



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY


300 Sixth Street

Allison O. Marsland, Assistant City Attorney
City web: www.rcgov.org

Phone: 605-394-4140
Fax: 605-394-6633
e-mail: allison.marsland@rcgov.org

MEMORANDUM

TO: City Council

FROM: Allison Marsland, Assistant City Attorney 

DATE: March 20, 2012

RE: Sidewalk Request – Kensington Heights

Kensington Heights, L.L.C., developed residential lots within the City. At the time the land was developed, the City's subdivision regulations required that the developer install sidewalks. The developer was required to post surety to secure the completion of the public improvements, including the sidewalks. After the subdivision was approved, the City amended the sidewalk ordinance and developers are no longer required to install a majority of the sidewalks. The responsibility for sidewalks on residential lots has been transferred to the homebuilders. In reality that is what normally took place and the ordinance amendment codified that reality. The City now confirms that sidewalks are installed prior to issuing a certificate of occupancy for the residential structure on the lot.

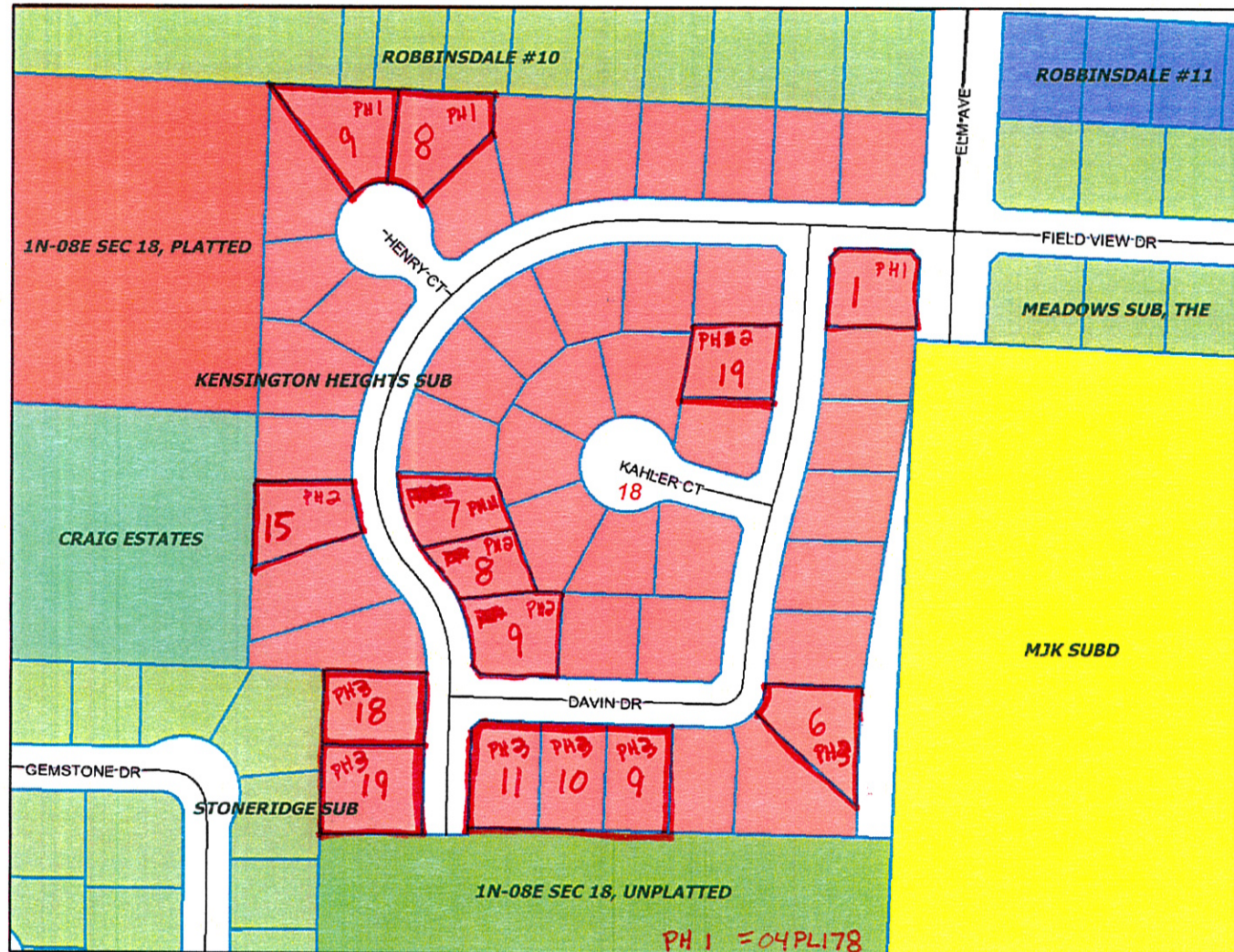
In this case, the developer has completed all of the public improvements, including most of the sidewalks required under 16.16.090 of the Rapid City Municipal Code. In 2010 the City and developer entered into three agreements, one for each phase of the development, whereby the City accepted the public improvements, but required the developer to continue posting surety to secure completion of the rest of the sidewalks.

