

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

STATE OF SOUTH DAKOTA)
) SS. **COVENANT AGREEMENT**
COUNTY OF PENNINGTON)

This declaration of covenant and agreement (“Agreement”) is entered into this _____ day of _____, 2006, by and between FARRAR REAL ESTATE LIMITED PARTNERSHIP, 3857 N. Kings Peak Rd., Mesa, AZ 85215 and CARSON QUINN and DAVID LIPP, 9901 Canyon Place, Rapid City, SD 57702, collectively referred to as the “Landowners,” and the CITY OF RAPID CITY (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, the Landowners hereby acknowledge that they are the owners of record of the following properties legally described as:

Lot 1 of Block 5 of Farrar Business Park all located in Section 16 of T2N, R7E, BHM, Rapid City, Pennington County, South Dakota.

The N ½ of the SE ¼ lying North and East of I-90, Less Farrar Business Park, Section 16 of T2N, R7E, BHM, Rapid City, Pennington County, State of South Dakota.

WHEREAS, the Landowners have requested approval of a preliminary plat which proposes to create Lot 1R; and

WHEREAS, the subject property is not currently served by City water; and

WHEREAS, the water pressure for the subject property does not currently meet City standards for fire flows; and

WHEREAS, the parties are currently negotiating an agreement to provide for a water system with fire flows that meet City standards for the above described properties; and

WHEREAS, the City is reluctant to allow any additional structures on the above described property until the water issues have been resolved; and

WHEREAS, there currently are structures on Lot 1; and

WHEREAS, the intent of the Landowners in requesting the preliminary plat for Lot 1R is to allow an area for parking, not to construct additional structures; and

WHEREAS, it is the intent of the Landowner and the City to enter into an agreement whereby the City will approve the preliminary plat in consideration for the Landowners agreeing that no building permits will be requested or issued for the proposed Lot 1R until the public water system serving the above described property is in place and is operational.

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

1. The Landowners hereby covenant and agree that no building permits will be requested or issued for the proposed Lot 1R in exchange for the City approving the preliminary plat that creates the Lot.
2. It is understood by the Landowner that the City's primary consideration for its approval of the preliminary plat is the Landowners' covenant and promise that no buildings or structures that require a building permit will be constructed on Lot 1R until such time as a public water system that provides fire flows that meet City standards is in place and operational. Once the water system is operational and has been accepted by the City, this agreement will terminate.
3. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Landowners, and shall 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 the provisions of South Dakota statutes.

4. 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.

5. If any section(s), or provision 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.

6. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

7. 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 _____, 2006.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

FARRAR REAL ESTATE LIMITED
PARTNERSHIP

By: _____

Its: _____

Carson Quinn

David Lipp

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2006, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, 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 Agreement Consenting to Assessed Project 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:

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

On this ____ day of _____, 2006, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of Farrar Real Estate Limited Partnership, 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.

[SEAL] _____
Notary Public, State of South Dakota
My Commission Expires: _____

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

On this the ____ day of _____, 2006, before me, the undersigned officer personally appeared Carson Quinn who is known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

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

On this the ____ day of _____, 2006, before me, the undersigned officer personally appeared David Lipp who is known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

Notary Public, South Dakota

My Commission Expires:
(SEAL)