COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BLACK HILLS FEDERAL CREDIT UNION TO PERMIT A STRUCTURE TO ENCROACH INTO THE ADJACENT PLAZA DRIVE RIGHT OF WAY

This Covenant Agreement (the “Agreement”) is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, SD 57701 (hereinafter referred to as the “City”) and BLACK HILLS FEDERAL CREDIT UNION, of 2700 North Plaza Dr., Rapid City, SD 57702 (hereinafter referred to as the “Landowner”).

WHEREAS, the Landowner owns property located at 2700 North Plaza Drive in Rapid City, South Dakota (“the Property”); and

WHEREAS, as part of an expansion, Landowner platted the property and dedicated an additional 17 feet of right of way on Plaza Drive in conjunction with the plat; and

WHEREAS, an on-premises sign structure that had been located on the Property is now located 4 feet into the Plaza Street right of way; and

WHEREAS, Landowner acknowledges that the sign structure is located in the Plaza Drive right of way and that the City may legally require its immediate removal at Landowner’s cost; and

WHEREAS, the Landowner has requested authorization from the City to permit the sign structure to continue to encroach in the adjacent public right of way; and

WHEREAS, the City is willing to authorize the Landowner’s occupation of the Plaza Drive right of way if the Landowner agrees to certain terms and conditions designed to protect the public right of way and to further insulate the City from liability for the Landowner’s special use of the public right of way.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is agreed by the parties as follows:
1. The land which is subject to this Agreement is generally located at 2700 North Plaza Drive, Rapid City, South Dakota and is legally described as follows:

   **Tract A Revised of Fountain Springs Business Park located in the N ½ of Section 27, Township Two North (T2N), Range Seven East (R7E) of Rapid City, Pennington County, State of South Dakota.**

2. The Landowner is hereby authorized to continue to maintain the sign structure within the Plaza Drive right of way adjacent to the above-described Property. Landowner agrees that as a condition of the City allowing the sign structure to remain in the Plaza Drive right of way, Landowner will remove said structure from the right of way within 180 days of receiving a request to do so if the City or another person engages in a street, utility or other public construction project or other event which necessitates removal. Landowner agrees to bear the entire cost of removing the sign structure from the public right of way.

3. From the execution of this Agreement, the encroachment into the right of way will be considered in the nature of a revocable license permitting Landowner to occupy that portion of the public right of way where the sign structure is located. Landowner agrees that any investment it has made, or any investment it makes in the future, in the sign located within the Plaza Drive right of way is at its own risk. City shall not be responsible for reimbursing or paying any costs or lost investment Landowner may have if the sign structure is removed pursuant to this Agreement.

4. If the City becomes aware of safety or maintenance issues related to the sign structure authorized in this Agreement and if the Landowner refuses to repair or remove the sign structure, the City may remove the sign structure at the Landowner’s sole expense. If the Landowner refuses to pay the City for the cost of such work and forces the City to obtain a judgment for the cost, the Landowner agrees to pay the City’s reasonable attorney’s fees.

5. The parties agree that the sign structure shall not be added to or enlarged outside of its present area dimensions at its location in the Plaza Drive right of way. If the sign structure becomes damaged or in need of repair to the extent of more than 50% of its cost of replacement at the time of damage, the parties agree that the license described in Section 3 is automatically revoked and the sign shall be removed. If the sign structure becomes damaged or in need of repair to the extent of less than 50% of its cost of replacement at the time of damage, then Landowner may repair or reconstruct the sign so long as the work occurs within 1 year of the date of the damage.

6. The Landowner agrees to defend, indemnify and otherwise hold the City harmless from any and all claims arising from or related to the location of the sign structure within the Plaza Drive right of way.

7. Landowner acknowledges that this Agreement is made for the direct benefit of the Property noted above. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and successors in interest of the Landowner, 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, 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.

8. The Landowner acknowledges the City’s license to permit the continued occupation of the sign structure within the Plaza Drive right of way is good and sufficient consideration for the promises it has made herein.

9. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

10. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this Agreement.

11. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.

12. This Agreement is intended solely for the benefit of the parties hereto along with their heirs, assigns and successors in interest and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. Except as allowed under paragraph 7 of this Agreement, the rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other.

13. If any section(s), or provisions of this Agreement are 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.

14. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this Agreement shall be venued in Rapid City, South Dakota, in the Pennington County Circuit Court.
Dated this _____ day of __________________, 2018.

CITY OF RAPID CITY

_________________________________
Mayor

ATTEST:

_________________________________
Finance Officer

(seal)
State of South Dakota  )
   ss.
County of Pennington  )

On this the _____ day of __________________, 2018, before me, the undersigned officer, personally appeared Steve Allender 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 instrument for the purposes therein contained.

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

(seal)  
Notary Public - South Dakota
My Commission Expires _____________________
Dated this _____ day of __________________, 2018.

BLACK HILLS FEDERAL CREDIT UNION

By ________________________________

Its ________________________________

State of _________________________)  
)ss.  
County of _________________________)

On this the _____ day of ____________________, 2018, before me, the undersigned officer, personally appeared _____________________________, who acknowledged himself/herself to be the ______________________________ of Black Hills Federal Credit Union, and that he/she, as _____________________________, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(seal) Notary Public - ________________________________

My Commission Expires ________________________________