

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND LAZY P6  
LAND CO. INC.**

This Settlement Agreement (“Agreement”) is made and entered into on this 3<sup>rd</sup> day of ~~October~~<sup>November</sup>, 2015, by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City,” Sam Kooiker, an individual, whose address is 6601 Wellington Drive, Rapid City, South Dakota 57702, herein after referred to as “Mr. Kooiker,” Lazy P6 Land Co. Inc., a South Dakota corporation, located at 505 Catron Blvd., Rapid City, South Dakota 57701, herein after referred to as “Lazy P6,” and Orvil Davis, an individual, whose address is P.O. Box 1646, Rapid City, South Dakota 57709, herein after referred to as “Mr. Davis.”

**SECTION ONE: PURPOSE**

This Agreement is made and entered into between the City, Sam Kooiker, Lazy P6 and Mr. Davis to memorialize the terms of a settlement reached between the parties for the complete and final disposition of their claims, differences, and causes of action arising out of *Lazy P6 Land Co., Inc., and Orvil Davis v. City of Rapid City and Sam Kooiker* filed in the Seventh Judicial Circuit and venued in Pennington County, South Dakota, Case Number 51CIV14-001571.

**SECTION TWO: TERMS OF THE AGREEMENT**

The City, Mr. Kooiker, Lazy P6 and Mr. Davis wish to resolve all matters, known and unknown, discovered or discoverable by them, which may be in controversy between the parties and to resolve claims that were made, or could have been made, in the legal action described in Section One of this Agreement. This settlement and release extends to the individual employees of the parties and the elected officials of the City. Each party specifically denies any liability whatsoever to each other, but specifically express their desire to settle all disputes between them fully and finally.

In consideration of the mutual covenants set forth herein, the City and Lazy P6 agree as follows, based upon the signed acceptance of the September 14, 2015 Settlement Terms and Conditions Agreement, attached hereto as Exhibit A:

A. The City shall design, advertise, bid, award and manage all construction tasks needed for the upgrade of the traffic signal at the 5<sup>th</sup> Street and Catron Blvd. intersection and the extension of the existing sanitary sewer beyond the south edge of the existing Catron Blvd. pavement that was extended for 5<sup>th</sup> Street. With the exception of the approximately \$1,000 in costs the City and Lazy P6 previously agreed to, the cost of this work will be the sole responsibility of the City.

B. The City shall design, advertise, bid, award and manage all construction tasks needed to complete the drainage detention pond and outlet identified on City plans as MP 203. This work will be done at the City's sole expense. Lazy P6 agrees to donate any easements necessary to complete MP 203 within the parcel identified as Unit 6. If the City needs permanent easements within any units other than Unit 6, the City agrees to pay just compensation for such easements. Lazy P6 will provide the City with any temporary easements necessary to complete the project. Any temporary easement areas obtained by the City shall be returned to their existing condition upon completion of the project. The City commits to building MP 203 by October 1, 2016, unless weather, acts of god or other events beyond the City's control prevent the City from completing it by that date. If the City does not proceed with the construction of MP 203 in 2016, it agrees not to use the lack of MP 203 as a basis to impede or deny the development of Lazy P6's property, but the city will remain liable for completion of MP203 for its intended purpose.

C. The City will initiate a review of the future land use plan designation for the approximately 40 acres of land identified as Southgate Commercial Condominiums. City Staff will support amending the plan to change the anticipated future land use designation of this property to General Commercial consistent with the previous land use designation contained in the 2009 South Robbinsdale Neighborhood Area Future Land Use Plan.

D. Upon completion of the amendments to the future land use designation identified in paragraph C, Lazy P6 will submit an annexation request for the entire 40 acres currently described as Southgate Commercial Condominiums.

E. Upon execution of this Agreement and filing of a request for annexation of Unit 11 by Lazy P6, the City will allow immediate connection of the buildings on Unit 11 to the previously City accepted water and sewer mains. Lazy P6 will only be charged the standard City connection and use fees for making this connection.

F. Upon approval of this Agreement Lazy P6 will initiate the process of undoing the current condominium units on the parcels owned by Lazy P6 by platting the units which have been sold and converting the Southgate Commercial Condo Assoc. into covenants. The sale and transfer of the title to any of the other existing units in the future will be accomplished through the normal platting process and Lazy P6 agrees that only platted lots will be transferred upon execution of this Agreement. Extension of City infrastructure corridors required upon changing units to standard lots and blocks will be in accordance with the standard City design and construction process, and will be located within future dedicated public right of way corridors previously approved by the City.

