AGREEMENT BETWEEN THE CITY OF RAPID CITY AND ZANDSTRA CONSTRUCTION TO ALLOW FOR ACCEPTANCE OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR ELKS COUNTRY ESTATES SUBDIVISION.

This agreement is entered into on this 27th day of October, 2010, by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, SD 57702, herein after referred to as the "City" and Zandstra Construction, P.O. Box 1940, Rapid City, SD 57709, herein after referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Elks Country Estates Subdivision in Rapid City; and

WHEREAS, prior to approval of the final plat for Elks Country Estates Subdivision, the Developer was required to post surety to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, this surety includes the cost for completing sidewalks within the subdivision; and

WHEREAS, the Developer has completed all of the improvements required under the City's Subdivision Regulations with the exception of various sidewalk segments fronting non-contiguous residential lots; and

WHEREAS, the Developer has requested that it be allowed to construct the remaining sidewalks in conjunction with the construction of the homes on the individual lots; and

WHEREAS, this manner of constructing sidewalks in residential areas is consistent with current development practices and is also consistent with policies and ordinances that have been recently adopted by the City; and

WHEREAS, this subdivision was approved prior to the adoption of the new policy; and

WHEREAS, the Developer has requested that the City accept the completed improvements and start the running of the warranty period once the improvements have been officially accepted; and

WHEREAS, the City is willing to accommodate the Developer's request if it can insure that the sidewalks are completed.

NOW THEREFORE, the parties agree as follows:

1. The Developer will provide an updated estimate of the cost to construct all required sidewalks that remain to be built within the subdivision. The Developer will

then provide the City with a new surety or may reduce the original surety in an amount sufficient to cover the cost of installing the sidewalks as shown in the updated estimate. The surety shall be in a form acceptable to and approved by the City Attorney's Office. The Developer may assign its obligations under this agreement. However, the Developer agrees that even after it has assigned its obligations, the surety it has provided will continue to secure completion of the sidewalks, until such time as an alternative surety, in a form acceptable to the City, has been provided.

2. In exchange for the Developer providing the updated estimate and a surety sufficient to cover the cost of completing the sidewalks within the subdivision, the City will conduct a final inspection of all improvements, other than the sidewalks, within Elks Country Estates Subdivision required under the City's Subdivision Regulations. Upon the improvements passing the final inspection and the Developer providing the City with sufficient surety to cover the cost of any punch list items and the sidewalks per Paragraph 1 of this agreement, the City will issue a letter to the Developer officially accepting the public improvements. Upon issuance of the letter of acceptance by the City the two year warranty period will begin to run.

3. The Developer agrees that all sidewalks will be installed within two years of the approval of this agreement. If any sidewalks in the Elks Country Estates Subdivision are not completed by this time, the City has the right to draw on the surety and construct the sidewalk. If the amount of the surety is insufficient to fully cover the cost of constructing the sidewalks, the Developer agrees to pay to the City the difference between the amount of the surety and the actual cost of constructing the sidewalk.

4. The following lots are covered by this agreement:

Lots 8 through 12 of Block 8, Lots 5 through 9 of Block 9, Lots 17 through 23 of Block 10, Lots 4 through 18 of Block 11 and Lots 1 through 10 of Block 13, Elks Country Estates, located in the SE ¼ of Section 16, Township 1 North, Range 8 East, Black Hills Meridian, Rapid City, Pennington County, South Dakota.

5. The Developer acknowledges that the City's agreement to accept the public improvements for the subdivision and start the running of the warranty period prior to the completion of the sidewalks required under the City's Subdivision Regulations is sufficient consideration for the promises made herein.

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, heirs, assigns or successors in interest agree the City may recover from the Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

7. This document represents the entire agreement of the parties. No other writing is a part of this agreement. All other prior representations, writings, oral statements or

negotiations have been merged into this document and are either included herein or intentionally excluded.

8. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

DATED this 15 day of November, 2010.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

ZANDSTRA CONSTRUCTION

By: Steve Zandstra

Its: President

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 15 day of November, 2010, 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 and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

SHARLENE MITCHELL NOTARY PUBLIC SEAL STATE OF SOUTH DAKOTA

Notary Public, State of South Dakota
My Commission Expires: 4-19-2013

[SEAL]

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 27th day of October, 2010, before me, the undersigned officer, personally appeared Steve Zandstra, who acknowledged himself to be the President of ZANDSTRA CONSTRUCTION, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Notary Public, State of South Dakota
My Commission Expires: 8-26-2014

[SEAL]

SUBDIVISION BOND

Bond Number 105482485

KNOW ALL MEN BY THESE PRESENTS, that we Zandstra Construction Incorporated/Triple Z Real Estate Development Limited Partnership as Principal, and Travelers Casualty And Surety Company of America, a company formed under the laws of the State of Connecticut, and authorized to do business in the State of South Dakota, as Surety, are held and firmly bound unto the City of Rapid City as Obligee, in the penal sum of Seventy Six Thousand Forty Two Dollars and No/100 ($76,042.00), lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, Zandstra Construction Incorporated/Triple Z Real Estate Development Limited Partnership has agreed to construct in the City of Rapid City the following improvements:
Sidewalk Improvements - Lots 8 through 12 of Block 8, Lots 5 through 9 of Block 9, Lots 17 through 23 of Block 10, Lots 4 Through 18 of Block 11, and Lots 1 through 10 of Block 13, Elks Country Estates, Located in the SE ¼ Of Section 16, T1N, R8E, B.H.M., Rapid City, Pennington County, South Dakota

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall construct, or have constructed, the improvements herein described and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete said work, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed, sealed and dated this 15th day of November, 2010.

Zandstra Construction Incorporated/Triple Z Real Estate Development Limited

Principal

By: Steve Zandstra
Steve Zandstra, President

Travelers Casualty And Surety Company of America

By: J.E. Jencks
J.E. Jencks, Attorney-in-Fact

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

ACS
Attorney

10/2/10
Date

 PW121311-16

TRAVELERS

POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 221579

Certificate No. 003564774

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

J. E. Jencks, G. M. Joyce, G. A. Loos, Jack E. Miller, J. D. Muller, C. A. Reaves, J. J. Scherschligt, Roger Starks, and W. W. Townsend

of the City of Sioux Falls, State of South Dakota, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 2nd day of September, 2009.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Connecticut
City of Hartford ss.

By: George W. Thompson, Senior Vice President

On this the 2nd day of September, 2009, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.

Marie C. Tetreault, Notary Public

58440-4-09 Printed in U.S.A.

SUBDIVISION IMPROVEMENTS ESTIMATE

Plat of: Lots 8 through 12 of Block 8, Lots 5 through 9 of Block 9, Lots 17 through 23 of Block 10, Lots 4 through 18 of Block 11, and Lots 1 through 10 of Block 13, Elks Country Estates, Located in the SE1/4 of Section 16, T1N, R8E, B.H.M., Rapid City, Pennington County, South Dakota

Submitted by: Steve Zandstra — Engineer: Sperlich Consulting, Inc.

Signed: Steve Zandstra 10/27/10 — Date: October 27, 2010

Developer

This estimate shall be attached to and become a part of the petitioner's letter of credit, bond, or other surety instrument(s). During a period of two (2) years after the completion of the work listed below, the Developer shall make all repairs arising out of defective workmanship and/or materials which, in the judgement of the City Engineer, shall become necessary during said period. City reserves the right to extend the warranty period if excessive problems develop during the initial 2-year period.

ATTACH WORKSHEET AS NECESSARY

ITEM	QUANTITY (Units)	UNIT PRICE	ESTIMATED PRICE
1. Paving	-	-	-
2. Curb & gutter	-	-	-
3. Water main & appurtenances	-	-	-
4. Sanitary sewer mains & appurtenances	-	-	-
5. Storm sewer & appurtenances	3	$1,500.00	$4,500.00
6. Sidewalks	20092	$3.50	$70,322.00
7. Site grading	-	-	-
8. Erosion/sediment. controll	-	-	-
9. Street signs	-	-	-
10. Property pins	-	-	-
11. As-Constructed plans	-	-	-
12. Other:	2	$610.00	$1,220.00
Subtotal			
TOTAL EXTIMATED COST			$76,042.00
SUBDIVISION INSPECTION FEE (paid separately to City Finance Office):			

TO: Finance Office

A bond in the amount of $_____ to cover installation of the above-listed improvements shall be posted before the final plat approval of the Common Council. (Council meets the first and third Monday of each month).

GROWTH MANAGEMENT DEPARTMENT — DATE: 10-27-10

Finance Office:

Bond Record:

Amount	Date Filed or Renewed	Expiration Date

Growth Management Department

1. Work completed on :_____ Inspected by:_____
2. As-constructed plans received: Yes No

Permission is hereby granted to release the bond.

Signed: _____ Date: _____