

November 24, 2003

[e-mail: jknooney@mtnlaw.com]

***VIA E-MAIL ONLY***

Ms. Vicki Fisher  
City Planning Office  
vickie.fisher@rcgov.org

Mr. Jason Green, Esq.  
City Attorney  
City of Rapid City  
jason.green@rcgov.org

Mr. Jerry Foster  
FMG Engineering  
jfoster\_fmg@rushmore.com

Re: 5 Star Real Estate/Kohl=s  
*Our File No. 03N178*

Dear Vicki & Gentlemen:

I am providing to you a draft copy of the covenants I have prepared as it concerns the replat of Lots 1 and 2 of the Five Star Subdivision.

In my conversations with both Vicki and Jason, it is my understanding that as a condition to approving this plat, you will require the filing of covenants to prevent access consistent with the provision set forth in the covenant. Vicki, consistent with our conversations, I have taken the notes found in the staff report and incorporated that into the covenants. If, for any reason, any of you believe that the covenants are not sufficient or that they need to be modified in any way, please contact Donna at my office, and she will coordinate any changes with me as I will be out of town on business the entirety of the week.

Jason, it is my understanding that all other matters are scheduled to be set for final approval at the City Council Meeting on Monday, December 1, 2003. As we have previously discussed, in addition to the plat that includes the Petition to Vacate, the execution of a Quit Claim Deed which has previously been provided to you, as well as a Release of the Sewer Easement which has also similarly been provided to you. If for any reason, there are any additional things I need to provide you, I would appreciate it if you would contact Donna at my office at your first

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convenience. I would be more than glad to work on any of these matters prior to Monday. As always, I appreciate the assistance each of you have shown me in this matter.

Sincerely yours,

*Dictated but not proofread to expedite*

John K. Nooney

JKN/dmg  
Enclosure

Prepared by:  
John K. Nooney  
Thomas Nooney Braun Solay & Bernard, LLP  
P.O. Box 8108  
Rapid City, SD 57709-8108  
(605) 348-7516

## **RESTRICTIVE COVENANT**

Formally by these present:

RWM, LLC, a South Dakota Limited Liability Company (“RWM”), and NMCK, LLC, a South Dakota Limited Liability Company (“NMCK”), RWM and NMCK shall be collectively referred to as (“Owners”) of the following described real property located in Pennington County, South Dakota, which is presently described as:

Lots 1 and 2 of Five Star Subdivision located in the Northwest  
Quarter of Section 25, Township 2 North, Range 7 East of the Black Hills  
Meridian, Rapid City, Pennington County, South Dakota,

which real property is presently being re-platted to be described as :

Lots 1R and 2R of Five Star Subdivision located in the Northwest  
Quarter of Section 25, Township 2 North, Range 7 East of the Black Hills  
Meridian, Rapid City, Pennington County, South Dakota,

hereinafter referred to as “Real Property”.

## **RECITALS**

WHEREAS, Owners own in fee the Real Property;

WHEREAS, Owners are in the process of re-platting the Real Property;

WHEREAS, as a condition of that re-plat, the City of Rapid City has required the establishment of these restrictive covenants as more fully set forth herein;

WHEREAS, the Owners and the City of Rapid City respectfully set forth their signatures below for the purposes of establishing the restrictive covenants as more fully set forth herein

NOW, THEREFORE, in consideration of the pending re-plat of the Real Property, the Owners established restrictive covenants as set forth herein and the City of Rapid City as the entity who is responsible to approve the re-plat of the Real Property set forth herein agree that the covenant more fully set forth herein be imposed against the Real Property.

1. Access

To the extent that Lot 2R of the Real Property is accessed from Howard Street, such access should be limited exclusively to service and delivery vehicles only and there shall be no physical connection from the service bay of any structure located on Lot 2R to the balance of Lot 2R.

Dated this \_\_\_\_\_ day of November 2003.

RWM, LLC

By: \_\_\_\_\_  
John K. Nooney, Member

NMCK, LLC

By: \_\_\_\_\_  
Norman McKie, Member

CITY OF RAPID CITY

By: \_\_\_\_\_  
Jim Shaw, Mayor

ATTEST:

Jim Preston, Finance Officer

(SEAL)

[illegible]

On the \_\_\_\_ day of November 2003, before me, the undersigned officer, personally appeared John K. Nooney, member of RWM, LLC, and he, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself.

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

(SEAL)

Notary Public

My commission expires:

[illegible]

On the \_\_\_\_ day of November 2003, before me, the undersigned officer, personally appeared Norman McKie, member of NMCK, LLC, and he, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself.

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

(SEAL)

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Notary Public

My commission expires:

[illegible]

On the \_\_\_\_\_ day of November 2003, before me, the undersigned officer, personally appeared Jim Preston, who acknowledged himself to be the Finance Officer of the City of Rapid City, a municipal corporation, and that he, as such Finance Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Finance Officer.

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

(SEAL)

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_