

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Conrad D. Rupert, Reone A. Rupert (hereinafter collectively referred to as the "Ruperts"), and the City of Rapid City (hereinafter referred to as the "City").

SECTION ONE: PURPOSE

This Settlement Agreement is made between the Ruperts and the City to memorialize the terms of the settlement reached between the parties for the complete and final settlement of their claims, differences, and causes of actions with respect to the dispute described below in Section Two concerning the Ruperts' real property (hereinafter referred to as the "Ruperts' property") with the following legal description:

Lot B of Lot Seven (7) of Una-Del Acres #1, located in the Southeast Quarter (SE¼) of Section Twenty-One (21), Township One North (T1N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 20, page 274, on June 16, 1986.

SECTION TWO: STATEMENT OF DISPUTE

The Ruperts have asserted claims against the City regarding the death of trees on the Ruperts' property in a lawsuit entitled, *Conrad D. Rupert and Reone A. Rupert v. City of Rapid City*, filed in the Seventh Judicial Circuit Court, Pennington County, South Dakota, Civil No. 09-542.

SECTION THREE: TERMS OF THE AGREEMENT

The Ruperts and the City have reached an agreement settling any and all claims arising out of the legal action pending between the parties, including any and all claims made in the Complaint dated March 20, 2009. The Ruperts and the City wish to resolve all matters, known

and unknown, discovered or discoverable by them, which may be in controversy between the parties and to resolve claims that were made, or could have been made, in the Complaint. Each party specifically denies any liability whatsoever to each other, but specifically expresses their independent desire to settle all disputes between them fully and finally.

In consideration of the mutual covenants set forth herein, the Ruperts and the City agree as follows:

- A. The City and its insurer, AIG, will pay Fifty Thousand Dollars (\$50,000) to the Ruperts within seven (7) days of both parties signing this Settlement Agreement.
- B. The Ruperts will cut down any standing dead trees on the southern edge of the Ruperts' property on or before November 1, 2013. The Ruperts will also clean up and remove the dead trees from the southern edge of their property on or before November 1, 2014, or within 60 days after the City completes reconstruction of the portion of Wildwood Drive as described in paragraph C below, whichever occurs later.
- C. The City will take steps to try and get City council approval and funding by October 1, 2013, to make changes to that portion of Wildwood Drive that is adjacent to the Ruperts' southern property line, consistent with Phase 1 of the proposed plan attached hereto as Exhibit A, and, in addition, installing approximately 700 feet of curb and gutter on the north side of Wildwood Drive.
- D. If approved and funded, the City will start and complete this project in the 2014 construction season.
- E. As is reflected in Exhibit A, the projected total cost of this project is \$300,000, plus the 700 feet of additional curb and gutter on the north side of Wildwood Drive which will add approximately \$20,000 to the project. The project will be completed with no assessment to the Ruperts. In exchange for the City making no assessment to the Ruperts for this project, the Ruperts agree to release the City from all future claims regarding any and all vegetation injury or death on the southern slope of their property from the City's winter maintenance on Wildwood Drive and will grant the City a permanent drainage easement on the southern slope of their property for any run-off or materials deposited from the City's winter maintenance on Wildwood Drive.

- F. The Ruperts agree not to plant any vegetation on the southern slope of their property until after completion of this proposed project which would be some time during the construction season of 2014.
- G. The Ruperts will grant the City a temporary construction easement, if such easement is needed for the work.
- H. If the project is not approved or funded, the Ruperts will not release future claims and the Ruperts will not provide the City with an easement on the southern slope of their property for any run-off from Wildwood Drive. The parties will make a good faith effort to try to negotiate a new solution to Wildwood run-off onto the Ruperts' property.
- I. The City's reconstruction of that portion of Wildwood Drive described above will be designed to not increase the amount of drainage elsewhere onto the Ruperts' property. Any culverts, piping, inlets, etc. needed for the project will be of sufficient size to capture the expected flow based on a drainage study to be performed by the City. It is the intent of the City to minimize to the extent possible drainage from Wildwood Drive onto the southern edge of the Ruperts' property and to not increase the amount of drainage elsewhere on the Ruperts' property through this reconstruction project.
- J. Upon the City council's approval, funding and completion of the Wildwood Drive reconstruction project described above, the Ruperts agree to sign a permanent drainage easement and a Release in Full of All Claims, including, but not limited to, all future claims regarding any and all vegetation injury or death on the southern slope of their property from the City's winter maintenance on Wildwood Drive.
- K. The Ruperts and the City will give their respective attorneys permission to sign a Stipulation for the Court to enter a Judgment of Dismissal with prejudice of the pending lawsuit.
- L. In the event any action is commenced to enforce or interpret this Settlement Agreement, the court shall be empowered to award attorney's fees, costs and litigation expenses to the prevailing party and against the non-prevailing party.
- M. The Ruperts and the City agree that the payment of the foregoing sum of money by the City and AIG to the Ruperts, and the Wildwood Drive reconstruction project, is not to be considered as an admission of any liability whatsoever by or on behalf of any party and that any and all liability is expressly denied.

