, Rapid City, South Dakota 57701 (hereinafter called "Landowner"), and the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701 (hereinafter called "City").

Recitals

Whereas, Landowner is the sole owner of each of the following described adjoining properties:

Parcel 1:

Lot 1 of Tract E of W-Y Addition to the City of Box Elder, Pennington County, South Dakota, as shown on the plat filed in Plat Book 35, Page 36

Parcel 2:

Lot 2 of Wal-East Subdivision to the City of Box Elder, Pennington County, South Dakota, as shown on the plat filed in Plat Book 29, Page 188

Parcel 3:

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

Parcel 4:

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

(hereinafter referred to as "Parcel 1," "Parcel 2," "Parcel 3" and "Parcel 4"); and



Whereas, in connection with the approval of Landowner's Final Planned Development for the expansion of the Watiki Water Park and hotel expansion located in part on each of the Parcels, the City has required the submittal of a cross-use agreement in the event that in the future the Parcels are no longer in common ownership in order to assure that common access, parking, landscaping, utilities and storm water development requirements will be constructed and utilized collectively to meet Rapid City development requirements.

Now, therefore, in consideration of the mutual covenants and conditions contained herein, it is agreed as follows:

(1) Landowner does hereby covenant and agree that if at any time any one of the Parcels described above is conveyed or transferred so that all four Parcels are no longer under common ownership, a cross-use agreement will be entered into simultaneously with the conveyance and transfer of the Parcel in order to provide for common and shared access, parking, landscaping, and storm water development. The cross-use agreement shall be in form and substance acceptable to and approved by the City Attorney's office. At such time as a cross-use agreement approved by the City Attorney's office is executed, this covenant shall be released and any of the Parcels may then be conveyed and transferred subject to the approved cross-use agreement.

(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 Parcel 1, Parcel 2, Parcel 3 and Parcel 4. Furthermore, it is agreed that, in accepting title to any Parcel, 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, and its 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, or provision of this agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section or provision of this agreement if they can be given effect without the invalid section or provision.

(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.

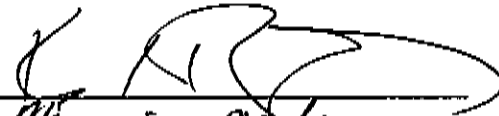


(6) No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

(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.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

ATLANTIS, LLC, a  
South Dakota limited liability company

By   
Its Managing Member

CITY OF RAPID CITY

\_\_\_\_\_  
Sam Kooiker, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(SEAL)



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

On this the 10th day of June, 2013, before me, the undersigned officer, personally appeared PAUL J. BRADSKY who acknowledged himself to be MANAGING MEMBER of Atlantis, LLC, a South Dakota limited liability company, and that he, as such MEMBER, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the South Dakota limited liability company by himself as MANAGING MEMBER.

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



MELISSA A. LUCAS  
Notary Public, South Dakota  
My Commission Expires:

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, 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 authorized so to do, executed the foregoing instrument 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)