

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

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

COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND GOOD GUYS LLC ALLOWING AN EXCEPTION TO THE REQUIREMENT THAT WATER/SEWER LINES NOT CROSS ADJOINING PROPERTY LINES.

THIS AGREEMENT IS MADE and entered into this ____ day of _____, 2007, by and for Good Guys LLC, hereinafter called the "Developers," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS, the Developer has requested approval of a Final Plat; and

WHEREAS, the Developer has submitted a proposed non-standard location for water/sewer service line(s) to serve one of the lots included in the requested Final Plat; and

WHEREAS, the City of Rapid City's Standard Specifications for Public Works Construction, 2007 Edition, requires water/sewer service line(s) to be connected directly to the City's mains without being extended across other lots; and

WHEREAS, it is the intended purpose of the Developer and the City to allow the non-standard location for the water/sewer service line(s) by entering into an agreement whereby the Developers will consent to grant an easement if ownership of any of the lots covered by the Final Plat is transferred as well as consent to a future assessed project for the installation of conforming infrastructure, including conforming water/sewer service line(s).

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:

Dan's Supermarket Tract Revised in Blocks 66 and 67 of the Original Townsite of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 24, Page 177, excepting Lot 1 of Dan's Supermarket Tract Revised and also accepting Lot H1.

2. This agreement specifically references the installation of private water/sewer service line(s), as well as any other infrastructure elements required by the City's subdivision or other ordinances or regulations.

3. The Developers acknowledge 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 Developers agree that if at any time in the future the City determines it is necessary or desirous to install conforming private water/sewer service line(s) through an assessed project, the Developers or their 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 final plat without the immediate installation of conforming private water/sewer service line(s). It is understood by the Developers that the City of Rapid City's primary consideration for granting approval for the Final Plat with the non-standard water/sewer service line(s) and the City's forbearance from requiring Developers to immediately install fully conforming private water/sewer service line(s) is the Developers' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project. The Developer further acknowledges that the granting of the exception which will allow approval of the Final Plat with the otherwise non-conforming water/sewer service line(s) is sufficient consideration for the promises it has made herein.

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of conforming private water/sewer service line(s) along with all other necessary infrastructure will be required within 90 days of the objection in order to comply with the City of Rapid City's ordinances and specifications. Should the weather prevent immediate installation of these 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 Developers.

5. The Developer agrees to defend, indemnify and hold the City harmless from all claims relating to or arising from the service line(s) allowed by this agreement. The Developer agrees that the service line allowed by this agreement is a private line and all costs of maintenance and up keep are the responsibility of the Developer. Should the service line(s) ever be damaged, or malfunction in any way, the Developer shall take immediate measures to repair the service line(s) at its sole expense. This provision shall not prevent the Developer from allocating financial responsibility for the service line(s) between itself and others through a private agreement. However, the existence of such an agreement shall not relieve either party from taking immediate action to repair or replace the service line(s) upon discovery of damage or

malfunction or upon notice from the City of the need for repair or replacement of the service line(s).

6. The Developer further covenants and agrees that should the proposed Final Plat subdividing the above property be approved and should the Developer then transfer such property, at the time of transfer, a non-standard service line easement in a form prepared by the City Attorney's Office shall be granted for the location where the non-standard service line is located. Such easement shall contain provisions making clear that this is a private line, that the owners of the individual lots are responsible for the maintenance and replacement of such line, that the City has no responsibility for maintenance or replacement of such line and that the owners of the individual lots will defend, indemnify and hold the City harmless from any and all claims related to the private service line for which is the subject of this agreement.

7. 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 Developers, 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.

8. 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.

9. 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.

10. This agreement shall be construed according to the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued in the State Circuit Court for the Seventh Judicial Circuit which is located in Rapid City, South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

11. 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 _____, 2007.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

GOOD GUYS LLC

By:_____

Its:_____

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 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, 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 _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of Good Guys 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]

Notary Public, State of South Dakota
My Commission Expires: _____