- N. The Ruperts and the City agree and warrant that no promise, inducement or representation has been offered or made except as herein set forth and that this Settlement Agreement is executed without reliance upon any statement or representation by any of the parties, their attorneys, or representatives, concerning the nature and extent of damages, or legal liability therefore, or the strength, weakness, or merit of any claims as part of this settlement. Both parties and their attorneys have made their own determination as to the law and facts and assume the risk in that regard.
- O. The consideration identified in this Settlement Agreement is not a mere recital. All agreements and understandings between the parties are embodied and expressed in this Settlement Agreement, the Release, the permanent drainage easement, the temporary construction easement (if needed) and the Stipulation for Dismissal of the pending legal action with prejudice.
- P. As used in this Settlement Agreement, where appropriate, the singular includes the plural and the plural includes the singular.
- Q. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of South Dakota.
- R. Each person executing this Settlement Agreement represents that he or she has full legal authority to enter into this Agreement, and to bind the party for which he or she has acted. Each party assumes the risk of any mistake of fact, whether the fact or facts be present, past, or future, including the extent of any injuries, damages or losses that may have been or may be incurred.
- S. The Ruperts represent and warrant that they have the sole and exclusive right to receive the sums specified in this Settlement Agreement.
- T. The Ruperts and the City represent that they are the only parties in interest to this Settlement Agreement and that no other entity, financial institution, mortgage loan company, etc., has an interest in this Settlement Agreement.

SECTION FOUR: EFFECT OF AGREEMENT

This Settlement Agreement shall be binding on and enure to the benefit of the Ruperts and the City and their respective legal representatives, successors, and assigns.

The Ruperts and the City hereby represent that they have carefully read the foregoing Agreement, have consulted with their attorneys, know the contents thereof, and sign this

Agreement of their own free act.

IN WITNESS WHEREOF, Conrad D. Rupert and Reone A. Rupert have executed this Agreement this 7th day of August, 2013, at Rapid city, South Dakota.

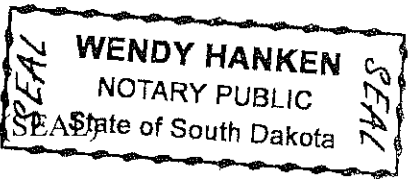
Conrad D. Rupert
Conrad D. Rupert

Reone A. Rupert
Reone A. Rupert

State of South Dakota)
)SS
County of Pennington)

On this the 7th day of August, 2013, before me, the undersigned officer, personally appeared Conrad D. Rupert and Reone A. Rupert, husband and wife, known to me or satisfactorily proven to be the persons whose name are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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



Wendy Hanken
Notary Public, South Dakota
My Commission Expires: 2-9-16

Dated this ____ day of August, 2013.

CITY OF RAPID CITY

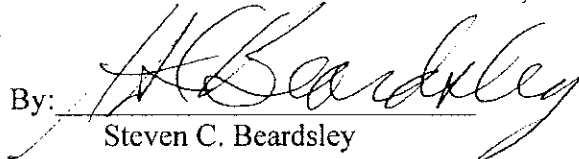
Sam Kooiker, Mayor

ATTEST:

Pauline Sumption
City Finance Officer

Dated this 7th day of August, 2013.

BEARDSLEY JENSEN & VON WALD, PLLC

By: 
Steven C. Beardsley
Attorney for the Ruperts

Dated this _____ day of _____, 2013.

BANKS, JOHNSON, KAPPELMAN
& BECKER, PLLC

BY _____
Timothy J. Becker
Attorney for the City