

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

*OK*  
*2-17-16*

**COVENANT AGREEMENT BETWEEN DOECK, LLC AND THE CITY OF RAPID CITY CONCERNING OUTLOT 1 OF AUBURN HILLS SUBDIVISION**

This declaration of covenant and agreement (“Agreement”) is entered into this 16 day of February, 2016, by and between DOECK, LLC (“Landowner”), a South Dakota limited liability company, of 1717 N. Sanborn, Mitchell, SD 57301-2617, and the City of Rapid City (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, the Landowner is the owner of record of property in Rapid City, South Dakota which is located in the Southwest Quarter of the Northwest Quarter (SW1/4NW1/4) of Section 13, Township 2 North (T2N), Range 7 East (R7E), BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS, the majority of Landowner’s property is located west of North Haines Avenue, with a small portion being located east of North Haines Avenue; and

WHEREAS, Landowner is proposing to plat a portion of the property into the following legal description:

Outlot 1 of Auburn Hills Subdivision, located in the Southwest Quarter of the Northwest Quarter of Section 13, Township 2 North (T2N), Range Seven East (R7E), BHM, Rapid City, Pennington County, South Dakota;

and

WHEREAS, this subdivision would plat only the small portion of the property located east of North Haines Avenue and otherwise separated from the remainder of Landowner’s property by North Haines Avenue;

WHEREAS, upon the platting of Outlot 1, City ordinances require the construction of street pavement, curb, gutter, sidewalk, street light conduit, water, and sewer; and

WHEREAS, Landowner does not wish to construct the improvements required by City ordinance upon platting of Outlot 1; and

WHEREAS, upon platting, Landowner intends to sell Outlot 1 to a neighboring landowner for agricultural use who does not intend to construct any buildings upon Outlot 1 or otherwise develop it in any way; and

WHEREAS, the City is willing to approve of an exception request not to construct any improvements within North Haines Avenue (City File 16EX008) if Landowner enters into this Covenant Agreement to render Outlot 1 an undevelopable lot that may not be developed or improved unless and until the construction of subdivision improvements, and connections with existing City utilities are completed; and

WHEREAS, the Landowner agrees to enter into a recorded Covenant Agreement to render Outlot 1 an undevelopable lot in exchange for the City's approval of the subdivision plat.

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:

**Outlot 1 of Auburn Hills Subdivision, located in the Southwest Quarter of the Northwest Quarter of Section 13, Township 2 North (T2N), Range Seven East (R7E), BHM, Rapid City, Pennington County, South Dakota**

("the Property").

2. The Landowner hereby covenants and agrees that the sole use of the Property shall be for conservation and agricultural uses. The parties agree that neither Landowner nor its heirs, assigns, and successors shall build upon the Property or in any way develop the Property, other than in minimal ways that encourage the use of the entire Property for conservation and agricultural use. The parties agree that no permanent structures shall be placed upon the Property.

3. The Landowner further covenants and agrees for itself, its heirs, assigns, and successors in interest, that should it or any of its heirs, assigns, or successors in interest fail to abide by any covenant herein contained, Landowner will make all necessary improvements to the Property required by the then-existing ordinances, including construction of subdivision improvements, and connection to City water and sewer utilities, within one year. Should the weather prevent immediate completion of these requirements, the Common Council may accept a surety bond in an amount equal to the estimated cost of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Landowner.

4. The parties agree that the City shall not issue a building permit for the Property unless or until Landowner makes the necessary improvements to the property required pursuant to Section 3 or the Landowner obtains further City permission not to construct the improvements, or connect to City utilities.

5. The parties acknowledge that the City's approval of the exception request (File 16EX008) to avoid construction of subdivision improvements submitted by Landowner is good and sufficient consideration for the promises made herein. It is understood by the Landowner that the City's primary consideration for granting approval of the exception request on the above-described property and its forbearance from requiring the Landowner to immediately construct the subdivision improvements and connect the Property to the City's utility systems is the Landowner's covenant and promise to refrain from developing the Property in any way and to use it solely for conservation and agricultural purposes.

6. The provisions and covenants herein shall continue in force until such time as this agreement is released, repealed, or rescinded with the consent of both parties, or until the provisions herein expire pursuant to state law. Upon expiration of twenty-five (25) years from time of its execution, this agreement will automatically renew for an additional twenty-five (25) year term. Thereafter upon expiration of each term, the agreement shall automatically renew in subsequent twenty-five (25) year terms for as long as state law permits.

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. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF RAPID CITY

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

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned officer, personally appeared Steve Allender 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.

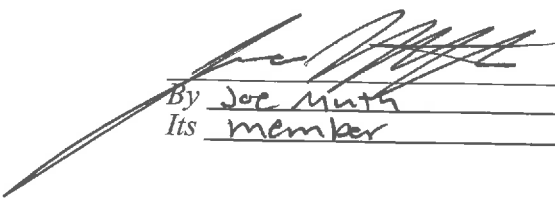
IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:  
(SEAL)

Dated this 16 day of February, 2016.

DOECK, LLC

  
By Joe Muth  
Its member

State of South Dakota )  
  ss.  
County of Pennington )

On this the 16 day of February, 2016, before me, the undersigned officer personally appeared Joe Muth, who acknowledged himself to be the member of DOECK, LLC, and acknowledged that he as such member, 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.

  
\_\_\_\_\_  
Notary Public – South Dakota

My Commission Expires:

(SEAL) \*



**My Commission Expires**  
**December 17, 2020**