

**AGREEMENT BETWEEN CITY OF RAPID CITY AND FISHER BEVERAGE, INC.  
FOR THE COMPLETION OF LANDSCAPING SITE IMPROVEMENTS FOR THE  
ISSUANCE OF A CERTIFICATE OF OCCUPANCY**

This agreement is made and entered into by and through the CITY OF RAPID CITY, located at 300 Sixth Street, Rapid City, South Dakota 57702, herein after referred to as the "City," and FISHER BEVERAGE, INC., located at 3636 Seger Drive, Rapid City, South Dakota 57702, herein after referred to as the "Owner."

WHEREAS, the Owner is seeking approval of landscaping site improvements for 3636 Seger Drive, which is legally described as:

Lot 3 of Block 2 of I-90 Heartland Business Park Subdivision, located in Section 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota.

WHEREAS, the Owner has submitted a bond to secure the completion of landscaping site improvements for this property; and

WHEREAS, the City is requesting that the Owner provide a date by which the required landscaping improvements will be completed, or if they are not, the City can draw on the bond; and

WHEREAS, the Owner is willing to provide a final date for completion of the landscaping improvements which is a requirement for the issuance of a Certificate of Occupancy.

NOW THEREFORE, the parties agree as follows:

1. The Owner agrees to complete the required landscaping site improvements on the above described property by July 31, 2008.
2. If the required landscaping improvements are not completed by July 31, 2008, the parties agree that the City has the option, if it so chooses, to draw on the bond and complete the landscaping improvements. The bond which is the subject of this agreement is Bond No. 70435239 issued by Western Surety Company. The City will notify the Owner prior to drawing on the bond and will provide the Owner with a reasonable amount of time to complete the remaining improvements.
3. In exchange for the Owner's agreement to the terms contained in paragraph 1 and 2 of this document, the City agrees to accept the bond submitted by the Owner.
4. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

Dated this 4th day of ~~January~~ <sup>FEBRUARY</sup>, 2008.

CITY OF RAPID CITY

Alan Hanks  
Alan Hanks, Mayor

ATTEST:

James F. Preston  
Finance Officer

(SEAL)

FISHER BEVERAGE, IINC.

By: [Signature]  
Its: President

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

On this 6th day of February, 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 and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

[Signature]  
Notary Public, State of South Dakota

My Commission Expires: 7-15-2012

(SEAL)