

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

STATE OF SOUTH DAKOTA        )  
  )SS.        RELEASE AND HOLD HARMLESS  
COUNTY OF PENNINGTON        )        AGREEMENT

For and in consideration of the City of Rapid City allowing the existing sewer main to be located under the Days Inn Motel, the THOMAS P. WALSH, SR. LIMITED FAMILY PARTNERSHIP, hereinafter referred to as the "Partnership," does hereby fully release, acquit and forever discharge the CITY OF RAPID CITY, together with all of its agents, employees, successors, and assigns, all for the purposes herein referred to as "City," from any and all actions, causes of action, claims, demands, disabilities, known and unknown damages, losses, and expenses relating to any and all sewer main problems that may arise on the real property located at 725 Jackson Boulevard, Rapid City, South Dakota, and legally described as:

A portion of Lot 2 of Trijowinn Subdivision, located in the NW<sup>1</sup>/<sub>4</sub>, Section 2, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota as shown on the plat filed in the office of the Pennington County Register of Deeds on February 7, 1997 and recorded in Book 27 of Plats on Page 183, and more fully described as follows: Beginning at the southeast corner of said Lot 2 of Trijowinn Subdivision, said corner being marked by a 5/8" rebar; thence, northwesterly along the southwesterly line of said Lot 2 of Trijowinn Subdivision, N43°50'26"W, a distance of 290.70 feet more or less to a point marked by a rebar with survey cap "LS 1019"; thence, continuing northwesterly along the southwesterly line of said Lot 2 of Trijowinn Subdivision, N44°03'21"W, a distance of 38.59 feet more or less, to the southwest corner of said Lot 2, said corner being marked by a mag nail in asphalt; thence, northeasterly along the westerly line of said Lot 2 of Trojowinn Subdivision, N46°07'16"E, a distance of 174.11 feet more or less to a point marked by an "x" in concrete; thence, S60°37'55"E, a distance of 25.24 feet more or less, to a point marked by a mag nail in asphalt; thence, S43°30'00"E, a distance of 145.00 feet more or less, to a point marked by a mag nail in asphalt; thence, S66°00'00"E, a distance of 65.00 feet more or less, to a point marked by a mag nail in asphalt; thence, N23°54'33"E, a distance of 30.00 feet more or less, to a point marked by a rebar with survey cap "RW Fisk 6565"; thence, S66°00'00"E, a distance of 15.00 feet more or less to a point on the easterly line of said Lot 2 (Two) of Trijowinn Subdivision, said point being marked by a rebar with survey cap "RW Fisk 6565"; thence, southwesterly along the easterly line of said Lot 2 of Trijowinn Subdivision, S23°54'33"W, a distance of 257.51 feet more or less to the point of beginning.

A sewer main is located in a twelve foot wide sewer easement that extends under the Days Inn Motel. A portion of the building is built over the main sewer line. The sewer line and the building in question are shown on the attached site plan and marked as Exhibit "A" and incorporated herein by reference.

It is understood that this Release and Hold Harmless Agreement is the compromise to allow the existing sewer main to remain located under the Days Inn Motel and is entered into to address possible future claims, the validity of which the City would dispute. The terms herein are not to be construed as an admission of liability on the part of the parties hereby released, by whom liability is expressly denied.

It is further agreed that the PARTNERSHIP shall defend, indemnify, and save and hold harmless the City and each of them from any loss, liability, damage or cost they may incur arising out of or related to the sewer main located under the above referenced property, whether caused by the actions or omissions of the City or otherwise.

It is further agreed that the PARTNERSHIP shall be responsible to provide for any repairs that become necessary for that portion of the sewer main that is located beneath the Days Inn Motel structure.

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 Partnership, 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.

This Release and Hold Harmless Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital.

The PARTNERSHIP further states that it has carefully read the foregoing Release and Agreement, knows and understands the contents thereof, and an authorized person has signed the same as his own free act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF RAPID CITY

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

THOMAS P. WALSH, SR. LIMITED  
FAMILY PARTNERSHIP

By:\_\_\_\_\_

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 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 Release and Hold Harmless 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 \_\_\_\_\_, 2008, before me, the undersigned officer personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of THOMAS C. WALSH, SR. LIMITED FAMILY PARTNERSHIP, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing Release and Hold Harmless Agreement for the purposes therein contained by signing the name of THOMAS C. WALSH, SR. LIMITED FAMILY PARTNERSHIP by himself as \_\_\_\_\_.

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

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

(SEAL)