

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

WEN
2/18/09

**DECLARATION OF COVENANT AND AGREEMENT
BETWEEN THE CITY OF RAPID CITY AND LANDOWNER
AUTHORIZING LANDOWNER TO OBTAIN A PERMIT
TO REPAIR OR REPLACE CURRENT ON-SITE WASTE WATER SYSTEM.**

This Declaration of Covenant and Agreement (the "Agreement") is entered into this 18th day of March, 2009, by and between **CALVIN M. SIEVERS and CYNTHIA L. SIEVERS** (the "Landowners"), 225 N. Berry Pine Rd., Rapid City, South Dakota 57702, and the **CITY OF RAPID CITY** (the "City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota 57701.

WHEREAS, the Landowners hereby acknowledge they are the owners of record of property generally located at 225 N. Berry Pine Rd., Rapid City, South Dakota which is legally described as:

Lot 327C of Berry Pines, Rapid City, Pennington County, South Dakota.

WHEREAS, the Landowners' property is currently served by an on-site waste water system; and

WHEREAS, the Landowners' on-site waste water system is currently failing; and

WHEREAS, the Landowners' have requested permission to repair or replace their current on-site waste water system; and

WHEREAS, the Landowners' property is within 400 feet of a City sewer; and

WHEREAS, the City could require the Landowners to connect to the City's sewer by notifying them in writing that they need to do so; and

WHEREAS, the cost of extending the City sewer to serve the Landowners property will be significant; and

WHEREAS, the City is willing to let the Landowners repair or replace their current on-site waste water system in lieu of requiring them to immediately connect to the City sewer system in exchange for the Landowners' covenant and promise to connect to the City sewer at

such time as it is adjacent to their property and if they further covenant and agree not to object if the City undertakes an assessed project to extend the sewer sometime in the future.

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

1. The Landowners hereby covenant and agree that in exchange for the City issuing them a permit to repair or replace their current on-site waste water system, they will connect to the City sewer system at such time as it becomes adjacent to their property. They further agree that if at any time in the future the City decides to proceed with extending the City sewer system through an assessed project, they will not object to the assessed project. The City will send the Landowners written notice they are required to connect to the City sewer system upon construction of a sewer main adjacent to their property. The Landowner shall connect to the City sewer system within 6 months of receiving written notice from the City.
2. The Landowners will be responsible for paying all tapping, connection and/or construction fees associated with connecting to the City sewer system. The Landowners are also responsible for all costs associated with construction or reconstruction of the service lines from the building to the public main as needed to provide facilities that comply with the City's standard specifications and ordinances.
3. This covenant and agreement applies to the following described real property:

Lot 327C of Berry Pines, Rapid City, Pennington County, South Dakota.
4. The Landowners acknowledge that the City has the authority to require that they immediately connect to the City sewer system. They further acknowledge that if they were required to immediately connect to the City sewer system it would have a significant economic impact on them. The City's primary consideration for issuing a permit to repair or replace the current on-site waste water system on the above described property is the Landowners' covenant and promise to connect to the City sewer system at such time as it is adjacent to their property and their consent to any future assessed project to extend the City sewer. The City's issuance of the permit to repair or replace their on-site waste water system in lieu of requiring them to immediately connect to the City sewer system is sufficient consideration for the promises they have made herein.
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 Landowners, 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 the provisions of South Dakota statutes.

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

8. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto or their successors in interest.

9. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

Dated this 18 day of March, 2009.

LANDOWNERS

[Signature]

CALVIN M. SIEVERS

[Signature]
CYNTHIA L. SIEVERS

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

On this the 18th day of March, 2009, before me, the undersigned officer personally appeared ~~CALVIN M. SIEVERS and CYNTHIA L. SIEVERS~~, known to me or satisfactorily proven to be the persons whose names 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.

(seal)

[Signature]
 Notary Public, South Dakota **My Commission Expires**
 My Commission Expires June 8, 2014

DECLARATION OF COVENANT AND AGREEMENT BETWEEN THE CITY OF RAPID CITY AND LANDOWNER AUTHORIZING LANDOWNER TO OBTAIN A PERMIT TO REPAIR OR REPLACE CURRENT ON-SITE WASTE WATER SYSTEM.

Cynthia L. Sievers

CYNTHIA L. SIEVERS

State of South Dakota)
 ss.
County of Pennington)

On this 19th day of March, 2009, before me, the undersigned officer personally appeared **CYNTHIA L. SIEVERS**, 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.

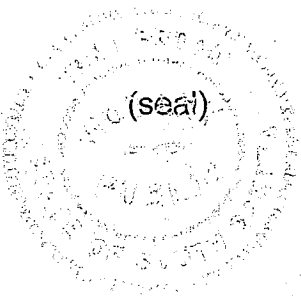
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Joni Brown

Notary Public, South Dakota

**My Commission Expires
June 8, 2014**

My Commission Expires



CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, 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 Declaration of Covenant and 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.

(seal)

Notary Public, South Dakota
My Commission Expires _____