G. Lazy P6 agrees that it will not obtain building permits from Pennington County for any structures located on any of the land that is part of Southgate Commercial Condominiums Phase I, consisting of approximately 40 acres on the SE corner of Catron Blvd. and 5th Street, prior to the land being annexed into the City. Nor will Lazy P6 transfer title to any new units unless the prohibition on obtaining a county building permit are specifically made part of any transfer. It is the intent of the parties that as this is developed, the land being developed will be platted through the legal platting process and any buildings or structures that are constructed will be built pursuant to City building permits and comply with the City's development standards.

H. Upon execution of this Agreement, the City will discontinue the process of involuntary annexing of any of the parcels currently owned by Lazy P6 (including the property to the south of Catron Blvd. and the west of 5<sup>th</sup> Street) so long as Lazy P6 complies with the terms of this Agreement.

I. The existing oversize agreement between the City and Lazy P6 regarding the extension of 5<sup>th</sup> Street shall remain in full force and effect except to the extent any provision has been modified by this Agreement.

J. Upon execution of this Agreement the parties shall give to their respective attorneys permission to sign a Stipulation for the Court to enter a Judgment of Dismissal of the claims made against the other in the pending lawsuit. The dismissal of claims against Sam Kooiker shall be with prejudice. The dismissal of the claims against the City generally shall be without prejudice. Lack of city performance will not impede Lazy P6 development or land use.

### **SECTION THREE: EFFECT OF AGREEMENT**

The parties agree and warrant that no promises, inducements, or representations have been made or offered except as herein set forth. The parties further agree that this Agreement is executed without reliance upon any statement or representation by any of the parties, their attorneys, or representatives, concerning the nature and extent of damages, or legal liability therefore, or the strength, weakness, or merit of any claims as part of this settlement. Both parties and their attorneys have made their own determination as to the law and facts and assume any and all risk in that regard. The consideration identified in this Agreement is not a mere recital.

Each entity and individual executing this Agreement represents that they have full legal authority to do so. This Agreement shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors, and assigns. The parties hereby represent that they have carefully read the foregoing Agreement, have consulted with their attorneys, know the contents thereof, and sign this Agreement of their own volition.

Dated this \_\_\_ day of November, 2015.

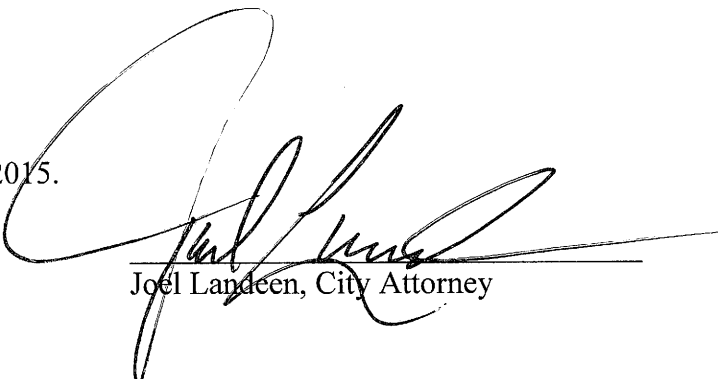
CITY OF RAPID CITY

\_\_\_\_\_  
Steve Allender, Mayor

ATTEST:

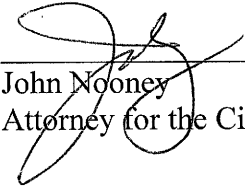
\_\_\_\_\_  
Pauline Sumption, Finance Officer

Dated this 10th day of November, 2015.

  
\_\_\_\_\_  
Joel Landeen, City Attorney

Dated this 5th day of November, 2015.

NOONEY & SOLAY, LLP.

  
\_\_\_\_\_  
John Nooney  
Attorney for the City and Sam Kooiker

Sam Kooiker  
Sam Kooiker, Individually

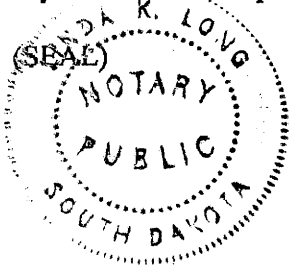
State of South Dakota     )  
  ss.  
County of Pennington     )

On this the 4<sup>th</sup> day of November, 2015 before me, the undersigned officer, personally appeared Sam Kooiker, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the foregoing instrument for the purposes herein contained.

