



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 *AM*

DATE: June 7, 2012

RE: Resolution Terminating the Remaining In-force Agreements Pertaining to the Completion of Sidewalks by Developers

The City's subdivision regulations previously required that the developer install sidewalks on buildable and non-buildable lots in new subdivisions. The developer was required to post surety to secure the completion of the public improvements, including the sidewalks. The City recently amended the subdivision regulation sidewalk ordinance, Rapid City Municipal Code ("RCMC") 16.16.050, and developers are no longer required to install a majority of the sidewalks. The responsibility for the 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.

Upon staff recommendation, over the last year the Common Council has taken the action of terminating several developer agreements that required the developer to post surety for the completion of sidewalks on buildable lots; the agreements provided that in exchange, the City accepted the then-completed public improvements in the affected new subdivision. These agreements were entered into prior to the enactment of the current RCMC section 16.16.050.

Currently before the Council is a resolution that will terminate any and all remaining in-force developer agreements that pertain to the completion of sidewalks on buildable lots in new subdivisions. The Public Works Department has identified four agreements that will be affected by this resolution, copies of which are linked to the agenda. If additional developer agreements of this nature come to light, those would also be terminated by this resolution.

Staff recommendation is to pass the resolution, and authorize the Mayor and Finance Officer to sign the same.

RESOLUTION #2012-072

**A RESOLUTION TERMINATING THE REMAINING IN-FORCE
AGREEMENTS PERTAINING TO
THE COMPLETION OF SIDEWALKS BY DEVELOPERS**

WHEREAS, the City of Rapid City's (the "City") subdivision regulations previously required that the developer install sidewalks on buildable and non-buildable subdivision lots; and

WHEREAS, in certain instances, the City entered into an agreement with the developer whereby the developer would post surety to secure the completion of the sidewalks on buildable lots, and in exchange the City accepted the then-completed required public improvements; and

WHEREAS, a number of the aforementioned developer agreements regarding the completion of sidewalks currently remain in-force (the "Existing Agreements"); and

WHEREAS, the Existing Agreements were entered into to provide for the City's acceptance of public infrastructure in new subdivisions, while at the same time providing surety that the remaining required sidewalks would be built on buildable lots; and

WHEREAS, the City has since amended the subdivision regulation pertaining to sidewalk construction, Rapid City Municipal Code ("RCMC") 16.16.050, under which developers are no longer required to install a majority of the sidewalks; and

WHEREAS, under RCMC amended section 16.16.050, the responsibility for sidewalks on residential lots has been transferred to the homebuilders; and

WHEREAS, the Common Council of the City of Rapid City desires to terminate the Existing Agreements in order to shift responsibility for the installation of the remaining sidewalks subject to the Existing Agreements on buildable lots only to the homebuilders as is currently done for new subdivisions under RCMC 16.16.050; and

WHEREAS, the City of Rapid City deems it is in the best interests of the City to terminate the Existing Agreements and hold any affected developers accountable for sidewalk construction pursuant to RCMC 16.16.050.

NOW, THEREFORE, BE IT RESOLVED by the City of Rapid City that all the aforementioned Existing Agreements between the City and various developers that pertain to the completion of sidewalks on buildable lots in subdivision developments are hereby terminated.

BE IT FURTHER RESOLVED, by the City of Rapid City that as of the termination of the Existing Agreements, on buildable lots only the responsibility for the

installation of any remaining sidewalks previously affected by the Existing Agreements is hereby shifted to the homebuilders, as is required for new subdivisions under RCMC 16.16.050.

BE IT FURTHER RESOLVED, by the City of Rapid City that all developers affected by this resolution shall be required to install any and all sidewalks that are required to be built by developers pursuant to RCMC 16.16.050.

