

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 the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, hereinafter referred to as the "City", and 16 Plus, L.L.P., a limited liability partnership organized under the laws of the State of South Dakota, hereinafter referred to as the "Developer".

      WHEREAS, the Developer wishes to construct Moon Ridge Subdivision located within the City jurisdictional limits, and further wishes to connect to the City's water distribution system, and the City desires to provide such water service; and

      WHEREAS, the Developer is required by the Subdivision Ordinances of the City and by a Resolution of the Common Council dated June 17, 1985, to pay for the cost of providing adequate water quantities and pressures; and

      WHEREAS, the cost of the Offsite Water Improvements was determined to be \$81,180.13, which does not include the cost of constructing the water mains within the Developer's property.

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

1.       The Developer hereby covenants and agrees to construct approximately 1,798 lineal feet of off-site 14 inch (14") ductile iron water main along Highway 16 as per plans prepared by Renner and Sperlich Engineering Co. titled, "Moon Ridge Sewer and Water Extension (DEV 02-534)".

2. The City hereby covenants and agrees to identify property, hereinafter referred to as the "Service Area" shown on Exhibit A attached hereto and incorporated herein, that may benefit from the above-described water system improvements.
3. The City hereby covenants and agrees to present a proposed Water Utility Construction Fee Resolution to its Common Council which would establish the fees to be levied against the identified benefiting properties in the Service Area at such time as said properties request to connect to the above-described water main.
4. The proposed Water Utility Construction Fee shall be based on the total calculated costs which includes construction costs.
5. The proposed Water Utility Construction Fee for properties within the Service Area and serviced by the water main from Sta. 15+97 to Sta. 33+95 of the construction plans and not within the Moon Ridge Subdivision shall be established by dividing the total calculated costs of the water main extension from Sta. 15+97 to Sta. 33+95 which equals \$81,180.13 (as determined from contractor invoicing), with the entire amount to be paid by landowners with direct frontage to the water main. Thus, the proposed Water Construction Fee may be established at \$45.99 per lineal foot of Highway 16 access road frontage.
6. In the event that the Water Utility Construction Fee Resolution is established by the Common Council, the Water Utility Construction Fee shall be paid by each parcel in the Service Area currently described and any future subdivided properties within the Service Area requiring water service and obtaining a water connection directly from the above-described water main.
7. In the event that the Water Utility Construction Fee Resolution is established by the Common Council, the City hereby covenants and agrees to collect the construction fees from the identified properties at the time said properties request to connect to the above-described water main.
8. In the event the that Water Utility Construction Fee Resolution is established by the Common Council, the City hereby covenants and agrees to reimburse the Developer all of the water construction fees within thirty (30) days of receipt of the fees by the City. In no case will the Developer be reimbursed in excess of the total calculated costs of construction. Payments to the Developer will cease if and when the total costs of construction are reimbursed.

9. The Developer hereby covenants and agrees to furnish the City Finance Office with a current mailing address and update that address as is needed in order to facilitate disbursement of collected construction fees.
10. The proposed Water Utility Construction Fee will be in addition to the existing connection fees established for this area as part of the Highway 16 Service Area, and the Moon Ridge Water Oversize Utility Construction Fee. The Highway 16 Water Utility Construction Fee was established at \$292.35 per acre, and the Moon Ridge Water Oversize Construction Fee was established at \$292.35 per acre for the properties identified in Exhibit A.
11. This Agreement does not bind the City to reimburse Developer for the water extension project. Rather, by this Agreement the option of imposing water construction fees upon the identified benefiting properties will be presented to the Common Council for consideration.
12. Developer shall indemnify, defend, and hold the City, harmless from any and all damages, claims, suits, demands, or asserted obligations for injuries or damages arising out of the omission of, or inability of the City to furnish water as herein provided.
13. 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, 16 Plus, L.L.P., its heirs, beneficiaries assignees, or successors in interest agree the City may recover from them its reasonable expenses, including attorney's fees incurred with respect to such action.
14. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, beneficiaries, assignees, or successors in interest of 16 Plus, L.L.P, 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, beneficiary, heir, assignee, 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 Codified Law.
15. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).

16. 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. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.
17. The parties agree that this writing constitutes the entire Agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

16 Plus, L.L.P.

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF SOUTH DAKOTA        )  
  ) SS.  
COUNTY OF PENNINGTON        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned officer, personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me or satisfactorily proven to be the people whose name is subscribed within instrument and acknowledged that they executed the same for the purposes therein contained and that they had the authority to do so in the name of 16 Plus, L.L.P., as its \_\_\_\_\_ and \_\_\_\_\_.

