

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

WGN
11-5-12

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 _____, 2012, by and for FMLC, INC., a South Dakota corporation, 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 curb, gutter, sidewalk, street light conduit, water, sewer, and pavement which in this instance would require the Developer to install water, sewer, and sidewalk along East North Street, to install curb, gutter, sidewalk, water, and sewer along Interstate 90, and to install curb, gutter, street light conduit, sewer, and additional pavement along Dyess Avenue as they abut that portion of the SE¼ lying North of the Interstate 90 right of way, excepting therefrom Tract A of the NE¼SE¼, Section 29, Township 2 North, Range 8 East 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 to install water, sewer, and sidewalk along East North Street, to install curb, gutter, sidewalk, water, and sewer along Interstate 90, and to install curb, gutter, street light conduit, sewer, and additional pavement along Dyess Avenue 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:

That portion of the SE $\frac{1}{4}$ lying North of the Interstate 90 right of way, excepting therefrom Tract A of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, Township 2 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the installation of water, sewer, and sidewalk along East North Street, the installation of curb, gutter, sidewalk, water, and sewer along Interstate 90, and the installation of curb, gutter, street light conduit, sewer, and additional pavement along Dyess Avenue 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 desirable to install water, sewer, and sidewalk along East North Street, to install curb, gutter, sidewalk, water, and sewer along Interstate 90, and to install curb, gutter, street light conduit, sewer, and additional pavement along Dyess Avenue 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 curb, gutter, sidewalk, street light conduit, water, sewer, and 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, sewer, and sidewalk along East North Street, to install curb, gutter, sidewalk, water, and sewer along Interstate 90, and to install curb, gutter, street light conduit, sewer, and additional pavement along Dyess Avenue 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, sewer, and sidewalk along East North Street, the installation of curb, gutter, sidewalk, water, and sewer along Interstate 90, and the installation of curb, gutter, street light conduit, sewer, and additional pavement along Dyess Avenue 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 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)

FMLC, INC.

By: *Julie A Lien*
Its: President

State of South Dakota)
ss.
County of Pennington)

On this the 6th day of November, 2012, before me, the undersigned officer personally appeared Julie A Lien, who acknowledged himself to be the President of FMLC, INC., and that he, as such President, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of FMLC, INC. by himself as President.

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

Debby A Heisinger
Notary Public, South Dakota

My Commission Expires:

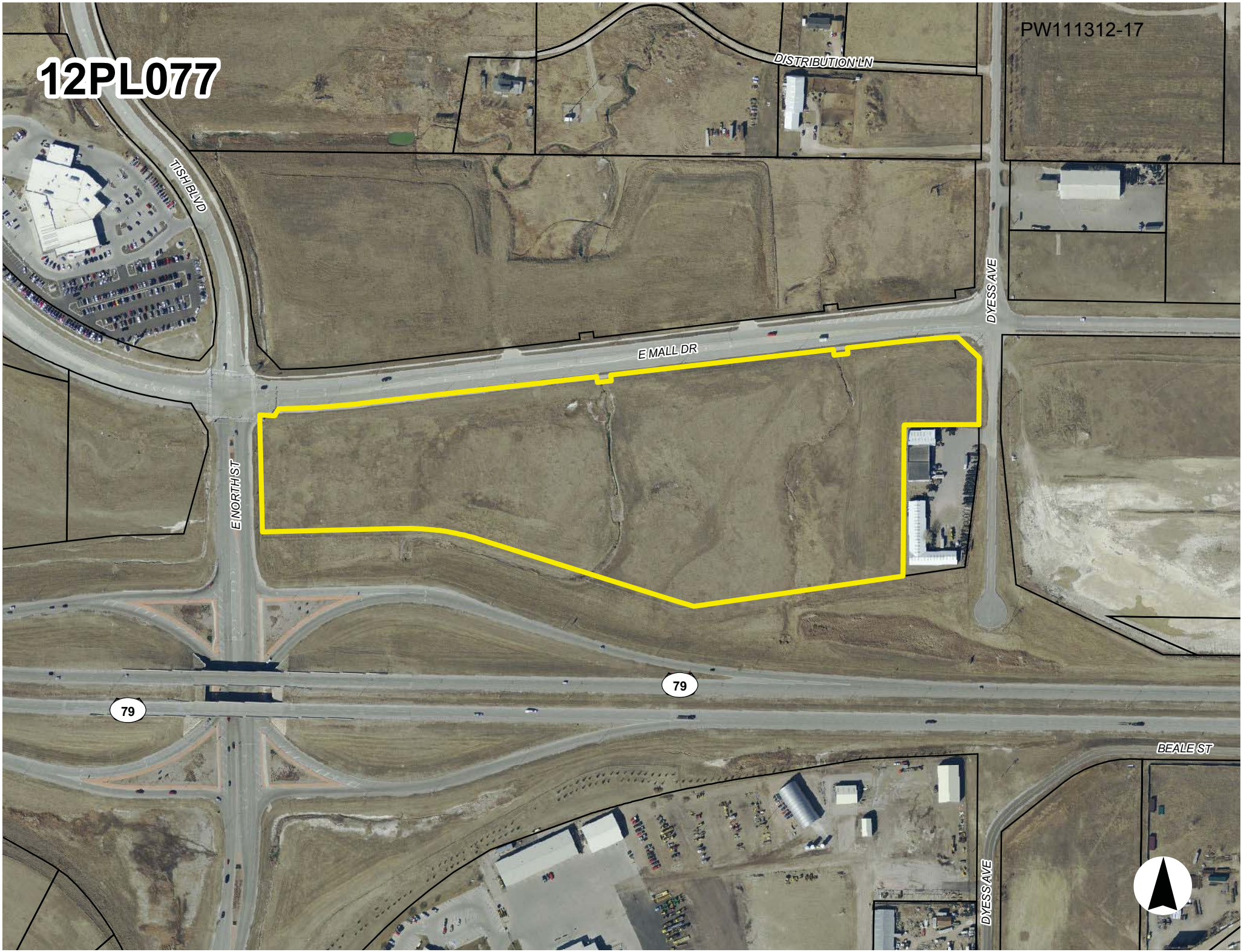
(SEAL)



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