The developer is requesting the Council terminate the existing agreement, and that the responsibility for the installation of the remaining sidewalks on buildable lots *only* be shifted to the homebuilders as is currently done for new subdivisions.

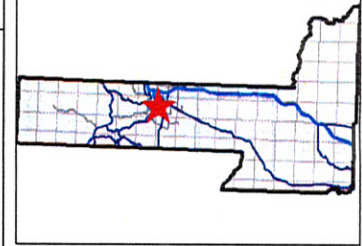
KENSINGTON HEIGHTS SIDEWALKS

RapidMap
Rapid City-Pennington County GIS
www.RapidMap.org

Rapid City-Pennington County GIS



PH 1 = 04PL178
PH 3 = 06PL009



Legend

- Roads**
 - Not classified
 - Interstate
 - US Highway
 - SD Highway
 - County Highway
 - Main Road
 - Minor Arterial
 - Collector
 - Ramp
 - Paved Road
 - Unpaved Road
 - FS Unpaved Road
 - Driveway
 - Paved Alley
 - Unpaved Alley
 - Unimproved Road
 - Trail
 - other
 - Not yet coded
- Township/Section lines**
 - SECTION
 - TOWNSHIP
 - Parcel Boundary
 - Lot Lines
 - COUNTY BOUNDARY
 - LOT LINE
 - PARCEL LINE
 - ROAD ROW
 - RR ROW
 - SECTION LINE
 - TOWNSHIP LINE
 - WATER LINE
 - STATE BOUNDARY
 - PLSS Sections



