

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)

**COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
CERTAIN LANDOWNERS WITHIN DAKOTA RIDGE SUBDIVISION
ALLOWING AN EXCEPTION TO THE REQUIREMENT THAT
WATER/SEWER LINES NOT CROSS ADJOINING PROPERTY LINES.**

This declaration of the covenant and agreement (“Agreement”) is entered into this _____ day of _____, 2010, by and between MICHAEL BOVEE and REBECCA BOVEE, NICK McWILLIAMS and JANEL McWILLIAMS, JASON BARNUM and SHARON BARNUM, RONDAE WOODLE, LISA USERA, and RAPID CITY DEFENSE HOUSING CORPORATION (“Landowners”), and the CITY OF RAPID CITY (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, the Landowner’s property lies within an established residential subdivision; and

WHEREAS, the lot lines on the original plat of the properties subject to this Agreement do not match the actual fence lines in existence; and

WHEREAS, the Landowners have agreed to adjust the lot lines of their properties to fix this problem and have jointly applied for a preliminary plat showing the new lots; and

WHEREAS, the City has attempted to determine the location of the water and sewer service lines and has been unable to determine their exact location but is aware that many of the service lines cross adjoining lots and will continue to do so if the new plat is approved; and

WHEREAS, the City’s Standard Specifications do not allow service lines to cross over another lot unless an Exception has been granted; and

WHEREAS, digging up the service lines to determine their exact location and reinstall them so that they meet the City's specifications would result in a significant expense and inconvenience to the Landowner's and would further delay approval of their plat; and

WHEREAS, the Landowners have granted a minor utility easement to the public which will allow access to private water and sewer lines on the Landowners' property; and

WHEREAS, it is the parties' intention that an exception be granted to allow the non-conforming water and sewer service lines 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. This Agreement pertains to, and includes those properties which are designated and identified as follows:

Lots 1 through 32, Block 3, Dakota Ridge Subdivision, located in the SE¹/₄ of Section 18, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

2. This Agreement specifically references the installation of private water/sewer service line(s) required by the City's subdivision or other ordinances or regulations.

3. The Landowners acknowledge the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Landowners agree that if at any time in the future the City determines it is necessary or desirous to install conforming private water/sewer service line(s) through an assessed project, the Developers or their heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of a final plat without the immediate installation of conforming private water/sewer service line(s). It is understood by the Landowners that the City of Rapid City's primary consideration for granting approval of a Final Plat with the non-standard water/sewer service line(s) and the City's forbearance from requiring the Landowners to immediately install fully conforming private water/sewer service line(s) is the Landowners' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project. The Landowners further acknowledge that the granting of the exception which will allow approval of a Final Plat with the otherwise non-conforming water/sewer service line(s) is sufficient consideration for the promises it has made herein.

4. Landowners further covenant and agree for themselves, their heirs, assigns, and

successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, they will be solely responsible for the immediate installation of water/sewer service line(s) which conform to the City's specifications, along with all other necessary infrastructure. Such water/sewer service lines shall be installed within 90 days of the objection. Should weather prevent immediate installation of these improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Landowners.

5. The Landowners acknowledge that this document does not constitute an easement and the City is not purporting to create an easement over any adjoining property for the individual Landowners' benefit. The City is solely cooperating with the Landowners to resolve their present concerns without the expense of locating and reconstructing all the service lines at the present time. The Landowners acknowledge they are aware their service lines may cross adjoining property and if they desire an easement it is their sole responsibility to obtain one. The Landowners further agree that they, not the City, are solely responsible for any damages of any kind whatsoever caused by a non-conforming service line serving their property.

6. The Landowners agree to defend, indemnify and otherwise hold the City harmless from all claims relating to or arising from the non-conforming service line(s) allowed by this Agreement. The Landowners agree that the service lines allowed by this agreement are private lines and all costs of maintenance and up keep are the responsibility of the individual Landowner served by that line. Should the service line(s) ever be damaged, or malfunction in any way, the Landowner served by that line shall take immediate measures to repair the service line(s) at their sole expense. If the repair is such that it requires a right to work permit, or any other authorization from the City, the Landowner served by the service line agrees to install a new service line which conforms to current City standards at their sole expense.

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

8. 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.

9. 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.

10. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto. If any section(s), or provision 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.

11. This Agreement shall be construed according to the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued in the State Circuit Court for the Seventh Judicial Circuit which is located in Rapid City, South Dakota.

12. 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 _____, 2010.

Michael Bovee

Rebecca Bovee

Nick McWilliams

Janel McWilliams

Jason Barnum

Sharon Barnum

Rondae Woodle

Lisa Usera

**RAPID CITY DEFENSE HOUSING
CORPORATION**

By: _____

Its: _____

State of South Dakota)

County of Pennington ss.
)

On this the _____ day of _____, 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, 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:
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer personally appeared MICHAEL BOVEE and REBECCA BOVEE, known to me or satisfactorily proven to be the persons whose names are 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:
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer personally appeared NICK McWILLIAMS and JANEL McWILLIAMS, known to me or satisfactorily proven to be the persons whose names are 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:
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2010, before me, the undersigned officer personally appeared JASON BARNUM and SHARON BARNUM, known to me or satisfactorily proven to be the persons whose names are 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:
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2010, before me, the undersigned officer personally appeared RONDAE WOODLE, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged she 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:
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer personally appeared LISA USERA, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she 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:
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of RAPID CITY DEFENSE HOUSING CORPORATION, and that he, as such _____, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of RAPID CITY DEFENSE HOUSING CORPORATION by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:
(SEAL)