

CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-5035

Community Planning & Development Services


300 Sixth Street

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MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Planning Manager 

DATE: December 14, 2011

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for street improvements

Legal Description: Lots 1-3 of R&L Subdivision and the unplatted balance of the SW1/4 of Section 22 and the unplatted portion of the N1/2 lying North of Interstate 90 of Section 27 all located in T2N, R7E, BHM, Rapid City, Pennington County, South Dakota to be known as "Tracts 1-3 of Harley-Davidson Subdivision"

A Variance to the Subdivision Regulations to waive the requirement to install street light conduit and water along Tatanka Road as it abuts Tract 2, to install pavement, curb, gutter, sidewalk, street light conduit, sewer and water along Tatanka Road as it abuts Tract 1, to install sewer, water and street light conduit along Harley Drive and to install sewer and water along Interstate 90 as it abuts the property has been submitted in conjunction with a Preliminary Plat to create three lots. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest any future assessment for the installation of the improvements. The document also requires the signature of the Mayor and the Finance Officer.

Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right to protest any future assessment for the installation street light conduit and water along Tatanka Road as it abuts Tract 2, to install pavement, curb, gutter, sidewalk, street light conduit, sewer and water along Tatanka Road as it abuts Tract 1, to install sewer, water and street light conduit along Harley Drive and to install sewer and water along Interstate 90 as it abuts the property.

(File #11SV018)



EQUAL HOUSING
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

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

AM

AGREEMENT WAIVING RIGHT TO PROTEST
(SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this 14th day of December, 2011, by and for GCC DACOTAH, INC., a South Dakota corporation, and HOG WILD, LLC, a limited liability company, collectively hereinafter the "Developers," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter the "City."

WHEREAS, the Developers have submitted a proposed subdivision plat; and

WHEREAS, it is the intended purpose of the Developers to obtain final approval for this subdivision plat; and

WHEREAS, the City of Rapid City's subdivision regulations require installation of pavement, curb, gutter, sidewalk, street light conduit, sewer, and water, which in this instance would require the Developers to install street light conduit and water along Tatanka Road as it abuts Tract 2, to install pavement, curb, gutter, sidewalk, street light conduit, sewer and water along Tatanka Road as it abuts Tract 1, to install sewer, water and street light conduit along Harley Drive, and to install sewer and water along Interstate 90 as it abuts Lots 1-3 of R&L Subdivision and the unplatted balance of the SW¼ of Section 22 and the unplatted portion of the N½ lying North of Interstate 90 of Section 27, all located in T2N, R7E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS, it is the intent and purpose of both the Developers and the City to enter into an agreement whereby the Developers will consent to a future assessed project for the installation of street light conduit and water along Tatanka Road as it abuts Tract 2, the installation of pavement, curb, gutter, sidewalk, street light conduit, sewer and water along Tatanka Road as it abuts Tract 1, the installation of sewer, water and street light conduit along Harley Drive, and the installation of sewer and water along Interstate 90 as it abuts the subject property in exchange for the City not requiring immediate installation of the improvements as required by Rapid City Subdivision Regulations;

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

1. This agreement pertains to, and includes those properties which are designated and identified as follows:

Lots 1-3 of R&L Subdivision and the unplatted balance of the SW $\frac{1}{4}$ of Section 22 and the unplatted portion of the N $\frac{1}{2}$ lying North of Interstate 90 of Section 27, all located in T2N, R7E, BHM, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the installation of street light conduit and water along Tatanka Road as it abuts Tract 2, the installation of pavement, curb, gutter, sidewalk, street light conduit, sewer and water along Tatanka Road as it abuts Tract 1, the installation of sewer, water and street light conduit along Harley Drive, and the installation of sewer and water along Interstate 90 as it abuts the subject property.

3. The Developers acknowledge the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Developers agree that if at any time in the future the City determines it is necessary or desirous to install street light conduit and water along Tatanka Road as it abuts Tract 2, to install pavement, curb, gutter, sidewalk, street light conduit, sewer and water along Tatanka Road as it abuts Tract 1, to install sewer, water and street light conduit along Harley Drive, and to install sewer and water along Interstate 90 as it abuts the subject property through an assessed project, Developers or their heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate installation of curb, gutter, sidewalk, street light conduit, water, and sewer. It is understood by the Developers that the City of Rapid City's primary consideration for the granting of the approval for a subdivision plat on the property herein described and forbearance from requiring Developers to immediately install street light conduit and water along Tatanka Road as it abuts Tract 2, to install pavement, curb, gutter, sidewalk, street light conduit, sewer and water along Tatanka Road as it abuts Tract 1, to install sewer, water and street light conduit along Harley Drive, and to install sewer and water along Interstate 90 as it abuts the subject property is the Developers' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project.

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of street light conduit and water along Tatanka Road as it abuts Tract 2, the installation of pavement, curb, gutter, sidewalk, street light conduit, sewer and water along Tatanka Road as it abuts Tract 1, the installation of sewer, water and street light conduit along Harley Drive, and the installation of sewer and water along Interstate 90 as it abuts the subject property, which is required in the City subdivision

regulations, will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. Should the weather prevent immediate installation of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Developers.

5. 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 Developers, and be considered as a covenant running with the property described herein. Furthermore, it is agreed that, in accepting title to the herein-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 Codified Laws.

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, its 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. If any section(s), or provision(s) of this agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this agreement if the same can be given effect without the invalid section(s) or provision(s).

8. 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.

9. If the Developer 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

Sam Kooiker, 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 Agreement Waiving Right to Protest 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)

GCC DACOTAH, INC.

By: _____
Its: _____

STEVEN ZELLMER

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

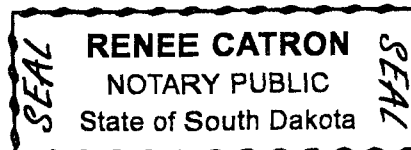
On this the 14 day of December, 2011, before me, the undersigned officer personally appeared Steve Zellmer, who acknowledged himself to be the Agent of GCC DACOTAH, INC., and that he, as such Agent, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of GCC DACOTAH, INC. by himself as Agent.

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

Renee Catron

Notary Public, South Dakota

My Commission Expires: 10-11-2012
(SEAL)



HOG WILD, LLC

By: *Al Rieman*
Its: *Member*

State of South Dakota)
 ss.
County of Pennington)

On this the 14 day of December, 2011, before me, the undersigned officer personally appeared Al Rieman, who acknowledged himself to be ~~the~~ Member of HOG WILD, LLC, and that he, as such Member, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of HOG WILD, LLC by himself as Member.

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

Renee Catron
Notary Public, South Dakota

My Commission Expires: 10-11-2012
(SEAL)

