

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 _____, 2010, by and between Angela Charlson ("Owner"), Rapid City, SD 57702, and the City of Rapid City ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

Owner hereby acknowledges that she is the owner of record of the property in Rapid City, South Dakota which is legally described as:

Lot 4R in Block 15 of Canyon Lake Heights Subdivision, as shown on the plat filed in Plat Book 28, Page 87, and as corrected by Affidavit recorded December 17, 1997, in Book 69, Page 9640, located in the SE1/4 SE1/4, Section 8 and the SW1/4 SW1/4, Section 9, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

The proposed legal description is:

Lots A, B, C and D of Lot 4R of Block 15 of Canyon Lake Heights Subdivision, located in the SE1/4 SE1/4, Section 8 and the SW1/4 SW1/4, Section 9, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

WHEREAS, Owner has applied for Final Plat approval; and

WHEREAS, the property is currently served by a private well; and

WHEREAS, the lots to be created by the plat will be served by the private well;
and

WHEREAS, as a stipulation for final plat approval, the City requires that Owner provide proof of ownership and maintenance of the well; and

WHEREAS, the parties have previously entered into an "Agreement Waiving Right to Protest" in which the Owner acknowledges that the City has the power to make assessments for local improvements, including water; and

WHEREAS, it is the parties' intention that Final Plat approval be granted if the Owner 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. Owner hereby covenants and agrees that the private well shall be maintained at the Owner's expense.
2. Owner hereby covenants and agrees to waive any right to object to an assessed project to install water as allowed under state law in consideration for the final plat approval of the subdivision plat without the immediate installation of water.
3. Owner hereby covenants and agrees to defend, indemnify and hold the City harmless from all claims related to the private well.
4. It is understood by Owner that the City's primary consideration for the granting of the Final Plat approval on the above described property is Owner's covenant and promise to complete the Agreement conditions outlined in paragraphs 1, 2 and 3 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 Owner, 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 _____, 2010.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, 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 _____, 2010.

Angela Charlson

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer personally appeared Angela Charlson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)