

### **CITY OF RAPID CITY**

RAPID CITY, SOUTH DAKOTA 57701-5035

# Community Planning & Development Services

300 Sixth Street

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#### **MEMORANDUM**

TO:

Rapid City Council

FROM:

Vicki L. Fisher, Planning Manage

DATE:

January 11, 2012

RE:

Authorization for Mayor and Finance Officer to sign a waiver of right to

protest a future assessment for street improvements

Legal Description:

Tract A of NW1/4 of the NE1/4 located in Section 7, T1N, R8E,

BHM, Rapid City, Pennington County, South Dakota

A Variance to the Subdivision Regulations to waive the requirement to install water along Cherry Avenue and additional pavement along East St. Francis Street as they abut the property has been submitted in conjuction with a Layout Plat to create two lots. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest any future assessement for the installation of the improvements. The document also requires the signature of the Mayor and the Finance Officer.

Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right to protest any future assessment for the installation of water along Cherry Avenue and additional pavement along East St. Francis Street as they abut the property.

(File #11SV022)



PREPARED BY:

City's Attorney Office

300 Sixth Street

Rapid City, SD 57701

(605) 394-4140

## 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 \_\_\_\_\_\_, 2012, by and for J. MARK ROBERTS, ACTING TRUSTEE OF THE JOHN P. ROBERTS REAL ESTATE TRUST, hereinafter "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 water and pavement, which in this instance would require the Developer to install water along Cherry Avenue and additional pavement along East St. Francis Street as they abut Tract A of the Northwest Quarter of the Northeast Quarter (NW¼NE¼) located in Section Seven (7), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota; 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 water along Cherry Avenue and additional pavement along East St. Francis Street as they abut the subject property 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:

Tract A of the Northwest Quarter of the Northeast Quarter (NW¼NE¼) located in Section Seven (7), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

- 2. This agreement specifically references the installation of WATER ALONG Cherry Avenue and additional pavement along East St. Francis Street as they abut the subject 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 desirous to install water along Cherry Avenue and additional pavement along East St. Francis Street as they abut the subject property through an assessed project, Developer or its 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 water and additional pavement. 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 water along Cherry Avenue and additional pavement along East St. Francis Street as they abut the subject property is the Developer's covenant and promise to waive any right to object to the assessed project and its consent to the assessed project.
- 4. Developer further covenants and agrees for itself, its heirs, assigns, and successors in interest, that should it or any of its heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of water along Cherry Avenue and additional pavement along East St. Francis Street as they abut the subject property, which is required in the City subdivision regulations, 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 f:\agrmnts\worp\_subdivision plat\rigtpr(john roberts trustee11sv022).doc Page 2 of 4

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
ATTEST:		Sam Kooiker, Mayor
Finance Officer		·
(SEAL)		,
State of South Dakota	)	
County of Pennington	ss.	
		, 2012, before me, the undersigned officer, Pauline Sumption, who acknowledged themselves to be
	-	tively, of the City of Rapid City, a municipal corporation, ace Officer, being authorized so to do, executed the
		o Protest for the purposes therein contained by signing the nselves as Mayor and Finance Officer.

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

	Notary Public, South Dakota
My Commission Expires:	
(SEAL)	JOHN P. ROBERTS REAL ESTATE TRUST
	By: Mark Roberts, Acting Trustee
Cab La	
State of South Dakota )	
County of Permington )	
personally appeared J. MARK ROBERTS, of the JOHN P. ROBERTS REAL ESTATE	, 2012, before me, the undersigned officer who acknowledged himself to be the Acting Trustee TRUST, and that as such Acting Trustee, being Agreement Waiving Right to Protest for the purposes
IN WITNESS WHEREOF, I hereunto	asalis a parase
Notar	y Public, South Dakota Argana
My Commission Expires: $S = 18 - 20$	015
OFFICIAL SEAL ROSALIE A. JONES Notary Public - State of Arizona YAVAPAI COUNTY M. Comm. Expires May 18, 2015	

#### CERTIFICATE OF TRUST

STATE OF SOUTH DAKOTA	)
	) SS
COUNTY OF PENNINGTON	)

- J. Mark Roberts, being first duly sworn on oath, says that:
- 1. Name of Trust: John P. Roberts Real Estate Trust;
- 2. Established: October 31, 1991;
- 3. Name of Grantor: John P. Roberts;
- 4. Name of Original Trustee: John P. Roberts;
- 5. Name and Address of Sole Trustee Authorized to Act: J. Mark Roberts of 8885 Hopewell Road NW, Salem, OR 97304;
- 6. The Trustee has all powers allowed by South Dakota statute and in addition the following specific powers:
  - a. Is empowered by the provisions of the Trust to sell, convey, pledge, mortgage, lease, transfer title to any interest in real property held in trust, and do everything else to manage, control and in any manner deal with the whole or any part of the real property; and
  - b. Is the only Trustee required by the provisions of the Trust to execute and deliver such an instrument.
- 7. This Certificate of Trust relates to the following real property:

Tract A in the NW1/4NE1/4 of Section 7 in T1N, R8E BHM, Pennington County, South Dakota

- 8. The Trust has not terminated or revoked;
- 9. The Trust is not supervised by any Court;
- 10. The Trust has not been modified or amended in any manner that would cause the representations contained in this Certificate of Trust to be incorrect;

- There no provisions in the Trust and there have been no amendments to this Trust 11. which limits the powers of Trustee to sell, convey, pledge, mortgage, lease, or transfer title to the interest in real or personal property; and
- Affiant does not have actual knowledge of any facts indicating that the 12. Trust is invalid.

**COUNTY OF** 

J. Mark Roberts, being first duly sworn, deposes and states:

That he is the Trustee named in and who subscribed the foregoing Trust Certificate; that he has read the same and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, as to which matters, he believes them to be true.

Mark Roberts

day of October 20

Subscribed and sworn to before me this

OFFICIAL SEAL

ROSALIE A. JONES lotary Public - State of Arizona YAVAPAI COUNTY My Comm. Expires May 18, 2015

Notary Public

My commission expires: 5-