

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND WALGAR
DEVELOPMENT CORPORATION FOR ACCEPTANCE OF PUBLIC
IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS**

This Agreement is entered into on this ____ day of _____, 2009, by and between the City of Rapid City, a municipal corporation located at 300 6th Street, Rapid City, SD 57701, herein after referred to as the “City” and Walgar Development Corporation, 3302 Hogan Court, Rapid City, SD 57709-5019, herein after referred to as Developer.

WHEREAS, the Developer owns certain residential lots within Robbinsdale Addition No. 10 in Rapid City; and

WHEREAS, prior to approval of the final plat for Robbinsdale Addition No. 10 the Developer was required to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, the Developer entered into an agreement with the City that set forth the requirements for the completion of subdivision improvements

WHEREAS, the public improvements to be made included sidewalks adjacent to Wisconsin Street; and

WHEREAS, the Developer has completed all of the improvements required under the City’s Subdivision Regulations with the exception of various segments of sidewalks adjacent to Wisconsin Street in conjunction with the construction of the homes on the individual lots; and

WHEREAS, the Developer has requested that it be allowed to construct the remaining sidewalks in conjunction with the construction of homes on the individual lot; and

WHEREAS, this manner of constructing sidewalks in residential areas is consistent with current development practices and is also consistent with policies and ordinances that have been recently adopted by the City; and

WHEREAS, this subdivision was approved prior to the adoption of the new policy; and

WHEREAS, the City is willing to accommodate the developer’s request if it can insure that the sidewalks are completed.

NOW THEREFORE, the parties agree as follows:

1. The Developer will provide an updated estimate of the cost to construct all required sidewalks that remain to be built within the subdivision. The Developer will then provide the City with a new surety or may reduce the original in an amount sufficient to cover the cost of installing the sidewalks as shown on the updated estimate. The surety shall be in a form acceptable to and approved by the City Attorney’s Office.

2. In exchange for the Developer providing to the City the updated estimate and adequate surety for the completion of the sidewalks, the City agrees to release Lot 27 of Block 23 of Robbinsdale Addition No. 10 from the agreement entered into by the Developer and City on December 18, 1995. The Developer acknowledges that this is sufficient consideration for this Agreement.

3. The Developer agrees that all sidewalks subject to this Agreement will be installed upon a building permit being issued for the lot. Furthermore, if any sidewalks for Lot 27 of Block 23 of Robbinsdale Addition No. 10 are not completed within two years of this Agreement, the City has the right to draw on the surety and construct the sidewalk. If the amount of the surety is insufficient to fully cover the cost of constructing the sidewalk, the Developer agrees to pay to the City the difference between the amount of the surety and the actual cost of constructing the sidewalk.

4. The following lot is covered by this agreement:

Lot 27 of Block 23 of Roddinsdale Addition No. 10 located in the Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW1/4NE1/4SE1/4) of Section Thirteen (13), Township One North (T1N), Range Seven East (R7E) of the Black Hills Meridian, 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 or its subdivision regulations in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

6. This document represents the entire agreement of the parties. No other writing is a part of this agreement. All other prior representations, writings, oral statements or negotiations have been merged into this document and are either included herein or intentionally excluded.

7. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

Dated this ____ day of _____, 2009.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

WALGAR DEVELOPMENT CORPORATION

By: _____

Its: _____

State of South Dakota)
 ss.
County of Pennington)

On this ____ 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 and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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 ____ day of _____, 2009, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of WALGAR DEVELOPMENT CORPORATION, and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of WALGAR DEVELOPMENT CORPORATION.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)