

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

**COVENANT AGREEMENT BETWEEN CITY OF RAPID CITY AND LANDOWNERS  
AUTHORIZING LANDOWNERS TO MAINTAIN PRIVATE SEWER MAIN**

This declaration of covenant and agreement (the "Covenant Agreement") is entered into by and between **M. MAC MEYER** and **LOIS MEYER**, husband and wife, of 314 S. Berry Pine Road, Rapid City, SD 57702, (the "Landowners") and the **CITY OF RAPID CITY** (the "City"), a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701.

WHEREAS, the Landowners are the owners of record of property generally located at 2009 Stirling Street, Rapid City, South Dakota, more particularly described below; and

WHEREAS, the Landowners' property is currently served by a private sanitary sewer main which crosses adjoining properties; and

WHEREAS, the Landowners' sewer service line connects to the private sewer main; and

WHEREAS, the Landowners acknowledge that the City has the authority to require the Landowners to connect to a public sewer main; and

WHEREAS, the City acknowledges that requiring the Landowners to connect to a public sewer main is not a wise use of public or private dollars, as the topography of the property makes it cost prohibitive to connect to a public sewer main in Stirling Street; and

WHEREAS, the City will not require the Landowners to construct a public sanitary sewer main in Stirling Street to serve the property so long as the private sewer main is adequately maintained according to this agreement; and

WHEREAS, the City is willing to let the Landowners repair or replace their sewer service line and private sewer main within the easements granted for such purposes; and

WHEREAS, the City and Landowners desire to reduce their agreement to writing.

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

1. The recitals set forth above constitute an integral part of this Covenant Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. This Covenant Agreement applies to the following described real property owned by Landowners:

**Lot Thirty-six (36) in Block Four (4) of Strathavon Addition, Revised 1952, to the City of Rapid City, Pennington County, South Dakota.**

3. The Landowners covenant and agree to be responsible for the operation and maintenance of the private sewer main and individual sewer service lines that connect to the City sanitary sewer system, which begins at the manhole located in Selkirk Place.

4. The Landowners covenant and agree that the private sewer main and sewer service lines shall be maintained in good working condition.

5. The Landowners covenant and agree to be responsible for all costs and expenses associated with the maintenance or reconstruction of the private sewer main and sewer service lines up to and including the connection to the public manhole located in Selkirk Place.

6. The Landowners and City agree that in the event the private sewer main and/or associated sewer line fails, Landowners shall have the option of promptly repairing the line(s) to normal operating condition, or replacing the line(s) pursuant to then-existing City standards (without regard to the location of the service line).

7. Upon execution of this Covenant Agreement, the property shall be removed permanently from the City's list of non-conforming service lines.

8. The Landowners agree to indemnify, defend and hold harmless the City of Rapid City from any and all liability, actions, causes of action, claims, demands, losses, damages, expenses and fees, including attorneys fees to defend or to establish the City's right to indemnity or those attorneys fees incurred on appeal, resulting from the Landowners' operation or maintenance of the private sewer main.

9. 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 Covenant Agreement

10. The City may undertake any legal or equitable action available to enforce the provisions of this Covenant Agreement in addition to any remedy provided herein. Violation of any covenant contained in this Covenant Agreement shall give the City the right to enter upon the land where the violation has occurred and, at the expense of the Landowners, abate and/or remove the same. The Landowners agree to pay the City for any assessments, costs or expenses incurred by the City for any maintenance work due to the Landowners' failure to abide by the covenants contained herein. The assessments shall be a lien upon the real property until paid by the Landowners. In the event the City is required to undertake any action to enforce the terms of this Covenant Agreement, the undersigned Landowners, on behalf of themselves and their heirs, assigns or successors in interest, covenant and agree that the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

11. The covenants contained herein shall be deemed as continuing. Any failure or delay in enforcing the same, on any occasion, or repeated occasions, shall not impair or affect the covenant so far as any future or other breach is concerned. It is understood and agreed that no waiver of any breach of the covenant herein contained shall be construed to be a waiver of any other breach of the same or other covenant, nor shall failure to enforce any one of the restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

12. This restrictive covenant is intended to last the maximum length of time as may be permitted by law, and at the end of any maximum term, as permitted by law, this restrictive covenant will automatically renew and be extended for an additional maximum term as may be permitted by law.

13. This Covenant Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written. This Agreement does not affect any rights the property owners have in easements relating to the private sewer service lines and private sewer main.

14. 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.

15. 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.

16. 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.



LANDOWNERS

*M. Mac Meyer*

M. Mac Meyer

*Lois Meyer*

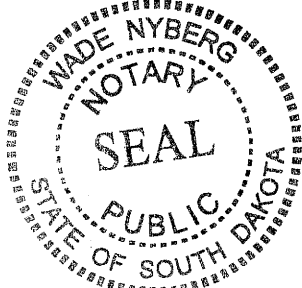
Lois Meyer

STATE OF SOUTH DAKOTA )  
 ) ss.  
COUNTY OF PENNINGTON )

On this the 2nd day of May, 2014, before me, the undersigned officer personally appeared **M. MAC MEYER**, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

(seal)



*Wade Nyberg*

Notary Public, South Dakota

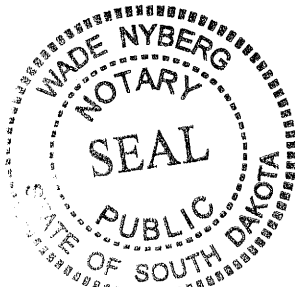
My Commission Expires: 9-17-2016

STATE OF SOUTH DAKOTA )  
 ) ss.  
COUNTY OF PENNINGTON )

On this the 2nd day of May, 2014, before me, the undersigned officer personally appeared **LOIS MEYER**, 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.

(seal)



*Wade Nyberg*

Notary Public, South Dakota

My Commission Expires: 9-17-2016