

**PREPARED BY:**

Rod Schlauger  
Bangs, McCullen, Butler, Foye & Simmons, L.L.P.  
P.O. Box 2670  
Rapid City, SD 57709  
(605) 343-1040

**NO BUILD EASEMENT & AGREEMENT**

WHEREAS 118 Main Street LLC, a South Dakota limited liability company (“**LLC**”), whose address is 606 Main Street, Rapid City, South Dakota 57701, desires to install windows on the Building located at 118 Main Street (the “**Benefitted Property**”), legally described as:

Lot 24 in Block 79 of the Original Townsite of the City of Rapid City, Pennington County, South Dakota.

WHEREAS the City of Rapid City, a South Dakota Municipality, (“**City**”) located at 300 Sixth Street, Rapid City, SD 57701 requires that a building must meet certain set back distances from the property line;

WHEREAS Lee Consolidated Holdings Co., a South Dakota Corporation (“**Lee**”), whose address is 507 Main Street, Rapid City, South Dakota 57701, acknowledges that it is the owner of record of the following property located (“**Burdened Property**”) legally described as:

Lot 25 in Block 79 of the Original Townsite of the City of Rapid City, Pennington County, South Dakota

WHEREAS the Building on the Benefited Property has a set back of zero feet from the East lot line of the Burdened Property.

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lee for itself, and its successors and assigns, hereby grants to LLC for itself, and its successors and assigns, the following perpetual easement (the “**No Build Easement**”):

1. That Lee, its heirs, successors and assigns shall not let any structure, signage, or building to be constructed, allowed or permitted to exist or to be placed in the West Five (5') feet of the Burdened Property along the lot line of the Benefited Property.
2. The purpose of the No Build Easement is to grant to LLC and its successors and assigns a perpetual right to receive and enjoy light and air and allow LLC to construct windows on the East Side of the Building located on Benefitted Property.
3. Nothing contained in this No Build Easement shall be interpreted or construed to prevent Lee and its successors and assigns from using, operating, maintaining, or repairing the No Build Area for a parking lot.
4. City agrees to allow LLC to construct windows on the East Side of Building on the Benefitted Property, so long as this No Build Easement remains in place and that no structure, signage or

building is in is placed in he West Five (5) Feet on the Burdened Property. LLC agrees that if the easement is terminated or if the easement area is encroached upon by a building, garage, shed, or sign, then LLC will promptly and within six months from the termination or encroachment cause the building to come into compliance with any building code or restriction that relates to the windows and openings in the east wall of the building. LLC agrees that if the building code so requires at the time the termination or encroachment, that it will remove or replace windows, close openings, or otherwise make any changes necessary to correct any condition relating to the windows and openings as are in violation of any applicable building code or restriction.

This No Build Easement and Agreement shall run with the land, is permanent, and shall be perpetual.

This No Build Easement imposes no duty or obligation upon LLC or its successors and assigns to maintain or repair the No Build Area.

[Signature Page Follows Separately]

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF RAPID CITY

ATTEST:

\_\_\_\_\_  
Steve Allender, Mayor

\_\_\_\_\_  
Finance Officer

(SEAL)

Lee Consolidated Holdings, Co.

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF SOUTH DAKOTA     )  
  )§§  
COUNTY OF PENNINGTON     )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer and that they, as such Mayor and Finance Officer, being authorized to do so, executed the No Build Easement and 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.

(SEAL)

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:\_\_\_\_\_

[Signature Page of LLC]

118 MAIN STREET LLC

By: \_\_\_\_\_  
Ray J. Hillenbrand

Its: Co-Manager

By: \_\_\_\_\_  
Margaret J. Hillenbrand

Its: Co-Manager

STATE OF SOUTH DAKOTA     )  
  )§§  
COUNTY OF PENNINGTON     )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned officer, personally appeared Ray J. Hillenbrand and Margaret J. Hillenbrand, who acknowledged themselves to be the co-managers of 118 Main Street LLC, a South Dakota limited liability company, and that they, as such co-managers, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company themselves as co-managers.

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

\_\_\_\_\_  
Notary Public, South Dakota

(SEAL)

My Commission Expires:\_\_\_\_\_

[Signature Page of Lee]

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016.

Lee Consolidated Holdings, Co.

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF SOUTH DAKOTA    )  
  )§§  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Lee Consolidated Holdings Co., a South Dakota Company, and that he, as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation himself as \_\_\_\_\_.

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

\_\_\_\_\_  
Notary Public, South Dakota

(SEAL)

My Commission Expires:\_\_\_\_\_