

WHEREAS, the City has previously established an area in which supplemental sewer construction fees are to be collected to retire the debt the City incurred in constructing the sewer line and lift station in Jolly Lane; and

WHEREAS, the property that is subject to this agreement is currently located within the fee area established by the City; and

WHEREAS, the approval of the requested annexation and the development of the Landowner's adjacent property will decrease the amount of available capacity in the sewer line and lift station in Jolly Lane; and

WHEREAS, the decrease in capacity caused by this development may hinder the further development of the property that is the subject of this agreement until such time as a gravity sewer line to serve the area is constructed; and

WHEREAS, it is the intent of the parties to enter into an agreement by which the City can approve the annexation and development of the adjacent property.

NOW THEREFORE, the parties covenant and agree as follows:

1. The Landowner agrees that if the City approves the annexation request for the adjacent property, that it will waive any right it may have to make a claim that the City is required to improve the sewer system in Jolly Lane beyond its current capacity to serve the property that is the subject of this agreement.

2. The Landowner acknowledges, that by the City approving the annexation request and allowing development of the adjacent property, that the capacity of the sewer line in Jolly Lane will be reduced which may hinder further development in the subject property and its Elks Country Estates development.

3. The Landowner currently has approval for a Preliminary Plat showing 29 additional lots on the subject property. Based on information that has been provided by the Landowner's engineer, which has been reviewed by City Staff, it appears that there is enough capacity in the Jolly Lane sewer line to support the development shown in the proposed Preliminary Plat. If the information submitted is incorrect, it is understood by the Landowner that the City has no duty to construct any additional sewer improvements to serve this property.

4. It is understood by the Landowner that the City's primary consideration for agreeing to the annexation of the adjacent property is the Landowner's covenant and promise to waive any claim that it is entitled to a certain amount of capacity in the Jolly Lane sewer line for this property, beyond the capacity that it is already using and beyond any capacity that is available at the time of any future development.

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 Landowner, 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 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 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.

7. If any section(s), or provision 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.

8. This agreement, along with the agreement that pertains to the adjacent property, are the entire agreement of the parties. 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. 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.

10. 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 _____, 2006.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer
(SEAL)

TRIPLE Z REAL ESTATE
DEVELOPMENT, LLP.

By: _____
Its: _____

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2006, before me, the undersigned officer, personally appeared Jim Shaw 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 _____ day of _____, 2006, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Triple Z Real Estate Development, LLP., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____