

PREPARED BY: City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57702  
(605) 394-4140

**COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND  
GWH PROPERTIES, LLC TO PERMIT CERTAIN ENCROACHMENTS  
IN PEDESTRIAN AND UTILITY EASEMENT**

This Covenant Agreement (the "Agreement") is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, SD 57701 (herein after referred to as the "City") and the **GWH PROPERTIES, LLC**, a South Dakota limited liability company, of PO Box 8181, Rapid City, SD 57709 (herein after referred to as the "Landowner").

WHEREAS, the Landowner is platting property located at the corner of Minnesota Street and Wisconsin Avenue; and

WHEREAS, as a condition of approving the proposed plat, the City is requiring dedication of a ten-foot pedestrian and utility easement across the property adjacent to the Minnesota Street right of way; and

WHEREAS, the Landowner has requested authorization from the City to allow advertising signs and lighting (hereinafter collectively "signs") to encroach into the pedestrian and utility easement; and

WHEREAS, the pedestrian and utility easement is not currently needed by the City or private utility companies, but will likely be required for such uses when Minnesota Street is widened for expanded use in the future; and

WHEREAS, signs would not unduly interfere with the easement in the near future, but would pose a potential conflict and liability issue for both the City and Landowner without this Covenant Agreement; and

WHEREAS, the City is willing to authorize the Landowner's proposed signs if the Landowner agrees to certain terms and conditions designed to protect the pedestrian and utility easement and to further insulate the City from liability for the Landowner's special use of the easement.

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

1. The land which is subject to this Agreement is generally located at the southwest corner of Minnesota Street and Wisconsin Avenue, Rapid City, South Dakota and is legally described as follows:

**Lot A of Lot 2 of Block 2 of Minnesota Park Subdivision, Rapid City,  
Pennington County, State of South Dakota.**

2. The Landowner is hereby authorized to construct and install advertising signs and lighting structures (hereinafter collectively referred to as “allowed encroachments”) within the pedestrian and utility easement across the above-described property in order to provide on-premises advertising to the above property. All signs shall be on-premises signs, as defined by the Rapid City Municipal Code. All allowed encroachments shall be subject to the regulations and restrictions provided in the Rapid City Municipal Code and any applicable state or federal laws. Prior to installation or construction, the Landowner shall be required to obtain all necessary permits and administrative approvals as may be required by law or ordinance.

3. The Landowner agrees it is solely responsible for any maintenance and upkeep on the allowed encroachments once completed. The Landowner specifically acknowledges that once completed, the Landowner is in the best position to provide necessary maintenance and upkeep.

4. From the date of installation of any allowed encroachments authorized in this Agreement, such allowed encroachments shall be considered in the nature of a revocable license to occupy that portion of the pedestrian and utility easement where they are located. If the City engages in a street, utility or other public construction project which necessitates removal, or if the City otherwise determines it necessary to remove the allowed encroachment, the Landowner agrees to do so at its sole expense. The Landowner further agrees to remove the allowed encroachment if requested by the City due to maintenance or safety concerns.

5. If the City becomes aware of safety or maintenance issues related to the allowed encroachments authorized in this Agreement and the Landowner refuses to repair or remove the structures, the City may remove or repair the structures at the Landowner’s sole expense. If the Landowner refuses to pay the City for the cost of such work and forces the City to obtain a judgment for the cost, the Landowner agrees to pay the City’s reasonable attorney’s fees and costs of collection.

6. The Landowner agrees to maintain sufficient liability insurance coverage as determined by the City for the property subject to this Agreement. The Landowner will defend, indemnify and otherwise hold the City harmless from any and all claims arising from or related to the allowed encroachments authorized by this Agreement.

7. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and successors in interest of the Landowner, and shall 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.

8. The Landowner acknowledges the City's authorization to allow encroachments to be located within the pedestrian and utility easement is good, valuable, and sufficient consideration for the promises it has made herein.

9. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

10. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this Agreement.

11. Landowner warrants that it has the power to enter into this Agreement, and the officer signing for it has full power and authority to do so.

12. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.

13. This Agreement is intended solely for the benefit of the parties hereto along with their heirs, assigns and successors in interest and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. Except as allowed under paragraph 7 of this Agreement, the rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

14. If any section(s), or provisions of this Agreement are 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.

15. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this Agreement shall be venued in Rapid City, South Dakota, in the Pennington County Circuit Court.

*[Signature Pages Follow]*

Dated this \_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

ATTEST:

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

(seal)

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, 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 instrument 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 \_\_\_\_\_

**GWH PROPERTIES, LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

State of South Dakota        )  
  )ss.  
County of Pennington        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of GWH PROPERTIES, 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 - South Dakota  
My Commission Expires \_\_\_\_\_