

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57702
(605) 394-4140

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

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND SLAINTE LLC TO
ALLOW A STAIRCASE AND HANDICAP ACCESS RAMP TO ENCROACH INTO
THE ADJACENT PUBLIC RIGHT OF WAY.**

This Covenant Agreement (the "Agreement") is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, SD 57701 (herein after referred to as the "City") and the SLAINTE, LLC., a South Dakota limited liability corporation, located at 510 Ninth St., Rapid City, SD 57701 (herein after referred to as the "Landowner").

WHEREAS, the Landowner is renovating property located at 510 Ninth Street; and

WHEREAS, the Landowner is trying to maintain the historical elements of the building;
and

WHEREAS, the entrance to the front of the building along St. Joseph St. is constructed several feet above the street grade; and

WHEREAS, the building is setback zero feet from the public right of way; and

WHEREAS, the Landowner has requested authorization from the City to construct a stairway and handicap ramp to provide access to the front of the building; and

WHEREAS, some private encroachments into the public right of way can be legal so long as they do not interfere with the use of the public right of way; and

WHEREAS, the two primary purposes generally cited for the existence of a public right of way are to provide a means of passage for the public and to provide a means of access to and egress from abutting lands; and

WHEREAS, the Landowner's request is consistent with one of the primary purposes for a right of way; and

WHEREAS, the International Building Code, as adopted by the City, has provisions for stairways extending into the public right of way; and

WHEREAS, the proposed stairway and handicap ramp would not unduly interfere with the use of the public right of way, but would pose a potential liability issue for both the City and Landowner; and

WHEREAS, the City is willing to authorize the Landowner's proposed stairway and handicap ramp if the Landowner agrees to certain terms and conditions designed to protect the public right of way and to further insulate the City from liability for the Landowner's special use of the public right of way.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is agreed by the parties as follows:

1. The land which is subject to this Agreement is generally located at 510 Ninth Street, Rapid City, South Dakota and is legally described as:

Lots 13 through 16, of Block 82, Original Town of Rapid City, Pennington County, State of South Dakota.

2. The Landowner is hereby authorized to install a stairway and handicap access ramp within the public right of way along St. Joseph St. in order to provide access to the current entrance to the historical building located on the above property. The stairway and ramp shall be designed in accordance with all applicable codes and regulations. Prior to installation, the Landowner will submit sufficient plans and drawings to the City to demonstrate compliance with this requirement and to further demonstrate there will be sufficient sidewalk space to accommodate pedestrian traffic. The Landowners plans and drawings must be approved by the City Building Official and City Engineer prior to installation.

3. In addition to the approvals required in Paragraph 2, the Landowner acknowledges that the International Building Code as adopted by the City only allows stairways to project 12 inches into the public right of way. If the Landowner needs to encroach further than 12 inches it will need to appeal to the International Building Code Board of Appeals for approval to do so.

4. The Landowner agrees it is solely responsible for any maintenance and upkeep on the structure once completed. The Landowner specifically acknowledges that once completed, the Landowner is in the best position to provide necessary maintenance and upkeep.

5. From the date of installation of the structures authorized in this Agreement, the structures will be considered in the nature of a revocable license to occupy that portion of the public right of way where the structure is located. If the City engages in a street project which necessitates removal, or otherwise needs to remove the encroachment, the Landowner agrees to do so at its

sole expense. The Landowner further agrees to remove the encroachment if requested by the City due to maintenance or safety concerns.

6. If the City becomes aware of safety or maintenance issues related to the structures authorized in this Agreement and the Landowner refuses to repair or remove the structures, the City may remove or repair the structures at the Landowner's sole expense. If the Landowner refuses to pay the City for the cost of such work and forces the City to obtain a judgment for the cost, the Landowner agrees to pay the City's reasonable attorney's fees.

7. The Landowner agrees to maintain sufficient liability insurance coverage as determined by the City for the property subject to this Agreement. The Landowner will defend, indemnify and otherwise hold the City harmless from any and all claims arising from or related to the structures authorized by this Agreement.

8. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and 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.

9. The Landowner acknowledges the City's authorization to allow its proposed structures to encroach upon the public right of way is good and sufficient consideration for the promises it has made herein.

10. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

11. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this Agreement.

12. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.

13. This Agreement is intended solely for the benefit of the parties hereto along with their heirs, assigns and successors in interest and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. Except as allowed under paragraphs 9 and 12 of this Agreement, the rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

14. If any section(s), or provisions of this Agreement are 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.

15. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this Agreement shall be venued in Rapid City, South Dakota in the Circuit Court for the Seventh Judicial Circuit.

16. 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 _____, 2011.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

SLAINTE, LLC.

By: _____
Its: _____

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2011, before me, the undersigned officer, personally appeared Allan Hanks and Pauline Sumption, 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 instrument 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

State of South Dakota)
)ss.
County of Pennington)

On this _____ day of _____, 2011, before me, the undersigned officer,
personally appeared _____, who acknowledged themselves to be the
_____ of Slainte, LLC., 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.

Notary Public, South Dakota
My Commission Expires:

SEAL