

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

STATE OF SOUTH DAKOTA)
) SS. COVENANT AGREEMENT
PENNINGTON COUNTY)

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND SSST, LLC,
REGARDING THE TIMING OF THE CONSTRUCTION OF MINNESOTA STREET
BEFORE ISSUANCE OF CERTIFICATES OF OCCUPANCY.**

This agreement is entered into on this ___ day of _____, 2009, 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 SSST, LLC, A South Dakota limited liability company, of 333 West Boulevard, P.O. Box 2670, Rapid City, SD, 57709-2670, hereinafter referred to as the “Developer”.

WHEREAS, the Developer has proposed constructing a large residential development on land which is generally located east of Elk Vale Road and north of Minnesota Street; and

WHEREAS, a component of the proposed development is the extension of Minnesota Street in three phases; and

WHEREAS, the issuance of Certificates of Occupancy for any properties platted within the proposed development is conditioned upon the completion of Phase 1 of the Minnesota Street extension, which includes constructing Minnesota Street from its intersection with the Southeast Connector to the intersection of a rearage road which will then connect Minnesota Street to Willowbend Drive; and

WHEREAS, upon the completion of Phase 1 of the Minnesota Street extension and its acceptance by the City, the temporary access shall be closed; and

WHEREAS, upon the completion of Phase 1 of Minnesota Street, its acceptance by the City, and the closing of the temporary access, the City may issue Certificates of Occupancy.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. The real estate subject to this Agreement is described as follows:

The NE1/4 of the SW1/4, Less Plum Creek Sub, Less ROW, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The NW1/4 of the SW1/4, Less Plum Creek Sub, Less ROW, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The SW1/4 of the SW1/4, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The SE1/4 of the SW1/4, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota.

2. Prior to any Certificates of Occupancy being issued by the City, the Developer shall complete Phase 1 of the Minnesota Street extension. Upon acceptance by the City of Phase 1, and the closing of the temporary access, the City may then issue Certificates of Occupancy.

3. It is understood by the Developer that the City's primary consideration for the approval of the final plat is the Developer's covenant and promise to complete Phase 1 of the Minnesota Street extension and the closing of the temporary access.

4. 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 law of the State of South Dakota shall be controlling without regard to the principle of conflicts 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.

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, 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. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of 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 South Dakota statutes.

7. If any section(s), or provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this Agreement if they can be given effect without the invalid section(s) or provisions.

8. 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 _____, 2009.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, 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, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement 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)

SSST, LLC

By: _____

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of SSST, LLC, and that he, as such _____, being authorized so to do, executed the foregoing Agreement for the purposes therein contained by signing the name of SSST, LLC, by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)