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

12/5/11

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

COVENANT AGREEMENT FOR CONSTRUCTION OF CITY WATER MAIN

This declaration of covenant and agreement ("Agreement") is entered into this _____ day of _____, 2011, by and between HOG WILD, LLC, ("Landowner"), of 2820 Harley Drive, Rapid City, South Dakota, 57702, and the CITY OF RAPID CITY ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS the Landowner is the lawful owner of a fee simple interest of the property made the subject of a Preliminary Plat for Tracts 1 and 2, and dedicated Harley Drive Right-of-Way, in the Harley Davidson Subdivision of the City of Rapid City, Pennington County, South Dakota, which has been submitted to the City by the Landowner; and

WHEREAS one of the conditions imposed by the City of Rapid City in connection with the review and approval of the aforesaid plat involves the construction of a minimum twelve-inch (12") diameter city water main from the existing water main on Tract 1 along Harley Drive as it abuts Tract 1 and Tract 2 of the Harley Davidson Subdivision to the northern limits of Tract 2 which is made the subject of the Landowner's request for plat approval. A conceptual alignment of the proposed water main improvement is attached hereto as Exhibit "A", and incorporated herein by reference. If it is mutually determined and agreed that a twelve- inch water main is not required to serve the Harley Davidson Subdivisions, the Landowner may request reimbursement

for the difference in construction costs between an eight-inch diameter water main and a twelve-inch diameter water main in accordance with the City's oversize reimbursement criteria; and

WHEREAS the parties have reached an agreement which delays the time of construction of the required extension of the city water main and now wish to impose the terms of that agreement as a covenant running with the aforesaid Tract 1 and Tract 2.

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

1. The requirement for construction and extension of the city water main along Harley Drive as it abuts Tract 1 and Tract 2 of the Harley Davidson Subdivision is hereby deferred by the City of Rapid City subject to the filing of this Covenant Agreement promptly upon the City's approval of the final plat for Tracts 1 and 2, and Dedicated Harley Drive Right-of-Way in the Harley Davidson Subdivision.

2. In the event that Tract 1 and/or Tract 2 of the Harley Davidson Subdivision is ever sold, or if the City determines that the improvements are necessary, the undersigned Landowner shall be required to complete the construction of the aforesaid water main extension from the existing water main in Tract 1 in the Harley Davidson Subdivision to the northern property line of Tract 2 of the Harley Davidson Subdivision and construction shall be commenced within sixty (60) days of closing on any sale which triggers this covenant and as weather permits, or upon receiving written notice from the City that the improvements are necessary. As security for the aforesaid obligations, the City's estimated cost of such construction, which is attached hereto as Exhibit "B", and incorporated herein by reference, shall be withheld from the proceeds of such sale and deposited in an escrow account at the local title company chosen by Hog Wild, LLC, in the name of the City, and shall be applied to the cost of completing the required construction

should the undersigned Landowner fail to timely complete the same.

3. This Covenant Agreement shall run with the land and shall be appurtenant to the following described real property which is located in Pennington County, South Dakota, to-wit:

Tract 1 and Tract 2 of the Harley Davidson Subdivision, Section 22, T2N, R7E of the Black Hills Meridian, Rapid City, Pennington County, South Dakota;

4. This Covenant Agreement shall remain in place until the water main construction contemplated herein and required by Rapid City Code of Ordinances S 16.16.040 has been completed in accordance with the design standards and construction requirements of the City of Rapid City, South Dakota. When said construction has been completed and accepted by the City, the parties will promptly execute and file a Discharge of Covenant which fully releases the aforesaid real property from the obligations hereunder.

5. This Covenant Agreement constitutes the entire understanding and agreement of the parties concerning the delayed completion of the aforesaid waterline construction as a condition of plat approval and that time is of the essence hereunder.

6. 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 Landowners, 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.

7. 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 Landowner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

8. 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.

9. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

10. 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 _____, 2011.

CITY OF RAPID CITY

_____
Mayor

ATTEST:

_____
Finance Officer

(SEAL)

State of South Dakota)
ss.
County of Pennington)

On this the _____ day of _____, 2011, 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 Covenant Agreement for Construction of City Water Main 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)

HOG WILD, LLC

By: _____
Its: Member - Attorney for Hog Wild, LLC

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

On this 9th day of December, 2011, before me, the undersigned officer, personally appeared James J. Doyle, who acknowledged himself to be the Member of HOG WILD, 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.

