

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 \_\_\_\_\_, 2009, by and between the Benedictine Convent of St. Martins (“Convent”), 2110, Suite C, St. Martins Drive, Rapid City, SD 57702, and the City of Rapid City (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

Convent hereby acknowledges that they are the owners of record of the property in Rapid City, South Dakota which is legally described as:

N1/2SW1/4 less Right-of-Way, and SW1/4SW1/4 of Section 29, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota.

WHEREAS, Convent has applied for a Certificate of Occupancy; and

WHEREAS, the property is not currently served by public water and sewer service lines; and

WHEREAS, an adjacent landowner has granted the Convent a private water and sewer service line easement; and

WHEREAS, as a result of the easement, the water and sewer service lines will be located on adjacent properties; and

WHEREAS, the City’s Standard Specifications do not allow service lines to cross over another lot unless an Exception has been granted; and

WHEREAS, it is the parties’ intention that an exception be granted to allow the Certificate of Occupancy to be issued if the Convent 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. Convent hereby covenants and agrees that the non-conforming water and sewer service lines will be replaced by conforming service lines within five (5) years of the execution of this Covenant Agreement.
2. Convent hereby covenants and agrees to consent to an assessed project to install conforming water and sewer service lines if the condition in Paragraph 1 is not met.
3. Convent hereby covenants and agrees to defend, indemnify and hold the City harmless from all claims related to the non-standard service lines.
4. It is understood by Convent that the City's primary consideration for the granting of the exception to the City's Standard Specifications on the above described property is Convent's covenant and promise to complete the Agreement conditions outlined in paragraphs 1 and 2 above.
5. 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.
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. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of Convent, 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.
8. 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 \_\_\_\_\_, 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 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 \_\_\_\_\_, 2009.

BENEDICTINE CONVENT OF  
ST. MARTINS

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 Benedictine Convent of St. Martins, and that she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of Benedictine Convent of St. Martins by himself as \_\_\_\_\_.

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

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

(SEAL)