

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

STATE OF SOUTH DAKOTA     )  
  SS.  
COUNTY OF PENNINGTON     )

**COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND  
SSST, LLC REQUIRING FIRE SPRINKLER PROTECTION**

This declaration of the covenant and agreement ("Agreement") is entered into this 27 day of October, 2010, by and between SSST, LLC, a South Dakota Limited Liability Company, ("Landowner"), 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 a proposed residential subdivision;  
and

WHEREAS, there is not adequate water service to meet the fire protection requirements of the residential subdivision;

WHEREAS, the Landowner has agreed to install fire sprinkler protection in all commercial buildings and all one or two family dwelling units that are greater than 3,600 square feet in area.

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 more fully described as follows:

Commencing at the northwesterly corner of Lot 3 of Block 3 of Plum Creek Subdivision, common to the southwesterly corner of Fieldstone Drive right-of-way, and the point of beginning;

Thence, first course: S24°46'42"E, along the westerly boundary of said Lot 3, a distance 59.75 feet;

Thence, second course: S58°43'01"W, a distance 131.94 feet;

Thence third course: southeasterly, curving to the left, on a curve with a radius of 134.00 feet, a delta angle of  $01^{\circ}58'02''$ , a length of 4.60 feet, a chord bearing of  $S32^{\circ}15'57''E$ , and chord distance of 4.60 feet;

Thence, fourth course:  $S56^{\circ}44'59''W$ , a distance of 52.00 feet;

Thence, fifth course:  $S56^{\circ}50'47''W$ , a distance of 133.87 feet;

Thence, sixth course:  $S38^{\circ}04'13''E$ , a distance of 70.85 feet;

Thence, seventh course:  $S15^{\circ}32'37''W$ , a distance of 191.10 feet;

Thence, eighth course:  $S00^{\circ}06'48''W$ , a distance of 800.03 feet;

Thence, ninth course:  $N89^{\circ}53'12''W$ , a distance of 110.00 feet;

Thence, tenth course:  $S00^{\circ}06'48''W$ , a distance of 1.15 feet;

Thence, eleventh course:  $N89^{\circ}53'12''W$ , a distance of 52.00 feet;

Thence, twelfth course:  $N00^{\circ}06'48''E$ , a distance of 23.98 feet;

Thence, thirteenth course:  $N89^{\circ}53'12''W$ , a distance of 90.00 feet;

Thence, fourteenth course:  $N45^{\circ}26'31''W$ , a distance of 51.07 feet;

Thence, fifteenth course:  $N44^{\circ}33'29''E$ , a distance of 37.79 feet;

Thence, sixteenth course:  $N00^{\circ}06'48''E$ , a distance of 32.01 feet;

Thence, seventeenth course:  $N51^{\circ}19'22''W$ , a distance of 225.90 feet;

Thence, eighteenth course:  $N11^{\circ}51'25''E$ , a distance of 72.79 feet;

Thence, nineteenth course:  $N00^{\circ}00'22''E$ , a distance of 279.93 feet;

Thence, twentieth course:  $N19^{\circ}33'30''E$ , a distance of 153.36 feet;

Thence, twenty-first course:  $N34^{\circ}10'56''E$ , a distance of 142.46 feet;

Thence, twenty-second course:  $N20^{\circ}06'13''E$ , a distance of 84.35 feet;

Thence, twenty-third course:  $N01^{\circ}41'11''E$ , a distance of 207.65 feet;

Thence, twenty-fourth course:  $N11^{\circ}26'54''E$ , a distance of 92.64 feet;

Thence, twenty-fifth course:  $N32^{\circ}11'51''E$ , a distance of 29.60 feet, to a corner on the southern boundary of Drainage Lot 1 of Elks Crossing;

Thence, twenty-sixth course:  $N32^{\circ}11'51''E$ , along the southern boundary of said Drainage Lot 1, a distance of 69.98 feet;

Thence, twenty-seventh course:  $N51^{\circ}17'37''E$ , along the southern boundary of said Drainage Lot 1, a distance of 98.89 feet;

Thence, twenty-eighth course:  $N69^{\circ}56'22''E$ , along the southern boundary of said Drainage Lot 1, a distance of 100.33 feet;

Thence, twenty-ninth course:  $S89^{\circ}53'12''E$ , along the southern boundary of said Drainage Lot 1, a distance of 165.61 feet;

Thence, thirtieth course:  $S00^{\circ}01'51''W$ , along the southern boundary of said Drainage Lot 1, a distance of 110.17 feet;

Thence, thirty-first course:  $S89^{\circ}56'25''E$ , along the southern boundary of said Drainage Lot 1, a distance of 98.23 feet, to the northwesterly corner of said Fieldstone Drive right-of-way;

Thence, thirty-second course:  $S00^{\circ}03'35''W$ , along the westerly edge of said Fieldstone Drive right-of-way, a distance of 52.00 feet, the northwesterly corner of said Lot 3, common to the southwesterly corner of said Fieldstone Drive right-of-way, and the point of beginning.

Said Parcel contains 527,520 square feet or 12.110 acres more or less.

2. Landowner agrees to install fire sprinkler protection in all commercial buildings and all one or two family dwelling units that are greater than 3,600 square feet in area.
3. Landowner further covenants and agrees for itself, its heirs, assigns, and successors in interest, that should it or any of its heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, it will be solely responsible for the immediate installation of fire sprinkler protection in all commercial buildings and all one or two family dwelling units that are greater than 3,600 square feet in area.
4. Landowner may petition the City for the release of the fire sprinkler protection requirement once Landowner has completed the water line loop and obtains the required flows for fire suppression.
5. 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 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 the provisions of South Dakota statutes.
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 owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.
7. 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.
8. 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.
9. 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.
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 27 day of Oct, 2010.

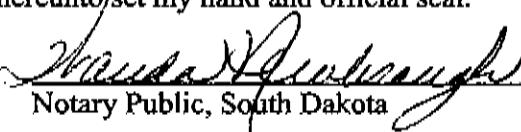
SSST, LLC

By: Steve Zandstra  
Its: member

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

On this the 27<sup>th</sup> day of October, 2010, before me, the undersigned officer personally appeared Steve Zandstra, who acknowledged himself to be the Member of SSST, LLC, and that he, as such Member, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of SSST, LLC by himself as Member.

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

  
Notary Public, South Dakota

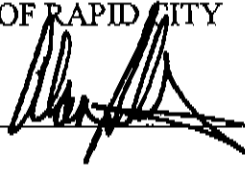
My Commission Expires:

My Commission Expires  
March 9, 2011

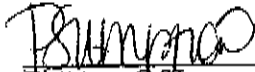


CITY OF RAPID CITY

\_\_\_\_\_  
Mayor



ATTEST:

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

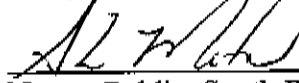


(SEAL)

State of South Dakota )  
ss.  
County of Pennington )

On this the 1 day of November, 2010, before me, the undersigned officer, personally appeared Alan Hanks 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 duly authorized to do so, executed the foregoing agreement 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: 4-19-2013

(SEAL)

