



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Growth Management Department

300 Sixth Street

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MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Urban Planner III

DATE: February 11, 2004

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for street improvements.

Legal Description: Lot 3-7, Block 13; and dedicated streets, Big Sky Subdivision, located in the SE1/4 NW1/4 of Section 3, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota

A Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, pavement, water and sewer along Homestead Street has been submitted in conjunction with a Preliminary and Final Plat to subdivide the above legally described property into 5 lots. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest a future assessment for the installation of curb, gutter, sidewalk, street light conduit, pavement, water and sewer along Homestead Street as it abuts the subject property. The document also requires the signature of the Mayor and the Finance Officer.

Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right to protest a future assessment for the installation of curb, gutter, sidewalk, street light conduit, pavement, water and sewer along Homestead Street as it abuts the above legally described property.

(File #03SV028)



EQUAL HOUSING
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

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

JRS
2-11-04

AGREEMENT WAIVING RIGHT TO PROTEST
(SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this 11th day of February, 2004, by and for DTH, LLC, hereinafter called "Developer," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developer has proposed a plat to be located and developed according to the attached final subdivision plat and it is the intent of the Developer to meet the conditions of the subdivision regulations required for the proposed final plat of this property and approved by the Rapid City Council on _____, 2004; and

WHEREAS it is the intended purpose of the Developer to obtain final approval for this subdivision plat; and

WHEREAS the City of Rapid City's subdivision regulations require construction of curb, gutter, sidewalk, street light conduit, pavement, sewer, and water which in this instance would require the Developer to construct curb, gutter, sidewalk, street light conduit, pavement, sewer, and water along Homestead Street as it abuts Lots 3 through 7, Block 13 of Big Sky Subdivision, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

WHEREAS it is the intent and purpose of both the Developer and the City to enter into an agreement whereby the Developer will consent to a future assessed project for the construction of curb, gutter, sidewalk, street light conduit, pavement, sewer, and water along Homestead Street as it abuts Lots 3 through 7, Block 13 of Big Sky Subdivision, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as required by Rapid City Subdivision Regulations;

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

1. This agreement pertains to, and includes those properties which are designated and identified as follows:

Lots 3 through 7, Block 13 of Big Sky Subdivision, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the construction of curb, gutter, sidewalk, street light conduit, pavement, sewer, and water along Homestead Street as it abuts Lots 3 through 7,

Block 13 of Big Sky Subdivision, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

3. The Developer acknowledges the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Developer agrees that if at any time in the future the City determines it is necessary or desirous to construct curb, gutter, sidewalk, street light conduit, pavement, sewer, and water along Homestead Street as it abuts Lots 3 through 7, Block 13 of Big Sky Subdivision, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, through an assessed project, Developer or its heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate construction of curb, gutter, sidewalk, street light conduit, pavement, sewer, and water along Homestead Street as it abuts Lots 3 through 7, Block 13 of Big Sky Subdivision, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota. It is understood by the Developer that the City of Rapid City's primary consideration for the granting of the approval for a subdivision plat on the herein described property and forbearance from requiring Developer to construct curb, gutter, sidewalk, street light conduit, pavement, sewer, and water along Homestead Street as it abuts Lots 3 through 7, Block 13 of Big Sky Subdivision, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, is the Developer's covenant and promise to waive any right to object to the assessed project and its consent to the assessed project.

4. Developer 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, the immediate construction of curb, gutter, sidewalk, street light conduit, pavement, sewer, and water along Homestead Street as it abuts Lots 3 through 7, Block 13 of Big Sky Subdivision, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, which is required in the City subdivision regulations will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. Should the weather prevent immediate construction of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Developer.

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 Developer, 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. If any section(s), or provision 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.

8. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

9. If the Developer 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 _____ day of _____, 2004.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

DTH, LLC

By: _____, MANAGER

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2004, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, 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 authorized so to do, executed the foregoing Agreement Consenting to Assessed Project 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:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the 11th day of February, 2004, before me, the undersigned officer, personally appeared Doyl Esko who acknowledged himself to be the MANAGER, of DTH, LLC, and that he, as such manager, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of the corporation by himself as DTH, LLC.

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

Jean M. Nicholson

Notary Public, South Dakota

My Commission Expires: 5-25-2008

(SEAL)