

**CONDITIONAL PACKAGE MALT BEVERAGE LICENSING AGREEMENT
BETWEEN FRESH START CONVENIENCE STORES, INC.,
AND THE CITY OF RAPID CITY**

This Conditional Package Malt Beverage Licensing Agreement ("Agreement") is made by and between FRESH START CONVENIENCE STORES, INC., a South Dakota corporation, ("Fresh Start") of PO Box 1180, Spearfish, South Dakota 57783, and the CITY OF RAPID CITY, a subdivision of the State of South Dakota, ("City") of 300 Sixth Street, Rapid City, South Dakota 57701.

WHEREAS, Fresh Start has made application for a Package Malt Beverage License ("License") to the City for its convenience store located at 520 Birch Avenue, Rapid City (the "Location"); and

WHEREAS, the City's Common Council, in determining whether to issue a license to sell alcoholic beverages, has the authority to determine whether the proposed location where alcoholic beverages will be sold is suitable for such purpose; and

WHEREAS, the City's Police Chief and its Common Council were concerned about various issues in regard to the proposed location of the License, including the number of alcohol-related citations issued by police at the Location, the number of calls for police service in the immediate vicinity of the Location, the Location's proximity to the School of Mines and Technology, and neighboring citizens' comments and concerns; and

WHEREAS, Fresh Start has previously, voluntarily chosen not to renew the licenses it held to sell alcoholic beverages at the Location in response to those concerns; and

WHEREAS, Fresh Start has offered to enter into this Agreement in order to place certain restrictions on its use of the License at the Location, including the ability to sell single serving sizes and forty-ounce containers of malt beverages; and

WHEREAS, the City's Common Council has agreed to issue a License upon Fresh Start's execution of this Agreement to restrict the use of the License as provided herein.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, it is agreed by the parties as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties

2. Issuance of License. Upon execution of this Agreement by Fresh Start, the City shall forward with its approval Fresh Start's application for a Package Malt Beverage License to the State Department of Revenue for issuance.

3. Restrictions on License. Upon issuance of the License, Fresh Start shall be limited by the following restrictions on its sale of malt beverages:

- a. Fresh Start shall not sell any forty (40) ounce malt beverages.
- b. Fresh Start shall not be allowed to sell any malt beverages in single serving containers.

4. Consideration. The parties acknowledge that but for the restrictions placed upon the License, the City would not have agreed to issue a Package Malt Beverage License to Fresh Start for the Location stated above. In exchange for its agreement to be bound by the restrictions contained herein, Fresh Start shall be issued the License for which it applied.

5. Term. The term of this Agreement shall begin upon execution and shall end upon expiration of the License issued following execution of this Agreement. The parties acknowledge and agree that this Agreement shall be renewed upon any renewal, issuance, or reissuance of a license to sell alcoholic beverages at the above location. Any renewal term of this Agreement shall be equal to that of the license or licenses renewed or issued.

6. Default, Remedies and Injunctive Relief. If Fresh Start fails to fully comply with the restrictions as provided herein, the City shall have the right to pursue all legal or equitable remedies available to it. The parties agree that remedies at law may be inadequate to protect against breach of this Agreement, and both parties hereby consent to the granting of injunctive relief, whether temporary, preliminary or final, in favor of the City without proof of actual damages. The parties understand that this provision does not waive other actions or remedies that may be available. Fresh Start agrees that the provisions contained in this Agreement are fair and reasonable. Fresh Start acknowledges that irreparable injury will result to City in the event of Fresh Start's breach of any of the provisions in this Agreement, and the same would necessitate injunctive relief. If court action by City is necessary to enforce the terms of this Agreement, City shall be entitled to recover from Fresh Start its reasonable costs and attorneys' fees in addition to any other relief to which it may be entitled.

7. Indemnification. Fresh Start agrees to defend, indemnify and hold the City, its officers, employees and agents harmless from and against any and all liability, personal injury, property damage, costs and expenses (including, without limitation in any way, attorneys' fees and expenses of litigation), relating in any way to or arising out of Fresh Start's sale of package malt beverages and use of the License issued upon execution of this Agreement.

8. Binding Effect. The covenants and agreements contained in this Agreement apply to, inure to the benefit of, and are binding upon the parties hereto and their respective successors administrators, executors, and assigns.

9. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

10. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

12. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

13. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

14. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.


15. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible. If either of paragraphs 2 or 3 are held to be unenforceable and are not so modified, the entire Agreement shall be voided.

16. Applicable Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota without regard to provisions on conflict of laws. All litigation under this Agreement shall be take place in the Circuit Court of Pennington County, South Dakota.

{Signature pages follow}

Dated this 28 day of December, 2012.

FRESH START CONVENIENCE STORES, INC.

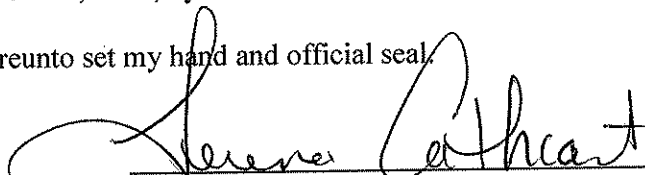
By 
Mark Schwartz, President

State of South Dakota)
 ss.
County of Pennington)

On this the 28 day of December, 2012, before me, the undersigned officer personally appeared Mark Schwartz, who acknowledged himself to be the President of FRESH START CONVENIENCE STORES, INC., and that he, as such President, being authorized so to do, executed the foregoing Agreement for the purposes therein contained by signing the name of FRESH START CONVENIENCE STORES, INC., by himself as President.

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




Notary Public – South Dakota
My Commission Expires 6/3/14

Dated this _____ day of _____, 2013.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2013, 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 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.

(seal)

Notary Public – South Dakota
My Commission Expires _____