

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

NEW
9-3-15

**COVENANT AGREEMENT BETWEEN CITY OF RAPID CITY
AND LANDOWNER AUTHORIZING LANDOWNER TO MAINTAIN
NON-CONFORMING WATER AND SEWER SERVICE LINES**

This declaration of covenant and agreement (the "Covenant Agreement") is entered into this ____ day of _____, 2015, by and between S & N HOMES, INC., a South Dakota corporation, of 1415 East Highway 44, Rapid City, SD 57703 (hereinafter the "Landowners") and the CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (the "City").

WHEREAS, the Landowner is the owner of record of property within the city of Rapid City, as more particularly described below; and

WHEREAS, the Landowner's property is currently served by a sanitary sewer service line and a water service line which does not conform to the requirements in city ordinances and regulations; and

WHEREAS, the Landowner acknowledges that the City has the authority to require Landowner to construct a new sewer and water service line in order to conform to the requirements of city ordinances and regulations; and

WHEREAS, the City is willing to let the Landowner repair, replace and/or maintain the non-conforming sewer service line and water service line main within an easement; and

WHEREAS, the City and Landowner 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 Nine BR (9BR) in Block One (1) of PLM Subdivision, located in the Northeast Quarter of the Northwest Quarter (NE¼NW¼) of Section Twenty-four (24), Township One North (T1N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

3. The Landowner covenants and agrees to be responsible for the operation and maintenance of the non-conforming sewer service line and water service line allowed by the City, including all costs and expenses associated with the maintenance or reconstruction of the sewer service line and water service line.

4. The Landowner covenants and agrees that the sewer service line and water service line shall be maintained in good working condition.

5. The Landowner acknowledges that the City has the authority to require that they construct new service lines in order to connect to the City sewer system and City water system. It further acknowledges that if it were required to do so, there would be a significant economic impact on Landowner. The City's approval of an exception request to allow its non-conforming service line in lieu of requiring conformance with the City's ordinances and regulations is sufficient consideration for the promises it has made herein.

6. Landowner, on behalf of itself and its heirs, personal representatives and assigns, does hereby release and discharge the City of Rapid City, its employees, agents, officers and assigns, of and from all liability for damages to itself or its heirs, personal representatives and assigns, for any and all actions, claims, demands, losses or damages as a result of injury to its property in any way resulting either directly or indirectly from the City allowing Landowner to continue operating and maintaining the non-conforming sewer service line and water service line.

7. Landowner further agrees for itself and its heirs, personal representatives and assigns, that they will not make a claim against, sue, attach the property of or prosecute the City of Rapid City for any injury or damage to its property resulting from the City allowing Landowner to continue operating and maintaining the non-conforming sewer service line and water service line.

8. Landowner also agrees for itself and its heirs, personal representatives and assigns to indemnify, defend and hold harmless the City of Rapid City from all liability, actions, causes of action, claims, demands, losses, damages, expenses and attorney fees, including attorneys fees to establish the City's right to indemnity or those attorneys fees

incurred on appeal, resulting from claims or suits related to Landowner's operation and maintenance of the non-conforming sewer service line and water service line.

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 Landowner, 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 Landowner, abate and/or remove the same. The Landowner agrees to pay the City for any assessments, costs or expenses incurred by the City for any maintenance work due to the Landowner's failure to abide by the covenants contained herein. The assessments shall be a lien upon the real property until paid by the Landowner. In the event the City is required to undertake any action to enforce the terms of this Covenant Agreement, the undersigned Landowner, on behalf of itself and its heirs, assigns or successors in interest, covenants and agrees 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.

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.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2015, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, 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 Covenant Agreement 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)