

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 THF STONERIDGE AND THE CITY
OF RAPID CITY REGARDING INSTALLATION AND MAINTENANCE OF
CERTAIN TRAFFIC SIGNALS AND APPURTENANCES AT THE
INTERSECTION OF 5TH STREET AND STUMER ROAD.**

This declaration of covenant and agreement ("Agreement") is entered into this _____ day of _____, 2011, by and between THF Stoneridge Development, L.L.C. ("Landowner"), a Missouri limited liability company, of 2127 Innerbelt Business Center Dr., Suite 200, St. Louis, Missouri 63114, and the City of Rapid City ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

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

Lot 3, Block 4 of Black Hills Center, located in the NE1/4 of the NE1/4 and the S1/2 of the NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

WHEREAS, the Landowner has applied for a right of way permit to install a traffic signal in the public right of way; and

WHEREAS, the Landowner desires to utilize an aesthetic black paint enhancement finish on galvanized steel traffic signal mast arm assemblies, aluminum signal posts, lighting facilities, sign posts and the back of signs at the intersection of 5th Street and Stumer Road as part of a Planned Commercial Development; and

WHEREAS, the Landowner has submitted to the City design details of the traffic signal assemblies and appurtenances it has proposed as part of its Planned Commercial Development; and

WHEREAS, the City has standard specifications for traffic signal assemblies and appurtenances; and

WHEREAS, the aesthetic deviations from the standard specifications for the proposed traffic signal assemblies and appurtenances may result in higher maintenance and replacement costs than those associated with the standard traffic signal assemblies; and

WHEREAS, in consideration for allowing aesthetically enhanced traffic signal assemblies and appurtenances in lieu of standard assemblies and appurtenances, the Landowner agrees to enter into a recorded Covenant Agreement identifying maintenance responsibility for the traffic signal assemblies and appurtenances at the intersection of 5th Street and Stumer Road.

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

1. The property which is subject to this Agreement is legally described as:

Lot 3, Block 4 of Black Hills Center, located in the NE1/4 of the NE1/4 and the S1/2 of the NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.
2. The Landowner hereby covenants and agrees that if it chooses to install painted galvanized steel traffic signal mast arm assemblies, aluminum signal posts, lighting facilities, sign posts and the back of signs at the intersection of 5th Street and Stumer Road which deviate from the City's standard specifications such aesthetic changes will be in accordance with the submitted design details provided by the Landowner.
3. The Landowner further covenants and agrees to maintain the aesthetic black paint enhancement finish on the traffic assemblies and appurtenances at the Landowner's sole expense in accordance with the reasonable requirements of the City. If maintenance is needed, the City will provide written notice to the Landowner of the required maintenance to be performed. Within ten (10) business days after receipt of said written notice from the City, the Landowner will provide a written schedule with appropriate plans and specifications for the timing of the work to be performed. Thereafter, the City will acknowledge its acceptance or rejection of said written schedule. If the City rejects the Landowner's proposal it shall indicate to the Landowner the basis for the denial and provide the Landowner with ten (10) days to respond. Should the Landowner fail to respond to the City within the time frames specified, the parties fail to reach an agreement on the work to be performed or the timing of such work, or if the Landowner fails to perform any necessary maintenance within the timeframes contained in the agreed upon schedule, with due consideration being given to the Landowner for weather and other issues beyond its control which delay the completion of the work,

the City shall have the right to cause the work to be performed and bill the Landowner for such work. If the items covered in this Agreement are damaged or destroyed to the extent complete replacement becomes necessary, the City will replace with the City's standard signals and/or appurtenances and will not match the more aesthetic items installed at the Landowner's expense. Upon approval of the City Engineer, or their designee, such approval to not be unreasonably withheld, the Landowner may at its sole expense paint in place or otherwise make improvements to any items which are covered by this Agreement so they match the items originally installed.

4. The City agrees to allow the Landowner to maintain the aesthetic black paint enhancement finish on the traffic assemblies and appurtenances for a period of twenty (20) years. After twenty (20) years the City may replace the traffic light covered by this Agreement with an alternate signal or may leave the Landowner's signal in place. The Landowner's obligations under this Agreement shall remain in full force and effect for as long as the signal covered by this Agreement remains, but shall cease if the City chooses to replace the signal installed by the Landowner with alternate lighting after the twenty (20) year term has expired. Nothing in this paragraph shall be construed as preventing the replacement of the decorative lighting with alternate lighting at an earlier time if the parties mutually agree to such replacement.
5. The parties acknowledge that in the absence of the promises made by Landowner in this Agreement the City would not approve installation of painted galvanized steel traffic signal mast arm assemblies, aluminum signal posts, lighting facilities, sign posts and the back of signs at the intersection of 5th Street and Stumer Road in lieu of a traffic signal with standard assemblies. The parties further acknowledge that the City's approval of installing the more aesthetically pleasing traffic signal at the request of the Landowner is good and sufficient consideration for the promises made herein.
6. 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.
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. 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 laws 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.
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. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.
11. 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.
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.
13. This Agreement can only be amended in writing by the consent of all the parties hereto.

Dated this _____ day of _____, 2011.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2011, 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 instrument for the purposes herein 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

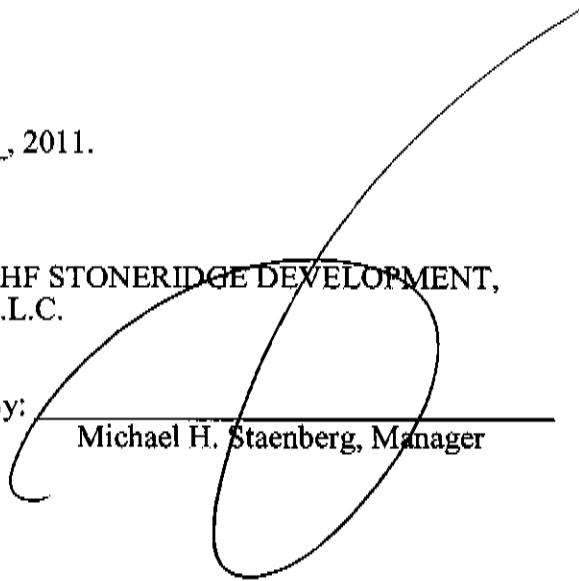
My Commission Expires:

(SEAL)

Dated this 7th day of March, 2011.

THE STONERIDGE DEVELOPMENT,
L.L.C.

By: _____
Michael H. Staenberg, Manager



STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 7th day of March, 2011, before me appeared Michael H. Staenberg, to me personally known, who, being by me duly sworn, did say that he is the Manager of THF Stoneridge Development, L. L. C., a Missouri limited liability company, and said Michael H. Staenberg acknowledged that he executed this instrument on behalf of said limited liability company and acknowledged said instrument as the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

Kimberly A Thomas
Notary Public

My Commission Expires: 3/28/2011

KIMBERLY A THOMAS
Notary Public - State of Missouri
Commissioned for St Louis County
My Commission Expires: March 28, 2011
Commission Number: 07497337