

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

COVENANT AGREEMENT

THIS AGREEMENT IS MADE and entered into this _____ day of _____, 2013, by and for J. MARK ROBERTS, ACTING TRUSTEE OF THE JOHN P. ROBERTS REAL ESTATE TRUST, hereinafter "Developer," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter the "City."

WHEREAS, Developer is the owner of real property within the City of Rapid City legally described as Tract A of the Northwest Quarter of the Northeast Quarter (NW¹/₄NE¹/₄) located in Section Seven (7), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota ("the Property"); and

WHEREAS, the Developer previously sought a variance to the subdivision regulations for the Property to, among other things, waive the requirement to dedicate 17 additional feet of right-of-way along East St. Patrick Street; and

WHEREAS, the Common Council granted the variance at its meeting on January 17, 2012, with the stipulation that prior to submittal of a Final Plat application the Developer shall enter a Covenant Agreement with the City securing the commitment to dedicate 17 additional feet of right-of-way along East St. Patrick Street and to remove the existing encroaching buildings should the Property be further subdivided or redeveloped or necessitated by corridor growth; and

WHEREAS, the Developer now wishes to submit a Final Plat application for the Property; 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 dedicate an additional 17 feet of right of way on East St. Patrick Street and remove encroaching buildings at a future date as defined in this Agreement in exchange for the City's grant of a variance in 2012 and its acceptance and consideration of Developer's Final Plat application concerning the Property.

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 that property ("Property") which is designated and identified as follows:

Tract A of the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) located in Section Seven (7), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

2. Developer agrees to dedicate 17 additional feet of right of way along East St. Patrick Street and to remove existing buildings or structures which encroach upon the existing or future right of way at the earliest of these two events:

- (1) The Property is further subdivided, developed, or redeveloped; or
- (2) The dedication is necessitated by corridor growth and the City provides written notice to Developer and/or its successors in interest.

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 Developer, and be considered as a covenant running with the Property described herein. Furthermore, it is agreed that, in accepting title to the 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 Codified Laws.

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, its heirs, assigns or successors in interest agree the City may recover from the owner of the Property its reasonable expenses, including attorney's fees incurred with respect to such action.

5. If any section(s), or provision(s) 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(s) of this Agreement if the same can be given effect without the invalid section(s) or provision(s).

6. This Agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

DATED this _____ day of _____, 2013.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Finance Officer

(SEAL)

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 Covenant 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)

