

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 covenant and agreement is entered into this _____ day of September, 2006, by and between DENNIS ZANDSTRA REAL ESTATE HOLDINGS, **(LLP?)** of P.O. Box 1940, Rapid City, South Dakota, 57709, herein after referred to as the "Landowner," and the CITY OF RAPID CITY ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701, herein after referred to as the "City."

WHEREAS, the Landowner is the owner of certain real property legally described as:

The North Half of Section 21 along with the West Half of the Southwest Quarter of Section 21 of T1N, R8E, of the BHM, Pennington County, South Dakota; and

WHEREAS, the Landowner has requested that a portion of the above described property be annexed into the City; and

WHEREAS, the Landowner intends to sell the property so that it may be developed as a residential subdivision; and

WHEREAS, the property would be served by a sewer line and lift station that were previously constructed in Jolly Lane by the City at public expense; and

WHEREAS, a supplemental sewer construction fee was previously established to pay for the construction of the sewer line in areas benefited by its construction; and

WHEREAS, the above described property was not included in the original boundaries of the area in which the City would impose supplemental construction fees; and

WHEREAS, the sewer line in Jolly Lane that the landowner proposes to connect to has a limited capacity; and

WHEREAS, by annexing this property and allowing the Landowner to connect to the sewer line in Jolly Lane without first expanding the boundaries of the area in which the City collects supplemental sewer construction fees would result in a benefit to the Landowner's property for which it would not have to pay; and

WHEREAS, it would also result in the availability of fewer sewer connections in the fee area previously established by the City; and

WHEREAS, the decrease in the number of available sewer connections in the area previously established would result in there not being enough connections available to retire the debt incurred by the City in constructing the sewer line; and

WHEREAS, pursuant to SDCL 9-4-1.1, the City and Landowner have the authority to enter into an agreement specifying under what conditions the Landowner's property is annexed into the City and/or developed; and

WHEREAS, it is the intent of the parties to enter into an agreement by which the City will agree to annex the above described property and the Landowner will agree not to object to the expansion of the supplemental sewer construction fee collection area.

NOW THEREFORE, the parties hereby covenant and agree as follows:

1. The City agrees to approve the annexation of the above described property.
2. The Landowner agrees that in exchange for the above described promises, that it will not object to the City expanding the boundaries of the area in which it collects supplemental sewer construction fees to include this property.
3. It is understood by the parties that there is limited capacity on the sewer line and lift station located in Jolly Lane and that the City is not making any guarantee that there will be capacity in the line for any phases of development on this property beyond the proposed Preliminary Plat for Elks Meadows Phase I.
4. 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 of Elks Meadows Phase I. 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.
5. It is understood by the Landowner that the City's primary consideration for agreeing to the annexation of this property is the Landowner's covenant and promise to

not object to the expansion of the area in which supplemental sewer construction fees can be collected to include the above described property.

6. 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.

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 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.

8. 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.

9. 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.

10. 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.

11. 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)

DENNIS ZANDSTRA REAL ESTATE
HOLDINGS, (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 Dennis Zandstra Real Estate Holdings, 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:_____