Scale: 1:2,304

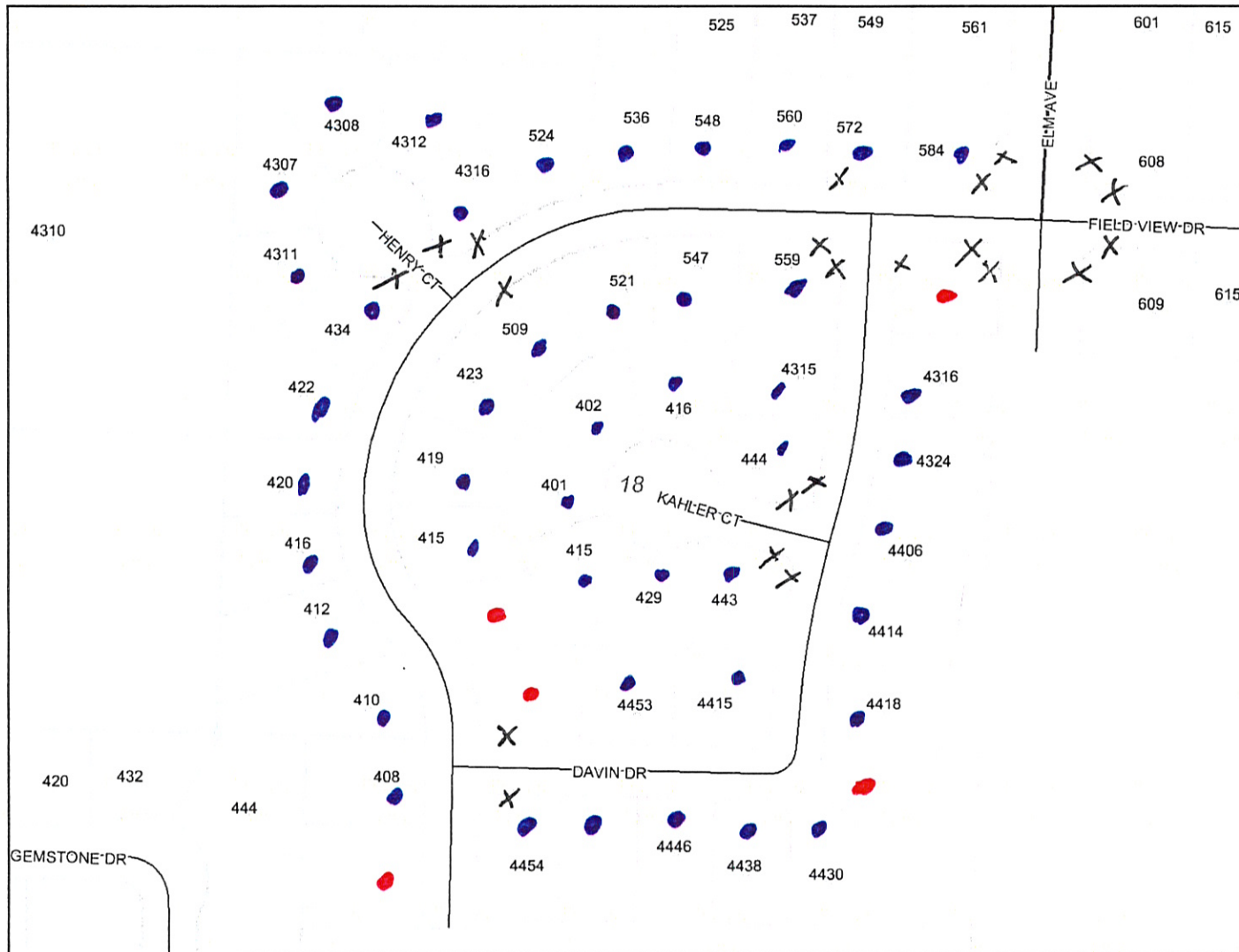
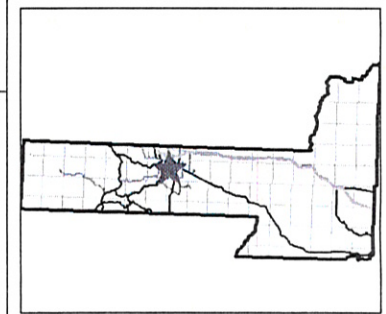
Map center: 44° 2' 27.5" N, 103° 12' 28.9" W

DISCLAIMER: This map is provided 'as is' without warranty of any representation of accuracy, timeliness, or completeness. The burden for determining accuracy, completeness, timeliness, merchantability, and fitness for or the appropriateness for use rests solely on the user. Rapid City and Pennington County make no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The user acknowledges and accepts the limitations of the map, including the fact that the data used to create the map is dynamic and is in a constant state of maintenance, correction, and update. This document does not represent a legal survey of the land. There are no restrictions on the distribution of printed Rapid City/Pennington County maps, other than the City of Rapid City copyright/credit notice must be legible on the print. The user agrees to recognize and honor in perpetuity the copyrights and other proprietary claims for the map(s) established or produced by the City of Rapid City or the vendors furnishing said items to the City of Rapid City.