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

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

(SEAL)

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

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

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 instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

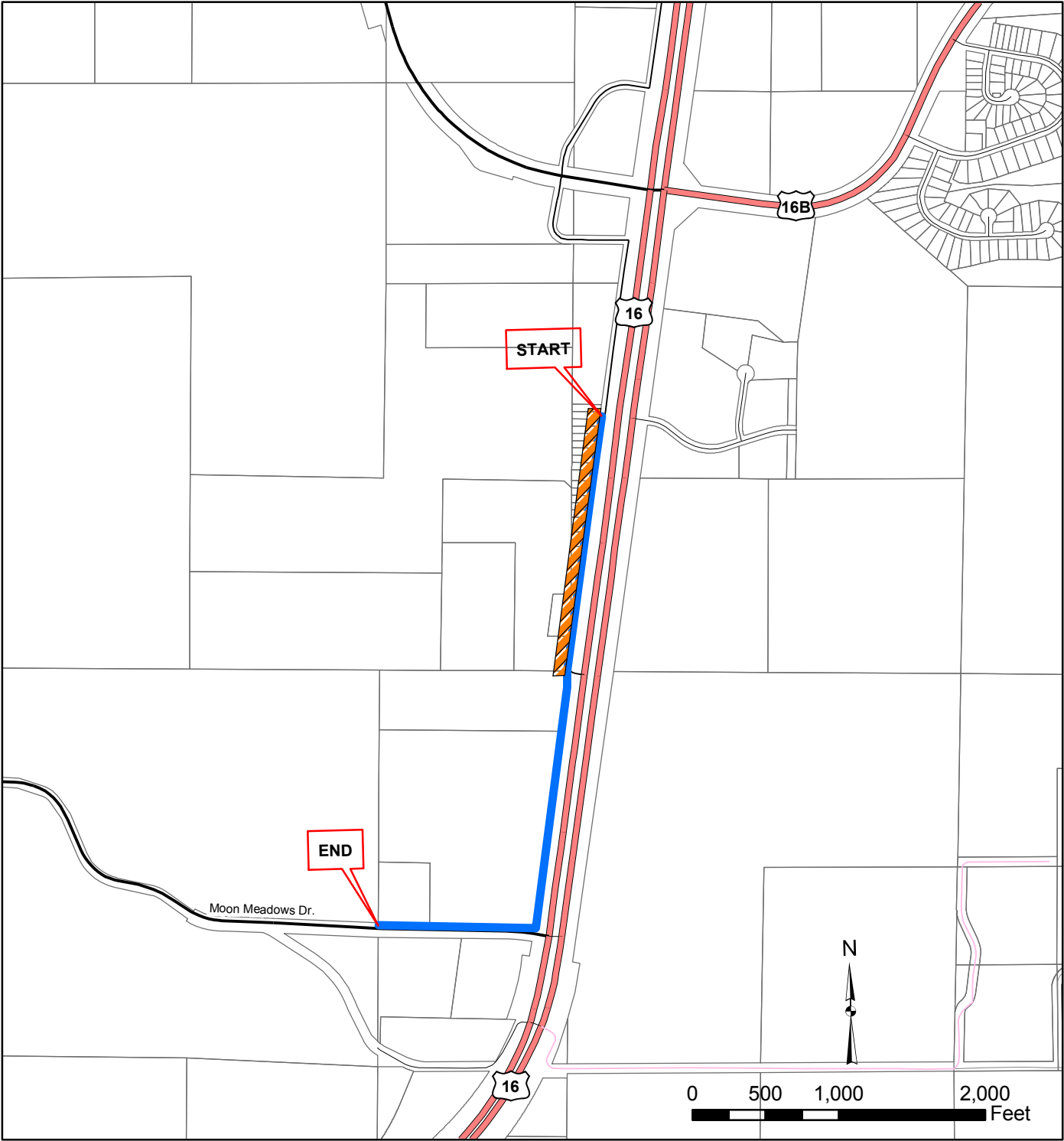
IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

(SEAL)

# Exhibit A

PW101006-09



## Legend

- Parcels
- Water Main
- Offsite Fronting Benefiting Area

## Moon Ridge Water Offsite Fronting Construction Fee Benefiting Area