

PREPARED BY: City's Attorney 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 _____, 2010, by and between Frontera Chicos, LLC (“Landowner”), Box 8007, Rapid City, SD 57709 and the CITY OF RAPID CITY (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, the Landowner hereby acknowledges that it is the owner of record of the following property located at 1301 E. North St. and legally described as:

Lot 2 of Huffman Subdivision , located in the N1/2 of the SW1/4 of Section 32, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 183, page 1872.

WHEREAS, the Landowner is proposing to subdivide the lot into three (3) separate parcels proposed to be known as Lot 2A, Lot 2B, and Lot 2C of Huffman Subdivision; and

WHEREAS, as a result of the plat, water and sewer service lines will be located on adjacent properties; and

WHEREAS, the City’s Standard Specifications do not allow service lines to crossover another lot unless an Exception has been granted; and

WHEREAS, it is the parties' intention that an exception be granted to allow the plat to be approved if the Landowner 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. Landowner hereby covenants and agrees to consent to an assessed project to install conforming water and sewer service lines in the future.
2. Landowner hereby covenants and agrees that, in the event of a break in the existing service lines, it will install conforming service lines in accordance with City specifications in effect at such time.
3. Landowner hereby covenants and agrees to hold the City harmless from all claims related to the non-standard service lines.
4. It is understood by Landowner that the City's primary consideration for the granting of the exception to the City's Standard Specifications on the above described property is Landowner's covenant and promise to complete the Agreement conditions outlined in paragraphs 1, 2, and 3 above.
5. 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.
6. 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.
7. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of Landowner, 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.

- 8. 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.
- 9. 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 _____, 2010.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

FRONTERA CHICOS, LLC

By: D. J. Wiersele
Its: Member - Project Mgr.

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, 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 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:

(SEAL)

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

On this 4th day of January, 2010, before me, the undersigned officer, personally appeared Ds Wieseler, who acknowledged himself to be the member and project manager of Frontera Chicos, LLC, 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.

Tina Ligtensberg

Notary Public, South Dakota

My Commission Expires: 3/16/13

(SEAL)