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RapidMap
Rapid City-Pennington County GIS
www.RapidMap.org

Rapid City-Pennington County GIS



Legend

Roads

- Not classified
- Interstate
- US Highway
- SD Highway
- County Highway
- Main Road
- Minor Arterial
- Collector
- Ramp
- Paved Road
- Unpaved Road
- FS Unpaved Road
- Driveway
- Paved Alley
- Unpaved Alley
- Unimproved Road
- Trail
- other
- Not yet coded

Address Points

Township/Section lines

- SECTION
- TOWNSHIP
- Parcel Boundary

Lot Lines

- COUNTY BOUNDARY
- LOT LINE
- PARCEL LINE
- ROAD ROW
- RR ROW
- SECTION LINE
- TOWNSHIP LINE
- WATER LINE
- STATE BOUNDARY



Scale: 1:1,983

0 190 380 570 ft.

Map center: 44° 2' 27.8" N, 103° 12' 29.4" W

DISCLAIMER: This map is provided 'as is' without warranty of any representation of accuracy, timeliness, or completeness. The burden for determining accuracy, completeness, timeliness, merchantability, and fitness for or the appropriateness for use rests solely on the user. Rapid City and Pennington County make no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The user acknowledges and accepts the limitations of the map, including the fact that the data used to create the map is dynamic and is in a constant state of maintenance, correction, and update. This document does not represent a legal survey of the land. There are no restrictions on the distribution of printed Rapid City/Pennington County maps, other than the City of Rapid City copyright/credit notice must be legible on the print. The user agrees to recognize and honor in perpetuity the copyrights and other proprietary claims for the map(s) established or produced by the City of Rapid City or the vendors furnishing said items to the City of Rapid City.

February 22, 2012

City of Rapid City, Engineering Services
Attn: Ted Johnson, P.E.
300 6th Street
Rapid City, South Dakota 57701

Regarding: Kensington Heights Subdivision, Phases I, II, and III

Dear Mr. Johnson,


On May 3, 2010 Kensington Heights, LLC, entered into three sidewalk agreements on Phases I, II, and III of Kensington Heights Subdivision with the City of Rapid City. As part of that agreement we posted surety for the installation of the sidewalks.

Since entering into that agreement the city amended their sidewalk policy (16.16.090) to allow for installation of public sidewalks as part of the building permit for the home, with construction of the sidewalks completed prior to issuance of a Certificate of Occupancy for the residence.

I am requesting that the City Council terminate the existing agreements and shift the responsibility for installation of the remaining sidewalks to the homebuilders which you are now doing with new subdivisions.

If you have any questions or require additional information please contact me at 343-1400 x111

Sincerely,



Richard Kahler
Manager
Kensington Heights, LLC

Phase I
04PL178

**AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND KENSINGTON HEIGHTS, LLC TO ALLOW FOR ACCEPTANCE
OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF
SIDEWALKS FOR KENSINGTON HEIGHTS SUBDIVISION, PHASE I**

This Amended Agreement is entered into on this 20 day of April, 2010, by and between the City of Rapid City, a municipal corporation, located at 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the "City", and Kensington Heights, LLC, 1010 9th Street, Rapid City, South Dakota, 57701, hereinafter referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Kensington Heights Subdivision, Phase I in Rapid City; and

WHEREAS, prior to approval of the final plat for Kensington Heights Subdivision, Phase I 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 parties previously entered into an agreement whereby the sidewalks were to be completed within two years of the approval of the agreement; and

WHEREAS, with the exception of some of the sidewalks, the improvements have been completed and accepted by the City, and have been placed into the warranty period; and

WHEREAS, the developer is requesting an extension of the time period in which the Developer is to complete all the sidewalks; 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 to the City a new 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.
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 refrain from drawing on the Letter of Credit currently in place. Upon the completion of a sidewalk in conjunction with the construction of a home, the City shall inspect the sidewalk. Upon the sidewalk passing final inspection, the City will issue a letter to the Developer officially accepting the sidewalk. 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 Kensington Heights Subdivision, Phase I 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:

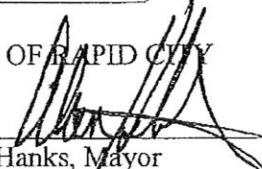
Lots 8 and 9 of Block 1; and Lot 1 of Block 3, all in Kensington Heights Subdivision, Phase I.
5. The Developer acknowledges that the City's agreement to accept the public improvements for the subdivision and start the running of the warranty period prior to the completion of all of the sidewalk segments 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.

