

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

NEW
 8-21-12

**COVENANT AGREEMENT BETWEEN THF STONERIDGE AND THE CITY OF
 RAPID CITY REGARDING INSTALLATION OF A NORTHBOUND RIGHT TURN
 LANE ON BLACK HILLS BOULEVARD AT OUTLOT 10**

This declaration of covenant and agreement ("Agreement") is entered into this ____ day of _____, 2012, 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 NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the S $\frac{1}{2}$ of the NE $\frac{1}{4}$, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

WHEREAS, the Landowner desires to construct a separate northbound right turn lane on Black Hills Boulevard at Outlot 10 as part of a Planned Commercial Development; and

WHEREAS, the City has standard specifications for turn lanes; and

WHEREAS, the Landowner agrees to enter into a recorded Covenant Agreement for the construction of a separate northbound right turn lane on Black Hills Boulevard at Outlot 10.

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 NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the S $\frac{1}{2}$ of the NE $\frac{1}{4}$, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

2. The Landowner hereby covenants and agrees that at the time Outlot 10 is developed or access through Outlot 10 is developed, it will construct a separate northbound right turn lane on Black Hills Boulevard at Outlot 10.

3. The parties acknowledge that the City's approval of the installation of a separate northbound right turn lane on Black Hills Boulevard at Outlot 10 is good and sufficient consideration for the promises made herein.

4. 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.

5. 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.

6. 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.

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. 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.

9. 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.

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.

11. This Agreement can only be amended in writing by the consent of all the parties hereto.

Dated this _____ day of _____, 2012.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2012, before me, the undersigned officer, personally appeared Sam Kooiker 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 17 day of August, 2012.

THF STONERIDGE DEVELOPMENT, L.L.C.

By TKG Rapid City Mortgage Investors, L.L.C.,
as Attorney-in-fact

By: [Signature]
R. Otto Maly, Its Authorized Agent

State of Missouri)
 ss.
County of Boone)

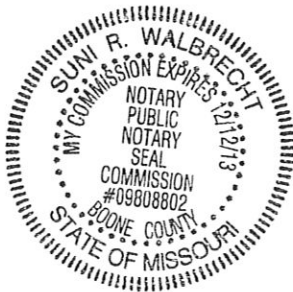
On this the 17 day of August, 2012, before me, the undersigned officer personally appeared R. Otto Maly, who acknowledged himself to be the authorized agent of TKG Rapid City Mortgage Investors, L.L.C., attorney-in-fact of THF Stoneridge Development, L.L.C., and acknowledged that he as such attorney-in-fact, being duly authorized to do so, executed the foregoing instrument as the act of its principal for the purposes therein contained.

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

[Signature]
Notary Public -- Missouri

My Commission Expires: 12/12/13

(SEAL)



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
- Not yet coded

Township/Section Lines

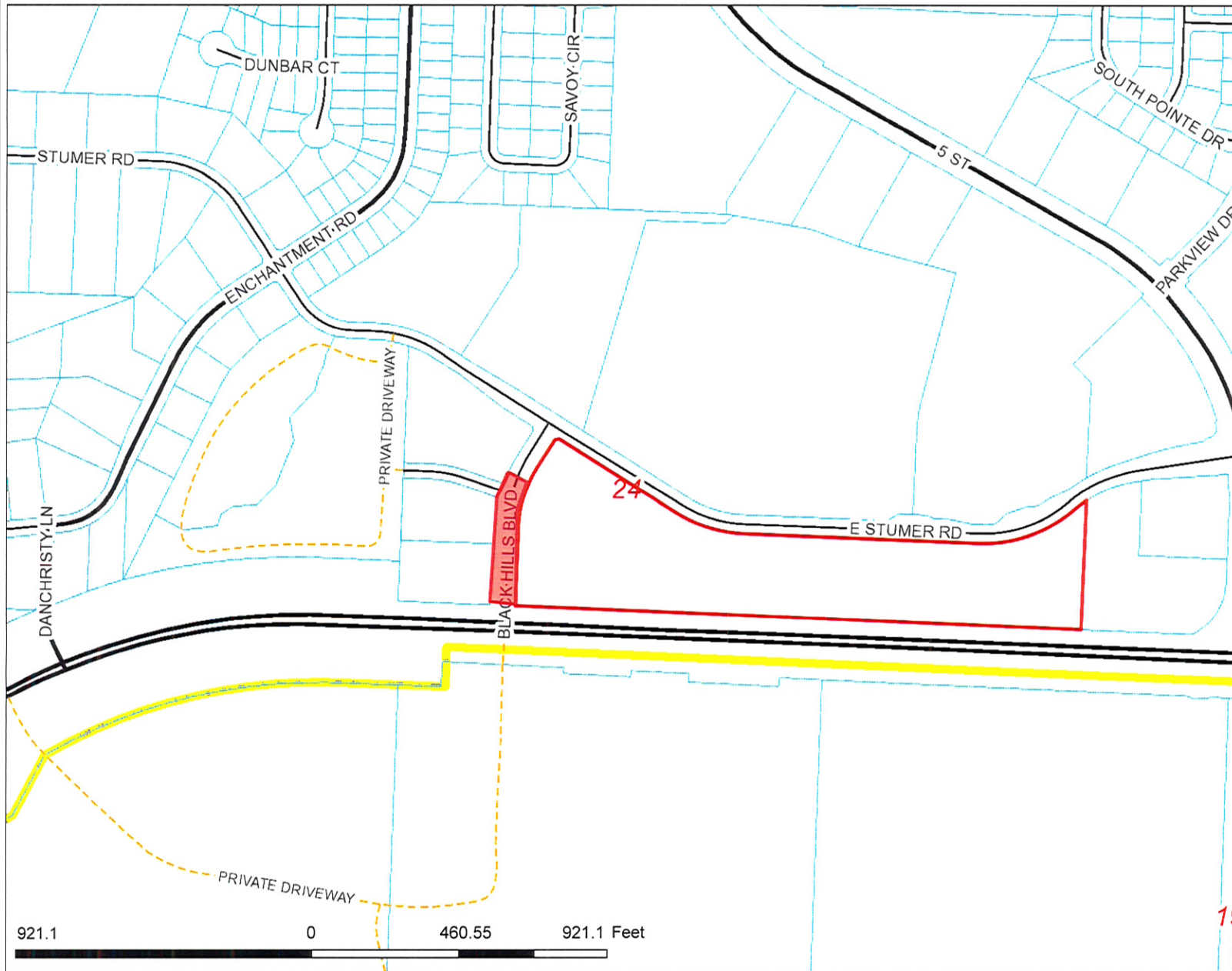
- 0
- 7

Tax Parcels

Lot Lines

- <all other values>
- Lot Line
- Parcel Line

- County Line



Scale: 1: 5,527

Map Notes:

DISCLAIMER: This map is provided 'as is' without warranty of any representation to 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 the constant state of maintenance, correction, and update. This documents 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.