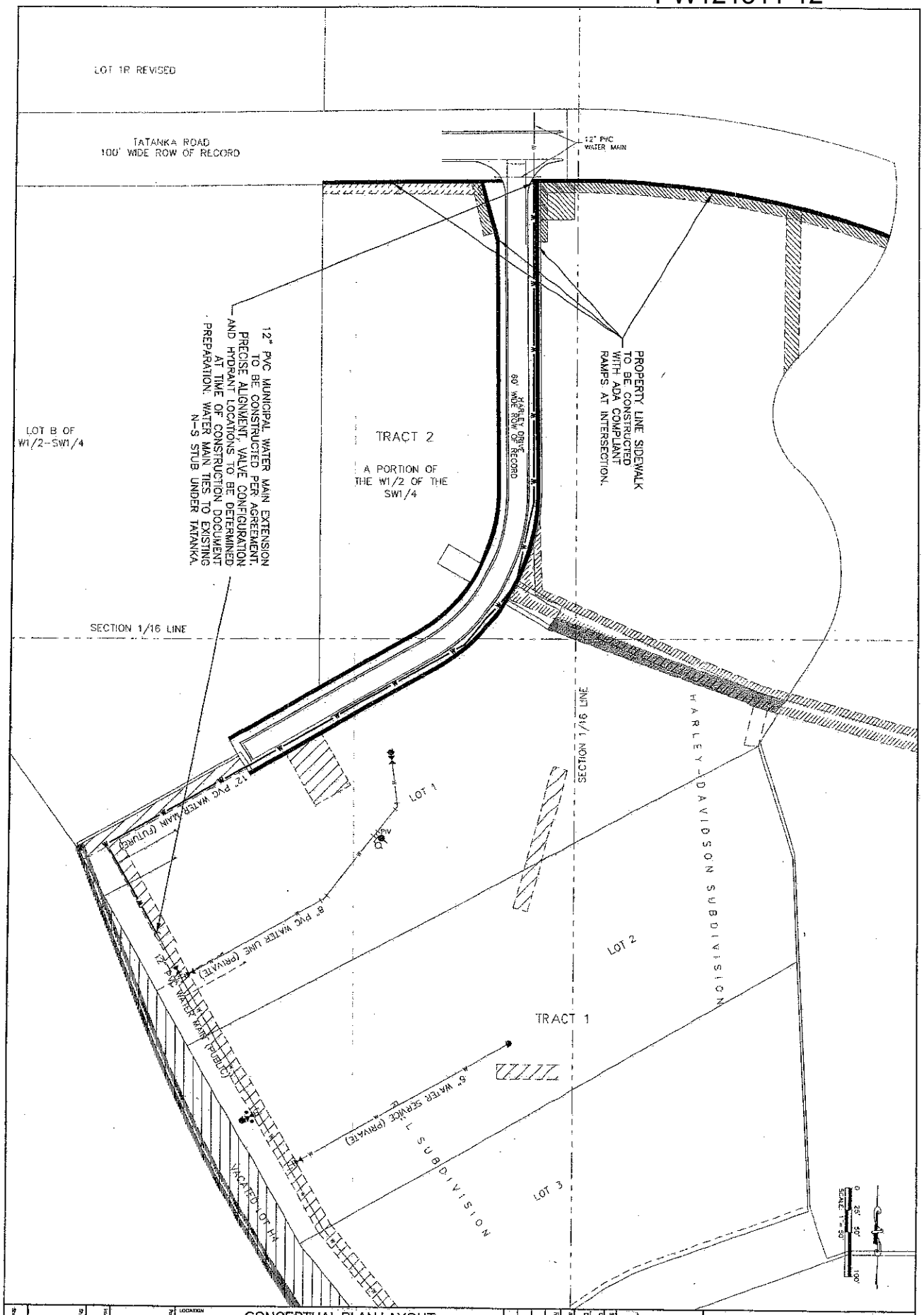
SUSAN DONAT NOTARY SEAL PUBLIC STATE OF SOUTH DAKOTA

_____
Notary Public, South Dakota
My Commission Expires:

(SEAL)

My Commission Expires
September 9, 2017

PW121311-12



Sheet 1 of 1	Sheet Title: CONCEPTUAL PLAN LAYOUT	Internal Job No. #2038.01	Prepared For:	LOCATION	CONCEPTUAL PLAN LAYOUT FOR WATER MAIN AND SIDEWALK HARLEY DAVIDSON SUBDIVISION LOCATED IN THE SW1/4; SECTION 22, T2N, R7E, BHM RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA	Reviewed By: / Revisions:	Scale: 1"=100' / Drawn By: PMM / Plan Date: 07/01/2011 / Survey Date:	EXHIBIT A

Prepared By:
RENNER & ASSOCIATES, LLC.
818 SIXTH ST. • RAPID CITY, SD 57701
PHONE: 605-721-7310 FAX: 605/721-7313
SPEARFISH OFFICE: 605/717-2016
CITY HALL 1903

PW121311-12

RENNER & ASSOCIATES, LLC.

616 SIXTH STREET, RAPID CITY, SOUTH DAKOTA 57701 - 605-721-7310
FAX 605-721-7313 GARY@RENNERASSOC.COM EXT-11, CELL 605-381-2808
SPEARFISH OFFICE 605-717-0016

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RAPID CITY
PUBLIC WORKS

December 2, 2011

Ted Johnson, PE
City of Rapid City Engineering
300 6th Street
Rapid City, SD 57701

Re: Construction Cost Estimate for 12" Water Main per Exhibit A, Harley Davidson Plat for Tract 1 and Tract 2 and Dedicated Tatanka Right-of-Way.

Based on the 2011 construction cost for 12" water main at Central High School, the cost per foot including valves, bends, hydrants, restraints, etc. was $119.40 per foot.

Exhibit A includes 1354 linear feet of 12" water main.

Cost estimate:
12" Water Main: 1354' x $119.40/ft = $161,667.60

Renner and Associates, LLC
Mitchell B. Kertzman, PE

EXHIBIT B