

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

COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND GOOD GUYS LLC TO ALLOW SHARED PARKING AND LANDSCAPING AT TUSCANY SQUARE.

This declaration of covenant and agreement (“Agreement”) is entered into this ____ day of March, 2008, by and between GOOD GUYS, LLC (“Landowner”), located at 4940 5th Street, Suite 2A, Rapid City, South Dakota, 57701 and the CITY OF RAPID CITY (“City”), a South Dakota municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, the Landowner hereby acknowledges that it is the owner of record of the following property, generally located at 333 Omaha Street a/k/a Tuscany Square and legally described as:

Tracts I and 2, Tuscany Square Subdivision (formerly the balance of Dan’s Supermarket Tract Revised) located in Blocks 66 and 67 of the Original Townsite of Rapid City, Pennington County, South Dakota;

and

WHEREAS, the Landowner is constructing a retail development on the above-described property; and

WHEREAS, Landowner has received approval of a Planned Commercial Development for its project; and

WHEREAS, at the time the Planned Commercial Development was approved, the landowner provided sufficient off-street parking and landscaping points to comply with the Rapid City Municipal Code; and

WHEREAS, the Landowner has requested a major amendment to the Planned Commercial Development in which it has subdivided the lot into two (2) separate parcels now known as Tract 1 and Tract 2 of Tuscany Square; and

WHEREAS, by subdividing the single lot, the Landowner will not be able to provide sufficient off-street parking requirements or the mandatory landscaping points for at least one of the individual lots as required by the Rapid City Municipal Code; and

WHEREAS, the development as a whole will continue to have sufficient off-street parking and landscaping as required by the Rapid City Municipal Code; and

WHEREAS, the Landowner and City want to ensure all future owners, users and occupants of the property will have ample parking and that the proper amount of landscaping points will be maintained; and

WHEREAS, the Landowner and the City recognize that, due to the configuration of the proposed lots, parking spaces will need to be shared between the lots; and

WHEREAS, the City will not support approval of the major amendment to the Planned Commercial Development without the Landowner agreeing to an easement being filed which will ensure that if any part of the above described property is subdivided and/or any of the lots are ever transferred separately, the required number of off-street parking spaces for the tracts will be maintained; and

WHEREAS, the City will not support approval of the major amendment to the Planned Commercial Development without the Landowner agreeing that maintaining landscaping points sufficient to comply with the Rapid City Municipal Code shall be the duty of any future owner of either of the proposed tracts that is deficient in landscaping points. This may necessitate the owner to provide for the maintenance of landscaping points on other portions of Tuscany Square.

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

1. The Landowner hereby covenants and agrees that at any time one of the above described Tracts is transferred so that they will no longer be under joint ownership, a parking easement will be granted and filed, on Tract 1 & Tract 2 of the above described property simultaneously with the transfer of the property. The easement shall be in a form that is acceptable to, and which has been approved by, the City Attorney's Office. This covenant shall inure to the benefit of the parties and shall run with the land. The total number of parking spaces on both Tract 1 and Tract 2 will be sufficient to comply with the off-street parking requirements for the development as if it was still one lot.
2. The Landowner also covenants and agrees that landscaping sufficient to meet the requirements of the Rapid City Municipal Code shall be maintained on the development as a whole. If one of the subdivided tracts has insufficient landscaping points under the City code, the points shall be made up on one of the other tracts that is part of the Tuscany Square development, and maintenance of such landscaping points shall be the responsibility of the owner of the tract that is deficient.
3. It is understood by the Landowner that the City's primary consideration for approval of the major amendment to the Planned Commercial Development and/or the issuance of any building permits on the above-described properties is the Landowner's covenant and promise to enter into a parking easement and to ensure sufficient landscaping should any of the above-described property be transferred in such a way that it is no longer under joint ownership.
4. 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 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 pursuant to the provisions of South Dakota statutes.

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. 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 provision.
7. This agreement shall be construed according to the laws of the State of South Dakota and any action concerning this agreement shall be venued in the Circuit Court for the Seventh Judicial Circuit, Rapid City, Pennington County, South Dakota.
8. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.
9. If the Landowner 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.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

GOOD GUYS, LLC

By:_____

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of March, 2008, 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 Covenant 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)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of March, 2008, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of GOOD GUYS, LLC, and that he, as such _____, being authorized so to do, executed the foregoing Covenant Agreement for the purposes therein contained by signing the name of GOOD GUYS, LLC, by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)