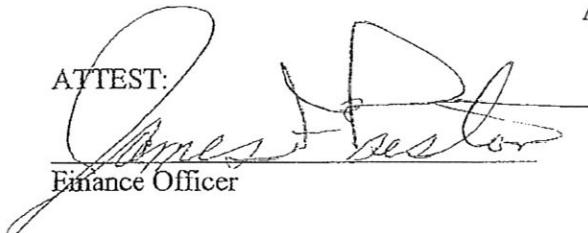
8. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City,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

DATED this 20 day of April, 2010.

CITY OF RAPID CITY


Alan Hanks, Mayor

ATTEST:


Finance Officer

(SEAL)

KENSINGTON HEIGHTS, LLC

By: 

Its: 

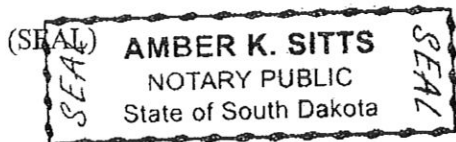
State of South Dakota)
 ss.
County of Pennington)

On this 3 day of May, 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.

Amber K. Sitts
Notary Public, South Dakota

My Commission Expires: 9-12-15



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

On this the 20 day of April, 2010, before me, the undersigned officer personally appeared Richard Kahler, who acknowledged himself to be the President of KENSINGTON HEIGHTS, LLC, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of KENSINGTON HEIGHTS, LLC.

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

Lindsay Leeper
Notary Public, South Dakota

My Commission Expires: 07/24/2013

(SEAL)



Phase II
05/20/14

**AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND KENSINGTON HEIGHTS, LLC TO ALLOW FOR ACCEPTANCE
OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF
SIDEWALKS FOR KENSINGTON HEIGHTS SUBDIVISION, PHASE II**

This Amended Agreement is entered into on this 20 day of April, 2010, by and between the City of Rapid City, a municipal corporation, located at 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the "City", and Kensington Heights, LLC, 1010 9th Street, Rapid City, South Dakota, 57701, hereinafter referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Kensington Heights Subdivision, Phase II in Rapid City; and

WHEREAS, prior to approval of the final plat for Kensington Heights Subdivision, Phase II 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 parties previously entered into an agreement whereby the sidewalks were to be completed within two years of the approval of the agreement; and

WHEREAS, with the exception of some of the sidewalks, the improvements have been completed and accepted by the City, and have been placed into the warranty period; and

WHEREAS, the Developer is requesting an extension of the time period in which the Developer is to complete all the sidewalks; 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 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.

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 refrain from drawing on the Letter of Credit currently in place. Upon the completion of a sidewalk in conjunction with the construction of a home, the City shall inspect the sidewalk. Upon the sidewalk passing final inspection the City will issue a letter to the Developer officially accepting the sidewalk. 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 Kensington Heights Subdivision, Phase II 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 7, 8, 9 and 19 of Block 2; Lot 15 of Block 1, all in Kensington Heights Subdivision, Phase II

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 sidewalk segments 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.

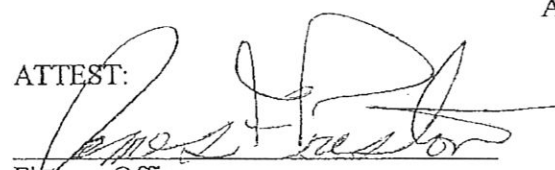
8. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City,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

DATED this 3 day of May, 2010.

CITY OF RAPID CITY


Alan Hanks, Mayor

ATTEST:


Finance Officer

(SEAL)

KENSINGTON HEIGHTS, LLC

By: 

Its: 

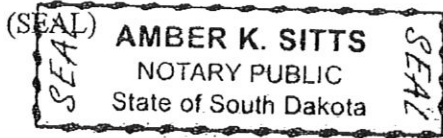
State of South Dakota)
 ss.
County of Pennington)

On this 3 day of May, 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.

