

## WATER SUPPLY AGREEMENT

THIS WATER SUPPLY AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the CITY OF RAPID CITY, a South Dakota municipal corporation (referred to as "City"), and WEST NIKE HOMEOWNERS ASSOCIATION, INC., a South Dakota nonprofit corporation (referred to as "Association").

### BACKGROUND AND RECITALS

1. Association consists of 16 individual single-family residences, located upon the following described real property:

FAMILY HOUSING AREA: (Originally labeled as Tract A-107)

A tract of land, situated in the NW1/4 of Section 7, Township 2 North, Range 8 East of the Black Hills Meridian. Meade County, South Dakota, being more particularly described as follows: Commencing at the Northwest corner of said Section 7; thence South 88 degrees 13 minutes 04 seconds East along the North line of said Section 7 for a distance of 2203.88 feet; thence South 09 degrees 9 minutes 44.47 seconds East for a distance of 2022.401 feet; thence North 02 degrees 30 minutes East for a distance of 50.00 feet to the point of beginning; thence North 86 degrees 30 minutes West for a distance of 39.10 feet; thence along a curve to the right, initial tangent bearing North 86 degrees 30 minutes West and radius of 332.00 feet, for an arc length of 159.35 feet; thence North 60 degrees 00 minutes West for a distance of 529.16 feet; thence North 02 degrees 30 minutes East for a distance of 367.55 feet; thence South 87 degrees 30 minutes East for a distance of 655.00 feet; thence South 02 degrees 30 minutes West for a distance of 650.00 feet to the point of beginning, being Lots "E" and "G" of Lot 7, Section 6 and NW1/4, Section 7, Township 2 North, Range 8 East of the Black Hills Meridian, according to the plat thereof on file and of record in the Office of the Register of Deeds in and for said county, containing 8.00 acres, more or less;

2. Upon completion of the Mall Drive water main extension project, currently scheduled to begin construction in 2005, the City has will have available water supplies capable of providing potable water for residential purposes to the Association in accordance with "A Resolution Establishing a Policy Regulating the Provision of City Utility Services to Property Located Outside the City Limits", adopted by City, dated March 18, 2002;

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3. City is willing to supply water to the Association, and the Association is willing to purchase water from the City, on the terms and conditions set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. The City agrees, upon completion of the Mall Drive water main extension project, to provide and sell water to the Association, at a rate equal to 150% of the retail water rate charged to customers within Rapid City, until such time as the Association is annexed into the City, at which time the rates charged shall be 100% of the retail water rates charged to residential water customers located within Rapid City.

2. The rate to be charged by the City to the Association shall be automatically adjusted to 150% of the rate charged to Rapid City residential customers, at any time during the term of this agreement that the rates are changed by the City.

3. The Association shall design and construct, in accordance with all applicable City design standards, the extension of City water main necessary to serve its property. Specifically, the Association shall design and construct the main from the intersection of Mall Drive and Lacrosse Streets, north to Seger Drive, then west to 143Ave. and then north to the proposed metering station shown on Figure "1", attached hereto and incorporated herein. The Association shall be solely responsible for the design and construction costs of the extension of this portion of the City's water main. If the City requires the water main to be constructed by the Association to be oversized, the City's cost for the oversize portion of the construction shall be established in a separate agreement. ~~The City shall supply water through existing lines which serve, in part, Ellsworth Air Force Base, according to a vicinity map attached hereto, designated as Figure "1", and incorporated herein by reference.~~

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4. The water provided to the Association shall be measured through a proposed metering station at the location described on Figure "1". In addition, the Association shall provide a backflow prevention device suitable to the City. All costs of designing and construction the metering station and backflow prevention device shall be the sole responsibility of the Association. The meter shall be of a type acceptable to and approved by the City, and shall be maintained in good and operating condition by the Association at all times. The meter or meter shall be available for inspection and examination by the City at all times. All statements for water delivery shall be based upon readings of such meter(s).

5. The water to be delivered and received hereunder shall be of such quality as to meet or exceed, at the point of delivery, any water quality standards heretofore or hereafter enacted or promulgated by the United States Public Health Service, the Department of Public Health of the State of South Dakota, the Federal or State of South Dakota Environmental

Protection Agencies, or such other federal or state agency or agencies as shall have jurisdiction from time to time to enact or promulgate such standards.

6. The Association shall be solely responsible for the construction and maintenance of the water line from the proposed metering station, identified on Figure "1", to the Association property referred to on Figure "1" as "West Nike Subdivision". Association shall be solely responsible for all reservoir systems, booster pump systems, pump stations (if any) and service lines within Association boundaries, as may be necessary or reasonable to supply water to Association residents. In addition, the Association shall be responsible for the maintenance on the metering station and the backflow prevention device and shall insure that both remain in good working order. City shall have no obligation to inspect or maintain Association's distribution lines.

7. City shall read the meter, at the proposed metering station, on a regular, monthly basis, and shall submit its billing to the Association in the same form and manner, as other residential water customers of the City are billed. The Association shall have the same time with which to pay the monthly bill as are afforded to residential customers within the City, as are more fully-set forth in City ordinances and resolutions previously adopted. Notices shall be addressed to the Association, and payment shall be remitted to the City, at the addresses set forth in Section 18 herein.

8. Should the Association fail to timely pay invoices for water charges, the City may, in accordance with normal City practices, shut off the water supply, after giving the same notices and time afforded to other City residents.

9. The Association shall be solely responsible for any rebilling or collection of fees among residents of the Association, and City shall have no responsibility to obtain payment from any individual property owner. City's only obligation shall be to deal with the Association, for all purposes contemplated by this agreement.