DATED this _____ day of _____, 2012.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

**AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
SYB, INC TO ALLOW FOR ACCEPTANCE OF PUBLIC
IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR
BIG SKY SUBDIVISION, PHASE 10**

This amended agreement is entered into on this 7 day of June, 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 SYB, LLC, of 528 Kansas City Street, Suite 4, Rapid City, SD 57701, herein after referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Big Sky Subdivision, Phase 10 in Rapid City; and

WHEREAS, prior to approval of the final plat for Big Sky Subdivision, Phase 10 the Developer was required to post surety to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, this surety included 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 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, with the exception of the sidewalk in Tract H, which shall be completed by August 31, 2010. If any sidewalks in Big Sky Subdivision, Phase 10 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 13 B and 19 of Block 4
- Lots 1A, 1B, 2A, 2B, 3A, 3B, 13 and 14 of Block 19
- Lot 10 of Block 20
- Tract H

All in Big Sky Subdivision

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 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

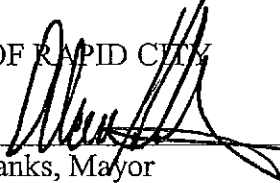
subdivision regulations in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

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 7 day of June, 2010.

CITY OF RAPID CITY

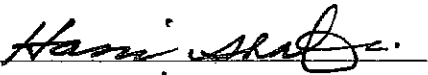

Alan Hanks, Mayor

ATTEST:


Finance Officer

(SEAL)

SYB, LLC

By: 
Its: managing member

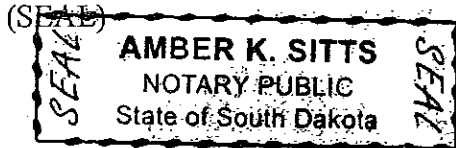
State of South Dakota)
 ss.
County of Pennington)

On this 7 day of June, 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: 9-13-15



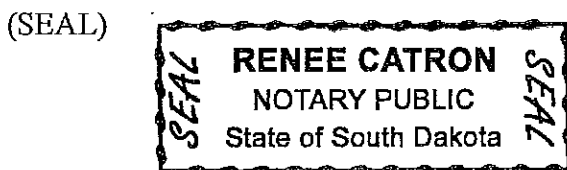
State of South Dakota)
ss.
County of Pennington)

On this the 7th day of June, 2010, before me, the undersigned officer personally appeared Hani Shafai, who acknowledged himself to be the Managing Member of SYB, INC., and that he, as such Hani Shafai being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of SYB, INC.

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

Reene Catron
Notary Public, South Dakota

My Commission Expires: 10-11-2012



AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY AND 3T's LAND DEVELOPMENT LLC TO ALLOW FOR ACCEPTANCE OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR LOTS 9A AND 9B OF ROBBINSDALE ADDITION #10

This amended agreement is entered into on this 17 day of May, 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 3T's Land Development LLC, P.O. Box 2624, Rapid City, SD 57709-2624, herein after referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Robbinsdale Addition #10 in Rapid City; and

WHEREAS, prior to approval of the final plat for Lots 9A and 9B of Robbinsdale Addition #10 the Developer was required to post surety to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, this surety included 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 ensure 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 cash surety 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 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 Lots 9A and 9B of Robbinsdale Addition #10 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 sidewalk, 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 9A and 9B of Robbinsdale Addition #10

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 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

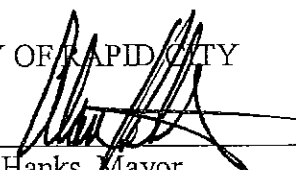
subdivision regulations in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

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.

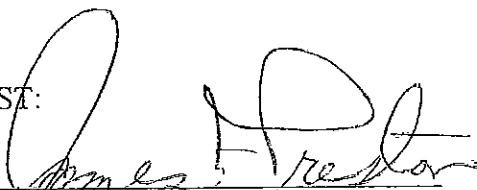
8. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City,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

DATED this 17 day of May, 2010.

CITY OF RAPID CITY


Alan Hanks, Mayor

ATTEST:


Finance Officer

(SEAL)

3T's Land Development, LLC

By: 

Its: 

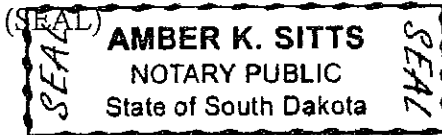
State of South Dakota)
 ss.
County of Pennington)

On this 17 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.

