

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

STATE OF SOUTH DAKOTA)
) SS. **COVENANT AGREEMENT**
COUNTY OF PENNINGTON)

**COVENANT AGREEMENT BETWEEN CITY OF RAPID CITY AND LANDOWNER
AUTHORIZING THE LANDOWNER TO OBTAIN A PERMIT TO DO WORK TO
CURRENT ON-SITE WASTE WATER SYSTEM.**

This declaration of covenant and agreement (the "Agreement") is entered into this 16
day of October, 2009, by and between DAENE and JAMIE BOOMSMA (the
"Landowners"), of 5340 Pine Tree Dr., Rapid City, South Dakota, 57702, and the CITY OF
RAPID CITY (the "City"), a South Dakota municipal corporation, of 300 Sixth Street, Rapid
City, South Dakota, 57701.

WHEREAS, the Landowners hereby acknowledge they are the owners of record of
property generally located at 5340 Pine Tree Dr., Rapid City, SD which is legally described as:

Lot 11 Vista Hills #2 Subdivision, located in T1N, R7E, of Section 21, BHM, Rapid City,
Pennington County, State of South Dakota; and

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

WHEREAS, the Landowners' have applied for a permit to expand their home; and

WHEREAS, the expansion of the Landowners' home requires modifications to their on-
site waste water system to bring it into compliance with the City's on-site waste water
ordinances; and

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

WHEREAS, the City could require the Landowners to immediately connect to the City's sewer; and

WHEREAS, in order to connect to the sewer that is within 400 feet, the Landowners would need to run a sewer line across private property; and

WHEREAS, based on the cost and logistics, connecting the Landowners' home to the City sewer is not currently feasible; and

WHEREAS, the City is willing to let the Landowners obtain a permit to expand their home and update 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 update their current on-site waste water system so that it complies with current City ordinances and so that they can obtain a permit to expand their home, 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 11 Vista Hills #2 Subdivision, located in T1N, R7E, of Section 21, BHM, Rapid City, Pennington County, State of South Dakota; and

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 update the current on-site waste water system and expand the structure 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 permits to update their on-site waste water system and expand their home 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.


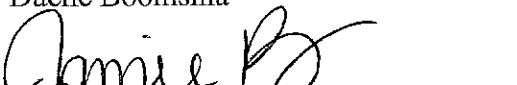
6. The City may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this Agreement, the undersigned, heirs, assigns or successors in interest 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 16 day of October, 2009.


 Daene Boomsma

 Jamie Boomsma

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

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 Agreement Consenting to Assessed Project for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

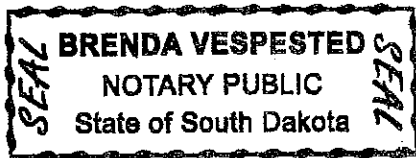
IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires:

State of South Dakota)
 ss.
County of Pennington)

On this the 16th day of October, 2009, before me, the undersigned officer personally appeared Daene Boomsma and Jamie Boomsma, husband and wife, 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)

Brenda Vespsted

Notary Public, South Dakota
My Commission Expires:

**My Commission Expires
March 13, 2015**

Property Owners: Daene and Jamie Boomsma
Address: 5340 Pine Tree Dr, Rapid City, SD, 57701
Legal: Lot 11 Vista Hills #2
Parcel ID # as of October 21, 2009: 3721253008