10. The Association may, in its discretion, enter into an agreement with the North Haines Volunteer Fire Department for authorization to tap into Association's lines, and to draw water supplied to Association by the City. The cost of any water utilized shall be billed to the Association. If the Association enters into an agreement to supply water to the North Haines Volunteer Fire Department, the Association shall not deliver any water to North Haines Volunteer Fire Department until such time as the North Haines Volunteer Fire Department

signs a waiver of its right to protest an assessed project for the construction of water and sewer facilities. Such waiver of right to protest shall be prepared by the Rapid City City Attorney's Office.

11. No other connections, extensions or use of water supplied by the City, under the terms of this agreement, shall be permitted unless specifically consented to and agreed upon in writing between the parties hereafter. Nothing in this agreement shall permit the Association to utilize water for anything other than bona fide domestic purposes.

12. The Association agrees to support and be voluntarily joined as a proponent to any efforts by the City of Rapid City, or adjoining landowners, to have the Association property annexed into the City of Rapid City.

13. Should the property owned by members of the Association be annexed, in whole, the Association may be dissolved upon majority vote of the members hereof. If the Association elects to continue a corporate form, the Association, at a minimum, shall amend, repeal or vacate any provisions of the Association's by-laws, rules and/or covenants relating to operation and maintenance of the water system, acknowledging that upon annexation the entire water distribution- system, including maintenance, repair, replacement and payment of all water charges, shall thereafter be solely controlled by the ordinances of City.

14. Should the Association enter into any agreement with any municipality or rural water system, to obtain an alternate supply of water, or should the Association be annexed, voluntarily or involuntarily, by any municipality other than City, any and all obligations or duties of the City to continue to supply water under the terms of this agreement shall become null and void, and of no force or effect, and all rights of the Association to water supplied by the City of Rapid City shall be immediately terminated.

15. Except as specifically modified by this agreement, all terms and conditions of the Rapid City Municipal Code Ch. 13.04 including, but not limited to, City ordinances regarding water restrictions, wasting water, service charges, rates, billing and failure to pay, as well as all City policies and design standards, are incorporated herein by this reference.

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16. The Association agrees that it will use the water provided pursuant to this agreement solely for the domestic use and fire suppression in sixteen (16) residential homes located upon its property described in this agreement, unless the Rapid City Common Council shall consent, by resolution to an expansion of the use. The decision whether to allow an

expansion of the use of the City water supplied pursuant to this agreement rests solely with the Rapid City Common Council.

17. The agreement shall be valid for an initial period of ten (10) years from its execution by both parties. Thereafter, it shall automatically renew for five (5) year periods unless either party shall give notice to the other at least one hundred eighty (180) days prior to expiration of its intent not to renew the agreement.

18. 16. This agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any modifications of this agreement must be made, in writing, and signed by all parties to this agreement.

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19. 17. This agreement constitutes the complete written memorandum of the final meeting of the minds between the parties, and incorporates all prior negotiations between the parties in reference to the matters contained herein. This agreement is to be binding upon the respective parties, their heirs, successors, executors, administrators and assigns.

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20. 18. Notices: Any notices required or permitted by this agreement shall be sent to the parties at the addresses as follows:

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West Nike Homeowners Association  
PO Box 218  
Sturgis, SD 57785

City of Rapid City  
300 6<sup>th</sup> Street  
Rapid City, SD 57701

With a copy to:  
Richard A. Pluimer  
Brady Pluimer, P.C.  
135 E. Colorado Blvd.  
Spearfish, SD 57783

With a copy to:  
Jason Green, Assistant City Attorney  
City of Rapid City  
300 6<sup>th</sup> Street  
Rapid City, SD 57701

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CITY OF RAPID CITY

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY FINANCE OFFICER

WEST NIKE HOMEOWNERS ASSOCIATION, INC.

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
SECRETARY

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

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who acknowledged themselves to be the Mayor and Finance Officer of the City of Rapid City, a South Dakota municipality, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement for the purposes therein contained, by signing their names as Mayor and Finance Officer.

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

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who acknowledged themselves to be the President and Secretary of the West Nike Homeowners' Association, a South Dakota non profit corporation, and that they, as such President and Secretary, being authorized so to do, executed the foregoing Agreement for the purposes therein contained, by signing the name of the corporation by themselves as President and Secretary.

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

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

PIONEER BIBLE INSTITUTE

16,000 GAL. RESERVOIR AND BOOSTER PUMP SYSTEM

16,000 GAL. RESERVOIR AND PUMP STATION

WEST NIKE SUBDIVISION

WEST NIKE TRANSMISSION PIPELINE

MEADE COUNTY PENNINGTON COUNTY 225TH STREET

12

7

8

13

18

17

24

19

20

25

30

29

MALLRIDGE SUBDIVISION

PROPOSED METERING STATION

EASTERN WATER

RAPID CITY LIMITS

RUSHMORE MALL

I-90

SEGER DRIVE

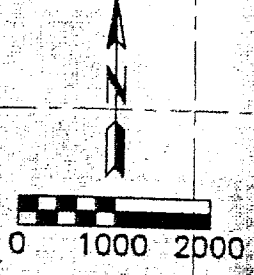
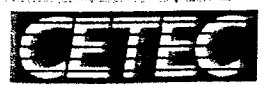


FIGURE 1 VICINITY MAP



Scale: 1" = 200' (1:40,000) PLOT DATE: 10/15/00 DRAWN BY: J. B. B. CHECKED BY: J. B. B. DATE: 10/15/00