

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

**COVENANT AGREEMENT BETWEEN RAPID CITY ECONOMIC
DEVELOPMENT FOUNDATION, HILTON DEVELOPMENT CORP. AND THE
CITY OF RAPID CITY PROVIDING FOR DRAINAGE IMPROVEMENTS
IN RUSHMORE BUSINESS PARK SUBDIVISION**

This declaration of covenant and agreement (“Agreement”) is entered into this 4 day of December, 2014, by and between Rapid City Economic Development Foundation, a South Dakota nonprofit corporation, of 525 University Loop, Rapid City, South Dakota 57701 (“Developer”), and Hilton Development Corp., a South Dakota corporation, of 2903 Industrial Avenue, Aberdeen, South Dakota 57401 (“Landowner”), and the City of Rapid City, a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701 (“City”).

WHEREAS, Landowner is the owner of record of property in Rapid City, South Dakota which is legally described as:

Lot 1R of Block 4, Rushmore Business Park, located in Government Lot 2, Section 4, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

(“the Property”); and

WHEREAS, Developer owned the Property before transferring it to Landowner in 2008;
and

WHEREAS, at the time it owned the Property, per City ordinance Developer was obligated to construct a drainage channel to handle a 100 year storm event in order to provide adequate drainage for the Property and adjacent properties; and

WHEREAS, Developer instead constructed a drainage channel on the south and east extants of the Property that is undersized and that is not located within an easement; and

WHEREAS, Developer and Landowner have now filed with the City an application for a final plat concerning the Property; and

WHEREAS, Developer and Landowner seek City approval of the final plat despite the absence of adequate drainage for the Property; and

WHEREAS, the City is willing to approve the final plat application if Developer and Landowner covenant to construct sufficient drainage upon future development and to dedicate a drainage easement to the City once the construction is complete; and

WHEREAS, Landowner and Developer agree to enter into this recorded Covenant Agreement in exchange for the City's approval of the final plat application.

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

1. The property which is subject to this Agreement is legally described as:

Lot 1R of Block 4, Rushmore Business Park, located in Government Lot 2, Section 4, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota

("the Property").

2. Developer's Obligations. Developer agrees to construct upon the Property an adequate drainage channel to handle the 100 year design storm when one of the following events occurs:

- (a) One or more now-existing or future lots within the boundaries of East Anamosa Street, Turbine Drive, Homestead Street, and Concourse Drive, exclusive of the Property described in Section 1, above, are developed; or
- (b) Ten years expires after execution of this Agreement.

All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of Developer.

3. Landowner's Obligations. The Landowner hereby covenants and agrees that upon completion of the improvements by Developer discussed in Section 2, Landowner or its heirs, successors, or assigns will dedicate to the City a public drainage easement which includes within its boundaries the entirety of the drainage improvements constructed on the south and east extents of the Property.

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 Landowner 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.

4. Consideration. The parties acknowledge that the City's approval of the final plat submitted by Landowner and Developer is good and sufficient consideration for the promises made herein. It is understood by all parties that the City's primary consideration for granting approval of the final plat on the Property and its forbearance from requiring the Landowner to

immediately construct adequate drainage on the Property are the covenants and promises Landowner and Developer make in this Agreement.

5. 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, Landowner and Developer, as well as their 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.

6. Upon Developer's completion of an adequate drainage channel as contemplated by this Agreement and the City's approval of the same, the parties hereto shall execute the appropriate instrument to release this Agreement from the real estate records at the Pennington County Register of Deeds.

7. 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 laws 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.

8. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this Agreement.

9. 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.

10. If any party 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.

11. This Agreement can only be amended in writing by the consent of all the parties hereto.

Dated this 4 day of December, 2014.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON THE FOLLOWING THREE PAGES]

[SIGNATURE PAGE OF CITY]

Dated this _____ day of _____, 2014.

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 _____, 2014, 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 duly authorized to do so, executed the foregoing instrument for the purposes herein 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.

(SEAL)

Notary Public
My Comm. Expires: _____

[SIGNATURE PAGE OF LANDOWNER]

Dated this 4 day of December, 2014.

HILTON DEVELOPMENT CORP.



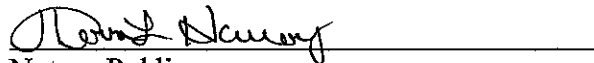
Steve Hilton, President

State of South Dakota)
 ss.
County of Pennington)

On this the 4 day of December, 2014, before me, the undersigned officer personally appeared Steve Hilton, who acknowledged himself to be the President of the Hilton Development Corp., and acknowledged that he as such President, being duly authorized to do so, executed the foregoing instrument as the act of its principal for the purposes therein contained.

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

(SEAL)



Notary Public

My Comm. Expires: Oct 23, 2016

[SIGNATURE PAGE OF DEVELOPER]

Dated this 4 day of December, 2014.

RAPID CITY ECONOMIC DEVELOPMENT
FOUNDATION



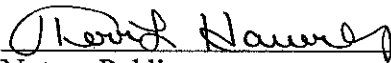
Patrick J. Burchill, President

State of South Dakota)
 ss.
County of Pennington)

On this the 4 day of December, 2014, before me, the undersigned officer personally appeared Patrick J. Burchill, who acknowledged himself to be the President of the Rapid City Economic Development Foundation, and acknowledged that he as such President, being duly authorized to do so, executed the foregoing instrument as the act of its principal for the purposes therein contained.

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

(SEAL)



Notary Public

My Comm. Expires: Oct 23, 2018