Amber K. Lites
Notary Public, South Dakota

My Commission Expires: 9-13-15



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

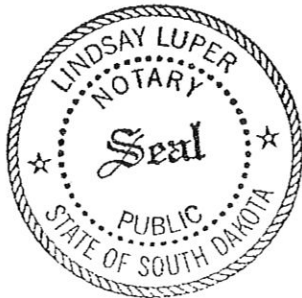
On this the 20 day of April, 2010, before me, the undersigned officer personally appeared Richard Kahler, who acknowledged himself to be the President of KENSINGTON HEIGHTS, LLC, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of KENSINGTON HEIGHTS, LLC.

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

Vincent J. Luper
Notary Public, South Dakota

My Commission Expires: 07/24/2013

(SEAL)



Phase III
06/20/09

**AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND KENSINGTON HEIGHTS, LLC TO ALLOW FOR ACCEPTANCE
OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF
SIDEWALKS FOR KENSINGTON HEIGHTS SUBDIVISION, PHASE III**

This Amended Agreement is entered into on this 20 day of April, 2010, by and between the City of Rapid City, a municipal corporation, located at 300 Sixth Street, Rapid City, SD 57702, hereinafter referred to as the "City", and Kensington Heights, LLC, 1010 9th Street, Rapid City, South Dakota, 57701, hereinafter referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Kensington Heights Subdivision, Phase III in Rapid City; and

WHEREAS, prior to approval of the final plat for Kensington Heights Subdivision, Phase III 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 parties previously entered into an agreement whereby the sidewalks were to be completed within two years of the approval of the agreement; and

WHEREAS, with the exception of some of the sidewalks, the improvements have been completed and accepted by the City, and have been placed into the warranty period; and

WHEREAS, the Developer is requesting an extension of the time period in which the Developer is to complete all the sidewalks; 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 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.
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 refrain from drawing on the Letter of Credit currently in place. Upon the completion of a sidewalk in conjunction with the construction of a home, the City shall inspect the sidewalk. Upon the sidewalk passing final inspection, the City will issue a letter to the Developer officially accepting the sidewalk. 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 Kensington Heights Subdivision, Phase III 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:

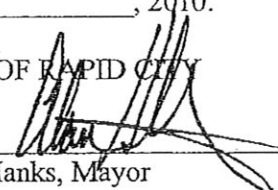
Lots 18 and 19 of Block 1, Lots 6, 9, 10, and 11 of Block 3,
all in Kensington Heights Subdivision, Phase III
5. The Developer acknowledges that the City's agreement to accept the public improvements for the subdivision and start the running of the warranty period prior to the completion of the sidewalks 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.

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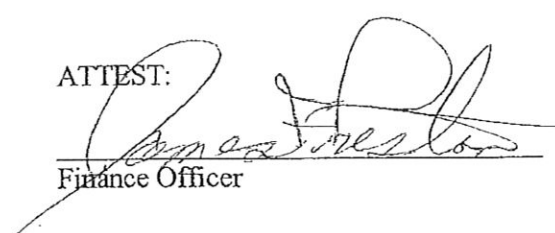
8. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City,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

DATED this 3 day of May, 2010.

CITY OF RAPID CITY


Alan Hanks, Mayor

ATTEST:


Finance Officer

(SEAL)

KENSINGTON HEIGHTS, LLC

By: 

Its: 

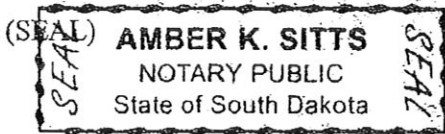
State of South Dakota)
 ss.
County of Pennington)

On this 3 day of May, 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.

Amber K. Little
Notary Public, South Dakota

My Commission Expires: 9-13-15



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

On this the 20 day of April, 2010, before me, the undersigned officer personally appeared Richard Kahler, who acknowledged himself to be the President of KENSINGTON HEIGHTS, LLC, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of KENSINGTON HEIGHTS, LLC.

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

Lindsay Luper
Notary Public, South Dakota

My Commission Expires: 07/24/2013

(SEAL)