Omber K. Seiler
Notary Public, South Dakota

My Commission Expires: 9-13-15



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

On this the 29th day of April, 2010, before me, the undersigned officer personally appeared Patrick Thustes, who acknowledged himself to be the manager of 3T's Land Development, LLC., and that he, as such manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of 3T's Land Development, LLC.

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

Margaret Truel
Notary Public, South Dakota

My Commission Expires:

(SEAL) 6/25/2015

**AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
VILLAGGIO, LLC, TO ALLOW FOR ACCEPTANCE OF PUBLIC
IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR
VILLAGGIO AT GOLDEN EAGLE SUBDIVISION.**

This agreement is entered into on this 17 day of May, 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 Villaggio, LLC, Rapid City, SD 57702, herein after referred to as the "Developer."

WHEREAS, the entity previously known as Signature Development Company, LLC, is now known as Villaggio, LLC; and

WHEREAS, the Developer owns certain residential lots within Villaggio at Golden Eagle Subdivision in Rapid City; and

WHEREAS, prior to approval of the final plat for Villaggio at Golden Eagle 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 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 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 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 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 Villaggio at Golden Eagle 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 9 through 17 of Block 1, and Lots 1R through 4R and Lots 5 and 6 of Block 2, all in the Villaggio at Golden Eagle Subdivision.
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 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 17 day of May, 2010.

CITY OF RAPID CITY

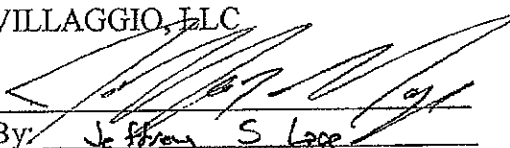

Alan Hanks, Mayor

ATTEST:


Finance Officer

(SEAL)

VILLAGGIO, LLC

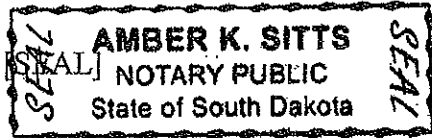

By: Jeffrey S. Lage
Its: Owner

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

On this 17 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.



Chamber K. Siler
Notary Public, State of South Dakota
My Commission Expires: 9-13-15

[illegible]

On this 7th day of May, 2010, before me, the undersigned officer, personally appeared Jeffrey S. Lage, who acknowledged himself to be the owner of VILLAGGIO, LLC, 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.

[SEAL]

Margaret Saech
Notary Public, State of South Dakota
My Commission Expires: 6/25/2015

14 Dec. 07

(5003-2492*)

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND GENERATIONS CARE, LLC TO ALLOW FOR ACCEPTANCE OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR FOUNTAIN SPRINGS PARK SUBDIVISION.

This agreement is entered into on this 14 day of 12, 2007 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 Generations Care, LLC, 2000 Wesleyan Boulevard, Rapid City, SD, 57702.

WHEREAS, the Developer owns certain residential lots within Fountain Springs Park Subdivision in Rapid City; and

WHEREAS, prior to approval of the final plat for Fountain Springs Park 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.

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 Fountain Springs Park 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 Generations Care, LLC 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 Fountain Springs Park 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 1A and 1B of Block 1; Lots 1A, 1B, 2A, 2B, 3A, 3B, 4A and 4B of Block 2 of Fountain Springs Park Subdivision.

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 7th day of January, 2007/8

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

ATTEST:



Finance Officer

(SEAL)

GENERATIONS CARE, LLC

By: Franklin O Simpson
Its: Managing Partner

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

On this 10th day of January, 2007, 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.

Notary Public, State of South Dakota

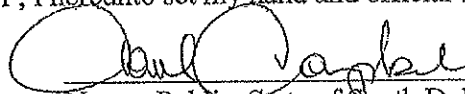
My Commission Expires: 7-15-2012

[SEAL]

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

On this 14th day of December, 2007, before me, the undersigned officer, personally appeared Franklin O. Simpson who acknowledged himself to be the Managing Partner of Generations Care, LLC, and that as such, being duly authorized so to do, 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: 10/28/09

[SEAL]

