

Prepared By: DREAM DESIGN INTERNATIONAL, INC  
528 KANSAS CITY STREET  
RAPID CITY, SD 57701  
(605) 348-0538

STATE OF SOUTH DAKOTA    )  
  )ss.  
COUNTY OF PENNINGTON    )

**COVENANT AGREEMENT**

COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND  
DISCOVERY CIRCLE, LLC. REGARDING OWNERSHIP AND MAINTENANCE OF  
STORM WATER DETENTION PONDS LOCATED IN LOTS 8 & 12, DISCOVERY  
SUBDIVISION.

This declaration of covenant and agreement (“Agreement”) is entered into this  
day of \_\_\_\_\_, 2013, by and between DISCOVERY CIRCLE, LLC  
 (“Landowner”), 2504 West Main Street, Rapid City, South Dakota 57702, and the City of Rapid  
City (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South  
Dakota, 57701.

Landowner hereby acknowledges that it is the owner of record of the  
property in Rapid City, South Dakota which is legally described as:

Lots 2-12 of Tract 3 of the Discovery Subdivision, located in the NE1/4 of the SE1/4 and  
the SE1/4 of the NE1/4 , Section 28, T2N, R8E, BHM, Rapid City, Pennington County,  
South Dakota.

WHEREAS, Landowner is seeking approval of a Final Plat; and

WHEREAS, there are proposed storm water detention ponds located on Lot 8 and Lot 12  
to provide storm water treatment for the Landowner’s proposed development; and

WHEREAS, as a condition of approval for the Final Plat, the Landowner agrees  
to enter into a recorded Covenant Agreement identifying the ownership of and the  
maintenance responsibility for the storm water detention ponds.

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

1. Landowner hereby covenants and agrees that it shall maintain ownership of the storm water detention ponds identified above.

2. Landowner hereby covenants and agrees to maintain the storm water detention ponds. Landowner will keep the storm water detention ponds free from improvements and obstructions including any buildings, hedges, trees and shrubs which could interfere with effective drainage. It is the responsibility of Landowner to prevent soil erosion and accumulation of sediment within the storm water detention ponds and to ensure that Lots 8 and 12 are maintained, mowed, and raked, all as required to allow the drainage improvements to function properly.

3. Landowner hereby covenants and agrees to defend, indemnify and hold the City harmless from all claims related to storm water detention ponds.

4. The parties agree that the terms of this agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling without regard to the principles of conflict of laws. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court for the State of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.

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 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.

7. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of Landowner, 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 provisions of South Dakota statutes.

8. If any section(s), or provisions 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.

9. 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 \_\_\_\_\_, 2013.

CITY OF RAPID CITY

By: \_\_\_\_\_

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 \_\_\_\_\_ and \_\_\_\_\_, 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 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)

DATED this 21<sup>ST</sup> day of NOVEMBER, 2013.

DISCOVERY CIRCLE, LLC

By:   
Gilbert D. Moyle  
Manager

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

On this the 21<sup>ST</sup> day of NOVEMBER, 2013, before me appeared Gilbert D. Moyle, to me personally known, who, being by me duly sworn, did say that he is the Manager of DISCOVERY CIRCLE, LLC, a South Dakota limited liability company, and acknowledged that he executed this instrument on behalf of said limited liability company and acknowledged said instrument to be the free act and deed of said limited liability company.

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

  
Notary Public, South Dakota

My Commission Expires: 6/2/17

(SEAL)