

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

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

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND SSST, LLC,
REGARDING JOLLY LANE LIFT STATION UPGRADES
BEFORE ISSUANCE OF CERTIFICATES OF OCCUPANCY.**

This agreement is entered into on this ___ day of _____, 2009, by and between the CITY OF RAPID CITY, a municipal corporation, located at 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the “City” and SSST, LLC, a South Dakota limited liability company, of 333 West Boulevard, PO Box 2670, Rapid City, SD, 57709-2670, hereinafter referred to as the “Developer”.

WHEREAS, the Developer has proposed constructing a large residential development on land which is generally located east of Elk Vale Road and north of Minnesota Street; and

WHEREAS, the Jolly Lane Lift Station currently serves this area; and

WHEREAS, the Jolly Lane Lift Station currently serves approximately 190 dwelling units or the equivalent thereof; and

WHEREAS, significant expansion of the Jolly Lane Lift Station will be needed in order for any further development to take place in this area; and

WHEREAS, the Developer has requested that the City provide \$424,000 in funds to assist with constructing the improvements to the Jolly Lane Lift Station which are necessary for further development in this area; and

WHEREAS, the City approved \$424,000 in .16 Funds to help construct the Jolly Lane Lift Station improvements; and

WHEREAS, each new construction building permit issued within the area served by the Jolly Lane Lift Station shall include a construction fee of the pro rata share of the final certified construction costs of the Jolly Lane Lift Station expansion; and

WHEREAS, the City requires that prior to any Certificates of Occupancy being issued, the upgrades to the Jolly Lane Lift Station shall be completed and accepted by the City; and

WHEREAS, upon the Lift Station becoming operational and acceptance by the City, and compliance with all applicable City regulations, the City may issue Certificates of Occupancy.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. The real estate subject to this Agreement is described as follows:

The NE1/4 of the SW1/4, Less Plum Creek Sub, Less ROW, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The NW1/4 of the SW1/4, Less Plum Creek Sub, Less ROW, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The SW1/4 of the SW1/4, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota; and

The SE1/4 of the SW1/4, T1N, R8E, Section 16, Unplatted, BHM, Rapid City, Pennington County, State of South Dakota.

2. The parties acknowledge that the actual increase in capacity of the Jolly Lane Lift Station following the expansion will not be known until it is complete. It is further understood by the parties that the Developer is not guaranteed any of the increased capacity of the lift station to serve its development. The increased capacity of the Jolly Lane Lift Station will be utilized on a first-come, first-served basis.

3. The City hereby covenants and agrees to present a proposed Sanitary Sewer Utility Construction Fee Resolution to its Common Council pursuant to Section 13.08.365 of the Rapid City Municipal Code that establishes the construction fee to be imposed at the time a building permit is issued in the area served by the Jolly Lane Lift Station. Such a fee will be the proportionate share of the cost of constructing the Jolly Lane Lift Station expansion.

4. The Sewer Utility Construction Fee shall be based on the total cost of construction, not to exceed \$424,000, divided by the number of dwelling units, or the equivalent thereof, that can be served by the improvements to the Jolly Lane Lift Station.

5. Prior to any Certificates of Occupancy being issued by the City, the upgrades to the Jolly Lane Lift Station shall be completed, the Lift Station shall be operational, and the City will have accepted the improvements.

6. 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 principle of conflicts 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.

7. 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.

8. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of developer, 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 South Dakota statutes.

9. If any section(s), or provision of this Agreement is 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.

10. If the Developer 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 _____, 2009.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

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 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)

SSST, LLC

By: _____

Its: _____

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of SSST, LLC, and that he, as such _____, being authorized so to do, executed the foregoing Agreement for the purposes therein contained by signing the name of SSST, LLC, by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

