

PREPARED BY: City Attorney’s Office
300 Sixth Street
Rapid City, SD 57702
(605) 394-4140

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF PENNINGTON)

COVENANT AGREEMENT

COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND TIMOTHY AND CHARLENE DOORN REGARDING THE SEWER SERVICE LINE SERVING THEIR PROPERTY AT 4902 W. CHICAGO STREET.

This Agreement is made and entered into by and between the City of Rapid City, a Municipal Corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City” and Timothy and Charlene Doorn, who reside at 4902 W. Chicago St., Rapid City, South Dakota 57702, and will herein after be referred to as the “Doorns.”

RECITALS

WHEREAS, the Doorns own real property generally located at 4902 W. Chicago; and

WHEREAS, the above property is the personal residence of the Doorns; and

WHEREAS, the property is served by the City’s sewer utility; and

WHEREAS, at the time the home was constructed, the prior owner did not construct the sewer service line with sufficient slope to prevent the pipe from occasionally backing up in to the residence; and

WHEREAS, the Doorns had the sewer service line reconstructed in 2004; and

WHEREAS, due to the depth of the City sewer main within W. Chicago Street similar problems have persisted; and

WHEREAS, at the time the Doorns’ sewer service line was constructed it was inspected by the City to check for compliance with City specifications; and

WHEREAS, the Doorns recently reconstructed their sewer service line again, this time connecting it to the main in San Marco Boulevard which will hopefully resolve the issues with their sewer service line; and

WHEREAS, in conjunction with the most recent sewer service line work, the Doorns paid a \$200 tapping fee to connect to the City sewer main and a \$94.50 building permit fee; and

WHEREAS, the Doorns have alleged the City has liability to them based on the issues with their sewer service line, but has indicated they are willing to release any and all claims against the City if the City is willing to refund sewer tapping and building permit fees they recently paid.

NOW THEREFORE, the parties mutually covenant and agree as follows:

1. The property which is subject to this Agreement is legally described as:

Lot 21 of Block 7 of Marcoe Heights #1 Subdivision, Rapid City, Pennington County, State of South Dakota.
2. The City will refund to the Doorns the \$294.50 in sewer tapping and building permit fees which were paid in conjunction with the recent reconstruction of the sewer service line at the above described property.
3. In exchange for the promises described in paragraph 2 of this Agreement, the Doorns agree to release, discharge and otherwise hold harmless the City and/or any of its officers and employees from any and all demands, damages, actions, causes of action, costs, expenses and compensation that the Doorns may now have or hereafter have, whether currently known or unknown, whether anticipated or unanticipated, arising in any way out of the installation, inspection, or slope of their previous or current sewer service line. It is the intent of the parties that this Agreement shall release and discharge all claims that could have been brought by the Doorns related to their sewer service line. It is not the intent of this Agreement to release any claims, demands, damages or causes of action for acts or omissions unrelated to their sewer service line or that arise after the date of this Agreement.
4. By agreeing to refund the fees contemplated in paragraph 2 of this Agreement, the City is in no way admitting any liability for the issues that the Doorns have experienced with their sewer service line.
5. All of the terms and conditions set forth herein shall extend to and be binding upon the heirs, assigns, and successors in interest of the Doorns and shall 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.
6. The Doorns acknowledge that in the absence of their promise to release any claims that they may now have against the City, the City would not agree to refund the fees described in paragraph 2 of this Agreement. The Doorns further acknowledge that the City's promise to refund the fees described in paragraph 2 of this Agreement is good and sufficient consideration for the promises they have made herein.
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. This Agreement can only be amended in writing by the consent of all the parties hereto.

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 ___ day of _____, 2011.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

Timothy Doorn

Charlene Doorn

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2011, before me, the undersigned officer personally appeared Timothy Doorn who is known to me or was 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.

Notary Public, South Dakota
My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2011, before me, the undersigned officer personally appeared Charlene Doorn who is known to me or was 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.

Notary Public, South Dakota
My Commission Expires:

(SEAL)