

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

STATE OF SOUTH DAKOTA     )  
  ) SS.           **COVENANT AGREEMENT TO**  
COUNTY OF PENNINGTON     )           **PROVIDE SHARED ACCESS**

This declaration of covenant and agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 200\_\_, by and between DUANE C. PANKRATZ, located at 44130 279<sup>th</sup> Street, Freeman, SD 57029, herein after referred to as “Pankratz,” and the CITY OF RAPID CITY, a South Dakota municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota, 57701, herein after referred to as the “City.”

WHEREAS, Pankratz has requested approval of a Final Plat for Lot 1 of Block 2 LaGrand Subdivision (“Lot 1”); and

WHEREAS, one of the stipulations for approval of the Final Plat is that a shared access be secured along the future Turbine Drive between Lot 1 and any future lot(s) which might be platted to the south of Lot 1; and

WHEREAS, Pankratz is willing to agree, for himself, his heirs, assigns and/or successors in interest to grant a future permanent easement to secure this shared access in exchange for the City approving the Final Plat of Lot 1.

NOW THEREFORE, the parties agree as follows:

1. This agreement pertains to property generally located to the South of Eglin Street and to the west of Elk Vale Road where the two streets intersect and is legally described as:

The Northeast Quarter (NE ¼, Less La Grande Subdivision, Less Lots H2 and H3, Less ROW, of Section 33 of Township Two North (T2N), Range Eight East R8E), Black Hills Meridian, Rapid City, Pennington County, State of South Dakota; and

2. At such time as the ownership of any of the property included in this Agreement has been transferred so that it is under separate ownership, Pankratz agrees for himself, his heirs, assigns and/or successors in interest to grant a permanent shared access easement along the future Turbine Drive, between Lot 1 of Block 2, LaGrand Subdivision and any subsequent lots which may be platted to the south of Lot 1. Such

easement shall be forty (40) feet wide and forty (40) feet long, with twenty feet of the easement being located on each side of the southern lot line of Lot 1 starting at the southwest corner of Lot 1 as shown on Exhibit "A" which has been attached hereto and incorporated herein by this reference.

3. Pankratz further agrees for himself, his heirs, assigns and/or successors in interest that once the permanent shared access easement has been granted it cannot be extinguished without the express approval of the City. If the permanent shared access easement should be extinguished without the express approval of the City, the City can require that the current owner of the properties, or any future owners re-grant the easement.

4. In exchange for Pankratz's promises herein, the City shall approve the Final Plat of Lot 1. However, nothing herein shall bind the City to approve the Final Plat if all other City ordinances or regulations relating to the platting of property, or any other stipulations for approval of the Final Plat, have not been met.

5. Pankratz acknowledges that approval of the Final Plat is sufficient consideration for the promises that he has made herein, and that without such promises, the City would not approve the Final Plat of Lot 1.

6. All of the terms and conditions set forth in this Agreement shall extend to, and be binding upon, the heirs, assigns, and/or successors in interest of Pankratz, and shall be considered as a covenant running with the above described property. Furthermore, it is agreed that, in accepting title to the above described property any grantee, heir, assign, and/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.

7. 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, heirs, assigns and/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.

8. If any section(s), or provision 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 of this application if they can be given effect without the invalid section(s) or provisions.

9. 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. Any action concerning this Agreement shall be venued in the Circuit Court for the Seventh Judicial Circuit located in Rapid City, South Dakota.

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

\_\_\_\_\_  
Duane C. Pankratz

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, 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 Consenting to Assessed Project 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:

State of South Dakota        )  
  ss.  
County of \_\_\_\_\_        )

On this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned officer personally appeared Duane C. Pankratz who is known to me or satisfactorily

proven to be the person whose name is subscribed to the within instrument and acknowledged that they 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: