

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

WEN
 4/20/12

AGREEMENT WAIVING RIGHT TO PROTEST
 (SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this _____ day of _____, 2011, by and for FRANKLIN O. SIMPSON, hereinafter the "Developer," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter the "City."

WHEREAS, the Developer has submitted a proposed subdivision plat; and

WHEREAS, it is the intended purpose of the Developer to obtain final approval for this subdivision plat; and

WHEREAS, the City of Rapid City's subdivision regulations require installation of pavement, curb, gutter, and street light conduit, which in this instance would require the Developer to install additional pavement width, curb, gutter, and street light conduit along North Plaza Drive as it abuts property described as follows: starting at a point that bears 19.32 feet S41°00'00"W from the northeast corner of previously vacated Tract C Revised of the S.G. Interstate Plaza located in the S1/2 NE1/4 and the N1/2 SE1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota and being the point of beginning. Thence first course: S41°00'00"W a distance of 600.00 feet, Thence second course: N61°00'00"W a distance of 254.90 feet, Thence third course: N35°00'00"E a distance of 493.10 feet, Thence fourth course: S77°23'18"E a distance of 342.00 feet to the point of beginning, more generally described as being located on the south side of North Plaza Drive approximately 450 feet east of the intersection of Fountain Plaza Drive and North Plaza Drive; and

WHEREAS, it is the intent and purpose of both the Developer and the City to enter into an agreement whereby the Developer will consent to a future assessed project for the installation of additional pavement width, gutter, and street light conduit along North Plaza Drive as it abuts property described as follows: starting at a point that bears 19.32 feet S41°00'00"W from the northeast corner of previously vacated Tract C Revised of the S.G. Interstate Plaza located in the

S1/2 NE1/4 and the N1/2 SE1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota and being the point of beginning. Thence first course: S41°00'00"W a distance of 600.00 feet, Thence second course: N61°00'00"W a distance of 254.90 feet, Thence third course: N35°00'00"E a distance of 493.10 feet, Thence fourth course: S77°23'18"E a distance of 342.00 feet to the point of beginning, more generally described as being located on the south side of North Plaza Drive approximately 450 feet east of the intersection of Fountain Plaza Drive and North Plaza Drive in exchange for the City not requiring immediate installation of the improvements as required by Rapid City Subdivision Regulations;

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

1. This agreement pertains to, and includes those properties which are designated and identified as follows:

Starting at a point that bears 19.32 feet S41°00'00"W from the northeast corner of previously vacated Tract C Revised of the S.G. Interstate Plaza located in the S1/2 NE1/4 and the N1/2 SE1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota and being the point of beginning. Thence first course: S41°00'00"W a distance of 600.00 feet, Thence second course: N61°00'00"W a distance of 254.90 feet, Thence third course: N35°00'00"E a distance of 493.10 feet, Thence fourth course: S77°23'18"E a distance of 342.00 feet to the point of beginning, more generally described as being located on the south side of North Plaza Drive approximately 450 feet east of the intersection of Fountain Plaza Drive and North Plaza Drive.

2. This agreement specifically references the installation of additional pavement width, curb, gutter, and street light conduit along North Plaza Drive as it abuts property described as follows: starting at a point that bears 19.32 feet S41°00'00"W from the northeast corner of previously vacated Tract C Revised of the S.G. Interstate Plaza located in the S1/2 NE1/4 and the N1/2 SE1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota and being the point of beginning. Thence first course: S41°00'00"W a distance of 600.00 feet, Thence second course: N61°00'00"W a distance of 254.90 feet, Thence third course: N35°00'00"E a distance of 493.10 feet, Thence fourth course: S77°23'18"E a distance of 342.00 feet to the point of beginning, more generally described as being located on the south side of North Plaza Drive approximately 450 feet east of the intersection of Fountain Plaza Drive and North Plaza Drive.

3. The Developer acknowledges the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Developer agrees that if at any time in the future the City determines it is necessary or desirable to install additional pavement width, curb, gutter, and street light conduit along North Plaza Drive as it abuts property described as follows: starting at a point that bears 19.32 feet

S41°00'00"W from the northeast corner of previously vacated Tract C Revised of the S.G. Interstate Plaza located in the S1/2 NE1/4 and the N1/2 SE1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota and being the point of beginning. Thence first course: S41°00'00"W a distance of 600.00 feet, Thence second course: N61°00'00"W a distance of 254.90 feet, Thence third course: N35°00'00"E a distance of 493.10 feet, Thence fourth course: S77°23'18"E a distance of 342.00 feet to the point of beginning, more generally described as being located on the south side of North Plaza Drive approximately 450 feet east of the intersection of Fountain Plaza Drive and North Plaza Drive through an assessed project, Developer or his heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate installation of additional pavement width, curb, gutter, and street light conduit. It is understood by the Developer that the City of Rapid City's primary consideration for the granting of the approval for a subdivision plat on the property herein described and forbearance from requiring Developer to immediately install additional pavement width, curb, gutter, and street light conduit along North Plaza Drive as it abuts property described as follows: starting at a point that bears 19.32 feet S41°00'00"W from the northeast corner of previously vacated Tract C Revised of the S.G. Interstate Plaza located in the S1/2 NE1/4 and the N1/2 SE1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota and being the point of beginning. Thence first course: S41°00'00"W a distance of 600.00 feet, Thence second course: N61°00'00"W a distance of 254.90 feet, Thence third course: N35°00'00"E a distance of 493.10 feet, Thence fourth course: S77°23'18"E a distance of 342.00 feet to the point of beginning, more generally described as being located on the south side of North Plaza Drive approximately 450 feet east of the intersection of Fountain Plaza Drive and North Plaza Drive is the Developer's covenant and promise to waive any right to object to the assessed project and his consent to the assessed project.

4. Developer further covenants and agrees for himself, his heirs, assigns, and successors in interest, that should he or any of his heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of additional pavement width, curb, gutter, and street light conduit along North Plaza Drive as it abuts property described as follows: starting at a point that bears 19.32 feet S41°00'00"W from the northeast corner of previously vacated Tract C Revised of the S.G. Interstate Plaza located in the S1/2 NE1/4 and the N1/2 SE1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota and being the point of beginning. Thence first course: S41°00'00"W a distance of 600.00 feet, Thence second course: N61°00'00"W a distance of 254.90 feet, Thence third course: N35°00'00"E a distance of 493.10 feet, Thence fourth course: S77°23'18"E a distance of 342.00 feet to the point of beginning, more generally described as being located on the south side of North Plaza Drive approximately 450 feet east of the intersection of Fountain Plaza Drive and North Plaza Drive will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. Should the weather prevent immediate installation of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will

be made and utilities installed without cost to the City in the event of default of the Developer.

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 the Developer, and be considered as a covenant running with the property described herein. Furthermore, it is agreed that, in accepting title to the herein-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 Codified Laws.

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, its 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. If 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 the same can be given effect without the invalid section(s) or provision(s).

8. 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.

9. If the Developer 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 _____, 2012.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2012, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, 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 Waiving Right to Protest 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)

Franklin O. Simpson

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2012, before me, the undersigned officer personally appeared Franklin O. Simpson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he 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)