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

Linda K. Long  
Notary Public, South Dakota

My Commission Expires: 7-17-2018



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LAZY P6 LAND CO., INC.,

*Orvil Davis*  
Orvil Davis, President

State of South Dakota     )  
  ss.  
County of Pennington     )

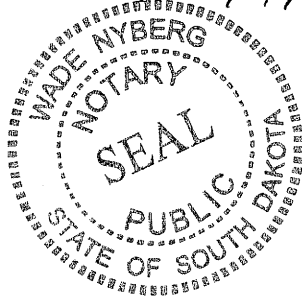
On this the 3rd day of ~~October~~ <sup>November</sup>, 2015 before me, the undersigned officer, personally appeared Orvil Davis, who acknowledged himself to be the President of Lazy P6 Land Co., Inc., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

*Wade Nyberg*  
Notary Public, South Dakota

My Commission Expires: 9-17-2016

(SEAL)



*Orvil Davis*  
Orvil Davis, Individually

State of South Dakota     )  
  ss.  
County of Pennington     )

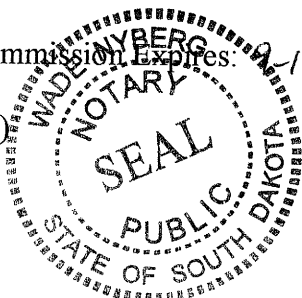
On this the 3rd day of ~~October~~ <sup>November</sup>, 2015 before me, the undersigned officer, personally appeared Orvil Davis, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the foregoing instrument for the purposes herein contained.

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

*Wade Nyberg*  
Notary Public, South Dakota

My Commission Expires: 9-17-2016

(SEAL)



Dated this \_\_\_\_ day of November, 2015.

COSTELLO, PORTER, HILL,  
HEISTERKAMP, BUSHNELL &  
CARPENTER, LLP.

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Jeff Swett  
Attorney for Lazy P6 and Orvil Davis

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Lazy P6 Land Co. Inc  
PO Box 1646  
Rapid City, South Dakota 57709  
Orvil Davis, President  
605-391-2027

September 14, 2015

Mayor, City Council  
City of Rapid City  
300 6<sup>th</sup> Street  
Rapid City, SD 57701

RE: Lazy P6 v. Sam Kooiker and City of Rapid City  
51CIV14-001571

**Settlement Terms and Conditions**

The following are the terms and conditions Lazy P6 believes are necessary for resolving the disputed actions taken by the City of Rapid City as set forth in the original Complaint.

The city shall design (currently complete) advertise, bid, award and manage all construction tasks needed for the 5<sup>th</sup> Street and Catron Blvd. intersection signal upgrade and the upgrade/extension of the existing sanitary sewer beyond the south edge of the existing Catron Blvd. pavement that was extended for 5<sup>th</sup> Street. There is no cost to Lazy P6 for this work, except for the amount previously agreed upon by city staff (approx. \$1,000 for sewer extension).

The city shall design (currently underway) advertise, bid, award and manage all construction tasks needed to complete the MP 203 outlet section on city property. There is no cost to Lazy P6 for this work, including no land taking from US, 11 or 15 without equitable compensation. Lazy P6 will provide temporary construction easements as needed. All disturbed areas shall be returned to existing condition. MP203 built by October 1, 2016.

There will be no forced annexations. The city will honor the annexation schedule in the Oversize Agreement approved by the city council October 7, 2013. P6 will submit voluntary annexation documents, approved in 60 days, in conjunction with future buyer's purchase documents. This annexed property shall come into the city zoned as shown in the 2009 South Robbinsdale Neighborhood Area Future Land Use Plan.

Lazy P6 will submit an annexation request for the 40 acres currently described as Southgate Commercial Condominiums upon approval of this agreement. The city will then return the 40 acres to the land use designations shown in the 2009 South Robbinsdale Neighborhood Area Future Land Use Plan.

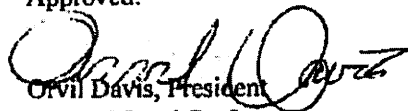
Upon city acceptance of this agreement, P6 will convert the Condo Association to Covenants.

Upon city acceptance of this agreement, P6 will convert the Current Units shown in the 40 acres to become P6's Master Plan. Upon sale transfer of these Units, they will convert to standard city lot and block designations, exactly the way P6 property north of Catron Blvd was platted upon sale/transfer.

Upon city acceptance of this agreement, city will allow immediate connection of U11 buildings to the previously city accepted water and sewer mains. Cost shall be standard city connection and use fees.

Extension of city infrastructure corridors required upon changing units to standard lot and blocks will be in accordance with the standard city design and construction process, within the future Right Of Way corridors previously approved by the city.

Approved:

  
Orvil Davis, President  
Lazy P6 Land Co. Inc.

Approved:

  
Steve Allender, Mayor, City of Rapid City

Attest: Pauline Sumption, Finance Officer