

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

WEN
9-18-13

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 September day of 18, 2013, 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: A portion of the S1/2 of the NE1/4 lying south of Interstate 90 Right-of-Way, and a portion of the N1/2 of the SE1/4, all in Section 27, T2N, R7E, B.H.M., Rapid City, Pennington County, South Dakota, more fully described as follows: Commencing at the northeasterly corner of Tract P of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of North Plaza Drive, and the Point of Beginning; thence, first course: S77°09'36"E, along the southerly edge of right-of-way of said North Plaza Drive, a distance of 314.39 feet, to the northwesterly corner of Tract R of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of said North Plaza Drive; thence, second course: S35°13'42"W, along the westerly boundary of said Tract R of Fountain Springs Business Park, a distance of 493.32 feet, to the southwesterly corner of said Tract R of Fountain Springs Business Park; thence, third course: N52°39'14"W, a distance of 138.96 feet, to a corner on the easterly boundary of said Tract P of Fountain Springs Business Park; thence, fourth course: N12°49'57"E, along the easterly boundary of said Tract P of Fountain Springs Business Park, a distance of 398.49 feet, to the northeasterly corner of Tract P of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of North Plaza Drive, and the Point of Beginning; said Parcel contains 96,895 square feet or 2.224 acres more or less; 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: A portion of the S1/2 of the NE1/4 lying south of Interstate 90 Right-of-Way, and a portion of the N1/2 of the SE1/4, all in Section 27, T2N, R7E, B.H.M., Rapid City, Pennington County, South Dakota, more fully described as follows: Commencing at the northeasterly corner of Tract P of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of North Plaza Drive, and the Point of Beginning; thence, first course: $S77^{\circ}09'36''E$, along the southerly edge of right-of-way of said North Plaza Drive, a distance of 314.39 feet, to the northwesterly corner of Tract R of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of said North Plaza Drive; thence, second course: $S35^{\circ}13'42''W$, along the westerly boundary of said Tract R of Fountain Springs Business Park, a distance of 493.32 feet, to the southwest corner of said Tract R of Fountain Springs Business Park; thence, third course: $N52^{\circ}39'14''W$, a distance of 138.96 feet, to a corner on the easterly boundary of said Tract P of Fountain Springs Business Park; thence, fourth course: $N12^{\circ}49'57''E$, along the easterly boundary of said Tract P of Fountain Springs Business Park, a distance of 398.49 feet, to the northeasterly corner of Tract P of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of North Plaza Drive, and the Point of Beginning; said Parcel contains 96,895 square feet or 2.224 acres more or less, 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:

A portion of the S1/2 of the NE1/4 lying south of Interstate 90 Right-of-Way, and a portion of the N1/2 of the SE1/4, all in Section 27, T2N, R7E, B.H.M., Rapid City, Pennington County, South Dakota, more fully described as follows: Commencing at the northeasterly corner of Tract P of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of North Plaza Drive, and the Point of Beginning; thence, first course: $S77^{\circ}09'36''E$, along the southerly edge of right-of-way of said North Plaza Drive, a distance of 314.39 feet, to the northwesterly corner of Tract R of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of said North Plaza Drive; thence, second course: $S35^{\circ}13'42''W$, along the westerly boundary of said Tract R of Fountain Springs Business Park, a distance of 493.32 feet, to the southwest corner of said Tract R of Fountain Springs Business Park; thence, third course: $N52^{\circ}39'14''W$, a distance of 138.96 feet, to a corner on the easterly boundary of said Tract P of Fountain Springs Business Park; thence, fourth course: $N12^{\circ}49'57''E$, along the easterly boundary of said Tract P of Fountain Springs Business Park, a distance of 398.49 feet, to the northeasterly corner of Tract P of Fountain Springs Business Park, common to a point on the southerly edge of the right-of-way of North Plaza Drive, and the Point of Beginning; said Parcel contains 96,895 square feet or 2.224 acres more or less.

2. This agreement specifically references the installation of additional pavement width, curb, gutter, and street light conduit along North Plaza Drive as it abuts the above-described property.

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 the above-described property 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 the above-described property 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 the above-described property 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.

Franklin O. Simpson
Franklin O. Simpson

State of South Dakota)
 ss.
County of Pennington)

On this the 23rd day of September, 2013, 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.

Christopher McConnell
Notary Public, South Dakota

My Commission Expires: **My Commission Expires**
 December 18, 2013

(SEAL)

