

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 TRIPLE Z REAL ESTATE DEVELOPMENT, LLLP, 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 TRIPLE Z REAL ESTATE DEVELOPMENT, LLLP, a South Dakota limited liability limited partnership, of 818 St. Joseph Street, Rapid City, SD, 57701, 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 is at capacity; 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 has 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:

Tract 1 of the E1/2, Less Elk Country Estates, Less Lot H1, Less ROW, T1N, R8E, Section 16, 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 Developer shall complete the upgrades to the Jolly Lane Lift Station, 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.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

TRIPLE Z REAL ESTATE
DEVELOPMENT, LLLP

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 TRIPLE Z REAL ESTATE DEVELOPMENT, LLLP, and that he, as such _____, being authorized so to do, executed the foregoing Agreement for the purposes therein contained by signing the name of TRIPLE Z REAL ESTATE DEVELOPMENT, LLLP, by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)