

**COVENANT AGREEMENT FOR VARIANCE TO WAIVE
ORTHOPAEDIC BUILDING PARTNERSHIP, LLP'S REQUIREMENT
TO PROVIDE SEWER SERVICE**

This declaration of covenant and agreement ("Agreement") is entered into this 10 day of June, 2008, by and between the CITY OF RAPID CITY ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701, ORTHOPAEDIC BUILDING PARTNERSHIP, LLP ("Developer"), a South Dakota limited liability partnership, 7220 S. Highway 16, Rapid City, South Dakota, 57709-8925, and ORTHOPEDIC LAND COMPANY, LLC, a South Dakota corporation, 7220 South Highway 16, Rapid City, South Dakota, 57702-8708.

Developer hereby acknowledges that it is the owner of record of the property located at:

Lots 1 and 5 of Old Rodeo Subdivision, located in the NW1/4 of the SW1/4 and the NE1/4 of the SW1/4, Section 26, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota. Said area includes 15.63 acres, more or less.

Orthopedic Land Company, LLC hereby acknowledges that it is the owner of record of property described as:

Lot B of SW1/4 SW1/4, less right of way, Section 26, T1N, R7E, unplatted.

Orthopedic Land Company, LLC's above-described property lies directly south of the Developer's property.

WHEREAS, the Developer has submitted a Preliminary Plat Application to create three lots on its above-described property; and

WHEREAS, the property is currently zoned General Commercial District with a Planned Development Designation and is located south of Catron Boulevard and east of U.S. Highway 16; and

WHEREAS, a commercial development is located on one of the proposed lots and the other two proposed lots are void of structural development; and

WHEREAS, the Developer is required to extend sewer services to the boundaries of their development per Chapter 16 of the Rapid City Municipal Code. If sewer is not provided along U.S. Highway 16, an alternative location for the sanitary sewer must be provided; and

WHEREAS, the Developer has applied for a Variance to the Subdivision regulations to waive the requirement to install water, sewer, curb, gutter, sidewalk, and street light conduit along U.S. Highway 16 as per Chapter 16.16 of the Rapid City Municipal Code; and

WHEREAS, it is the intent of the City and the Developer to enter into an Agreement whereby the City can support the Variance to the Subdivision Regulations if the Developer agrees to certain stipulations.

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

1. Developer and ORTHOPEDIC LAND COMPANY, LLC hereby covenant and agree that no building permits shall be issued for ORTHOPEDIC LAND COMPANY, LLC's adjacent property to the south until adequate sewer capacity is demonstrated to serve the property.

2. Developer and ORTHOPEDIC LAND COMPANY, LLC hereby covenant and agree that prior to approval of a Final Commercial Development plan for the adjacent property to the south, a sanitary sewer study and sanitary sewer construction plans shall be submitted for review and approval.

3. It is understood by Developer that the City's primary consideration for the granting of the variance to the Subdivision Regulations on the above described property is

Developer's covenant and promise to complete the Agreement conditions outlined in paragraphs 1 and 2 above.

4. 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 law 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. 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. 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 and ORTHOPEDIC LAND COMPANY, LLC 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.

6. 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.

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 _____, 2008.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

ORTHOPAEDIC BUILDING
PARTNERSHIP, LLP

By: James F. Preston

ORTHOPEdic LAND COMPANY, LLC

By: Randy Salen

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2008, before me, the undersigned officer, personally appeared Alan Hanks 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 for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

