

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)

This declaration of the covenant and agreement ("Agreement") is entered into this _____ day of _____, 2010, by and between Hewey and Jill Clemmons, of 4400 Reservoir Road, Rapid City, South Dakota 57703 (hereinafter "Landowner"), and the City of Rapid City ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

Landowner hereby acknowledges that it is the owner of record of the property in Pennington County, South Dakota which is legally described as:

A portion of the balance of Lot Three (3) of the South One-Half of the Southwest One-Quarter (S ½ SW ¼) of Section Fourteen (14), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian (BHM), Pennington County, South Dakota, as shown on the plat recorded on October 1, 1963 and filed in "Plat File N"; Beginning at the northeast corner of said balance of Lot Three (3), said point being located along the north-south quarter section line and also along the southerly edge of the adjoining railroad right-of-way; thence, southerly along said quarter section line, South 00 degrees 04 minutes 53 seconds West a distance of 1,050.36 feet, more or less; thence, North 63 degrees 41 minutes 40 seconds West a distance of 205.00 feet, more or less; thence, North 84 degrees 39 minutes 26 seconds West a distance of 270.00 feet, more or less; thence, North 33 degrees 30 minutes 20 seconds West a distance of 84.00 feet, more or less; thence, North 0 degrees 00 minutes 00 seconds West a distance of 796.70 feet, more or less; thence, North 57 degrees 23 minutes 22 seconds West a distance of 117.40 feet, more or less; thence, North 03 degrees 48 minutes 46 seconds East a distance of 95.00 feet, more or less; thence, North 12 degrees 39 minutes 32 seconds West a distance of 150.00 feet more or less to a point on the north line of said Lot Three (3); thence, easterly along the north line of said Lot Three (3), South 89 degrees 55 minutes 53 seconds East a distance of 168.93 feet more or less to a point on the southerly line of the adjoining railroad right-of-way; thence, southeasterly along the southerly edge of the adjoining right-of-

way, curving to the left on a curve with a radius of 5907.9 feet, a delta of 4 degrees 17 minutes 31 seconds, an arc length of 442.55 feet, and a chord bearing and distance of South 62 degrees 19 minutes 02 seconds East 442.44 feet, more or less; thence, continuing southeasterly along the southerly edge of the adjoining right-of-way, South 64 degrees 32 minutes 29 seconds East a distance of 72.19 feet more or less, to the point of beginning.

Said tract of land contains 13.14 acres, more or less.

WHEREAS, Landowner has applied for a final plat; and

WHEREAS, Landowner has requested approval to connect to the City sanitary sewer system; and

WHEREAS, the City requires that the Landowner connect to the City sewer system as required under "A RESOLUTION ESTABLISHING A POLICY REGULATING THE PROVISION OF CITY UTILITY SERVICES TO PROPERTY LOCATED OUTSIDE THE CITY LIMITS" dated May 16, 2005; and

WHEREAS, it is the parties' intention that the Landowner be allowed to connect to the City sewer sanitary sewer system if the Landowner agrees to certain stipulations.

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

1. Landowner agrees that sanitary sewer service shall be provided to Landowner at 150% of the retail rate charged to customers within Rapid City.
2. Landowner agrees to voluntary annexation of the property at such time as the property becomes contiguous to the City limits.
3. Landowner agrees that should they refuse to consent to annexation at the time that the property becomes contiguous to the City limits that they will pay 300% of the retail wastewater rate charged to customers within Rapid City. Prior to the higher rate being imposed the Landowner will have 60 days from the date they are requested by the City to agree to a voluntary annexation to consent to the annexation.
4. Landowner agrees not to join a rural water, sanitary, or any other district that is involved in providing water or sewer services.
5. Landowner agrees to pay all of the costs of improvements needed to connect to the City's sanitary sewer system. All improvements shall be constructed in accordance with the adopted standards of the City of Rapid City and the State of South Dakota. Landowner shall operate and

maintain the sanitary sewer line as a private line and shall be responsible for all costs related thereto.

6. It is understood by the parties that once the property is annexed into the City, the rate charged for services shall be the same rate charged to all customers residing within the corporate limits of Rapid City.
7. It is understood by Landowner that the City's primary consideration for the approval of the final plat is Landowner's covenant and promise to complete the Agreement conditions outlined in paragraphs 1-5 above.
8. The parties agree that the terms of this agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling without regard to the principles of conflict of laws. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court for the State of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.
9. 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 or its subdivision regulations in connection with 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.
10. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of 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 Agreement recorded with the Pennington County Register of Deeds' Office pursuant to provisions of South Dakota statutes.
11. If any section(s), or provisions of this application is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

If the Landowner is a corporation, it has the power to enter into this agreement and its officers signing for it have full power and authority to do so.

Dated this _____ day of _____, 2010.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, 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 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:

(SEAL)

Dated this _____ day of _____, 2010.

Hewey Clemmons

Jill Clemmons

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer personally appeared Hewey Clemmons and Jill Clemmons, 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.

Notary Public, South Dakota

My Commission Expires:
(SEAL)