

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

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

This declaration of the covenant and agreement ("Agreement") is entered into this _____ day of _____, 2009, by and between Cabela's Wholesale, Inc., a Nebraska corporation located at One Cabela's Drive, Sidney, NE 69160 ("Developer") and the City of Rapid City ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

Developer hereby acknowledges that pursuant to a separate agreement with the City, the following property will be transferred to the Developer:

Tract 3 Discovery Subdivision located in the NE1/4 of the SE 1/4 and in the SE1/4 of the NE 1/4, Section 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota.

WHEREAS, Developer and City, in the same agreement, have agreed that a portion of the above property will be transferred back to the City; and

WHEREAS, as a result, the water and sewer service lines will cross the balance of Tract 3 creating nonconforming service lines; and

WHEREAS, the City's Standard Specifications do not allow service lines to cross over another lot unless an exception has been granted; and

WHEREAS, Developer has requested an exception to the Rapid City Standard Specifications to allow water and sewer service lines to cross another property; and

WHEREAS, it is the parties' intention that an exception be granted to allow the water and sewer service lines to cross another property if the Developer agrees to certain stipulations.

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

1. Developer hereby covenants and agrees that the non-conforming water and sewer service lines shall be upgraded to current City standards within five (5) years of the execution of this Covenant Agreement, or upon development of the property, whichever occurs first.
2. Developer hereby covenants and agrees to consent to an assessed project to install conforming water and sewer service lines if the condition in Paragraph 1 is not met.
3. Developer hereby covenants and agrees to defend, indemnify and hold the City harmless from all claims related to the non-standard service lines.
4. It is understood by Developer that the City's primary consideration for the granting of the exception to the City's Standard Specifications on the above described property is Developer's covenant and promise to complete the Agreement conditions outlined in paragraphs 1 and 2 above.
5. The parties agree that the terms of this agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling without regard to the principles of conflict of laws. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court for the State of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.
6. 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.
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 Developer, 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 provisions of South Dakota statutes.
8. If any section(s), or provisions 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.

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.

Dated this _____ day of _____, 2009.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ 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, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing 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)

Dated this _____ day of _____, 2009.

Cabela's Wholesale, Inc.

By: _____

Its: _____

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 Cabela's Wholesale, Inc., and that he, as such _____, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of Cabela's Wholesale, Inc., by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)