

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

STATE OF SOUTH DAKOTA)
)SS. COVENANT AGREEMENT
COUNTY OF PENNINGTON)

This declaration of the covenant and agreement (“Agreement”) is entered into this _____ day of _____, 2009, by and between SoDak Development, Inc., a South Dakota corporation, 6150 Laredo Lane, Black Hawk, South Dakota 57718 (hereinafter “Landowner”), and the City of Rapid City (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

Landowner hereby acknowledges that it is the owner of record of the property in Rapid City, South Dakota which is legally described as:

A portion of the SE1/4 of the NE1/4, Section 3, T1N, BHM, Rapid City, Pennington County, South Dakota, as more particularly described on the Exhibit attached hereto.

WHEREAS, Landowner has applied for a final plat; and

WHEREAS, there is a drainage lot and appurtenances on the property; and

WHEREAS, the City requires that the Landowner ensure that the drainage lot and appurtenances be maintained; and

WHEREAS, it is the parties’ intention that the final plat be approved if the Landowner agrees to certain stipulations.

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

1. Landowner hereby covenants and agrees to maintain the drainage lot and appurtenances on the property as directed by Public Works. Such maintenance shall include, but not be limited to, mowing, sediment control and removal, tree removal, replacement or repair of concrete structures and rip rap, and other maintenance as required by Public Works.

2. Landowner hereby covenants and agrees to defend, indemnify and hold the City harmless from all claims related to the drainage lot and appurtenances, which are not due to the fault of the City.

3. It is understood by Landowner that the City's primary consideration for the approval of the final plat is Landowner's covenant and promise to complete the Agreement conditions outlined in paragraphs 1 and 2 above, and that the City requires the execution and delivery of this Agreement as a condition to approval of the final plat for the property.

4. If the City assumes responsibility for the maintenance of the drainage lot and appurtenances in the future, this Agreement will be null and void.

5. If the Developer assigns its interest in the above described property to a Homeowners Association, the Developer agrees to provide a Homeowners Association agreement to the City for its review and approval. Such agreement shall provide for the maintenance of the drainage lot and appurtenances in accord with this Agreement. The Developer shall be released from this Covenant Agreement upon the City approving the Home Owners Association agreement.

6. The parties agree that the terms of this agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling without regard to the principles of conflict of laws. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court for the State of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.

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, 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. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of Landowner, and 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 pursuant to provisions of South Dakota statutes.

9. If any section(s), or provisions of this application 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.

10. If the Landowner 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 _____, 2009.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, 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 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)

Dated this _____ day of November, 2009.

SODAK DEVELOPMENT, INC.

By: _____
Ronald L. Shape

Its: President

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of November, 2009, before me, the undersigned officer personally appeared Ronald L. Shape, who acknowledged himself to be the President of SoDak Development, Inc., and that he, as such President, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of SoDak Development, Inc. by himself as President.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

EXHIBIT

LOCATION OF DRAINAGE LOT

Proposed Lot 8 of Block 3, Homestead Subdivision
Located in the SE1/4 of the NE1/4,
Section 3, T1N, R8E, B.H.M.
Rapid City, Pennington County, South Dakota

More fully described as follows:

Commencing at the easterly ¼ section corner of Section 3, T1N, R8E, common to the westerly ¼ section corner of Section 2, and the Point of Commencement;

Thence, N62°58'27"W, a distance of 997.79 feet, to a point on the southerly edge of the proposed right-of-way of Homestead Street, and the Point of Beginning;

Thence, first course: S00°05'23"W, a distance of 165.78 feet;

Thence, second course: S11°57'01"E, a distance of 110.78 feet;

Thence, third course: S45°23'45"E, a distance of 251.39 feet;

Thence, fourth course: N89°46'28"W, along the 1/4 section line common with the southerly boundary of said SE1/4 of the NE1/4 of Section 3, and common with the northerly boundary of Lot 12 of Block 6 of Valley Ridge Subdivision, a distance of 127.93 feet;

Thence, fifth course: N89°46'55"W, along the 1/4 section line common with the southerly boundary of said SE1/4 of the NE1/4 of Section 3, and common with the northerly boundary of Lot 13 of Block 6 of Valley Ridge Subdivision, a distance of 128.51 feet;

Thence, sixth course: N89°49'46"W, along the 1/4 section line common with the southerly boundary of said SE1/4 of the NE1/4 of Section 3, and common with the northerly boundary of Lot 13 and Lot 25 of Block 6 of Valley Ridge Subdivision, a distance of 65.21 feet;

Thence, seventh course: N89°46'43"W, along the 1/4 section line common with the southerly boundary of said SE1/4 of the NE1/4 of Section 3, and common with the northerly boundary of Lot 25 of Block 6 of Valley Ridge Subdivision, a distance of 55.25 feet;

Thence, eighth course: N00°02'40"E, a distance of 224.08 feet;

Thence, ninth course: N16°18'28"E, a distance of 70.61 feet;

Thence, tenth course: N00°05'23"E, a distance of 157.69 feet, to a point on the southerly edge of the proposed right-of-way of Homestead Street;

Thence, eleventh course: S89°54'41"E, along the southerly edge of the proposed right-of-way of Homestead Street, a distance of 155.00 feet, to the Point of Beginning.

Said Parcel contains 95,851 square feet or 2.200 acres more or less.