

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)

1/24/07 This declaration of covenant and agreement ("Agreement") is entered into this day of January, 2007, by and between Cornerstone Rescue Mission, a corporation organized under the laws of the State of South Dakota, hereinafter referred to as "Developer", and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, hereinafter referred to as the "City". The term "Developer" as used in this agreement includes all successors and assigns of Cornerstone Rescue Mission.

WHEREAS, the Developer desires to develop land legally described as:

Tract 6, Signal Heights Subdivision, Section 1, Township 1N, Range 7E,
Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

WHEREAS, an existing 8" PVC sanitary sewer main transects the site and due to topographic constraints an adequate area for a building site is not available without encroaching onto the existing easement for the sanitary sewer main; and

WHEREAS, the Developer is a charitable organization and desires to build a transitional housing facility on the above site to improve the social welfare of the community; and

WHEREAS, the Developer has requested permission to encroach the City's existing sanitary sewer easement; and

WHEREAS, the Common Council finds that, although contrary to its standard policy of re-routing sewers to avoid conflicts with building locations wherever

technically feasible, allowing the Developer to encroach onto the sanitary sewer easement to allow construction of the proposed building is in the best interests of the City; and

WHEREAS, the City desires to ensure its access to the sewer main for maintenance, inspection, and replacement purposes; and

WHEREAS, the City desires to prevent certain additional or future costs from becoming the responsibility of the City and its taxpayers; and

WHEREAS, the Developer desires to accept the risk associated with placing a building over an active sewer main under its proposed project and to protect the city from the possible future costs of re-routing such, if needed.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions herein set forth, it is agreed as follows:

1. The City hereby covenants and agrees to allow the Developer to encroach on the City's sanitary sewer easement with the stipulations and conditions given herein.
2. The Developer shall construct the encasement of the 8" sewer main with suitable materials to protect and support both the sewer and the building structure above.
3. Prior to any construction, the Developer shall retain the services of a professional engineer to prepare plans and specifications for construction of the sanitary sewer and associated encasement and to monitor the construction. The plans shall demonstrate that the work will meet City requirements and accepted standards of engineering practice. The plans shall be submitted for review by the City. The plans shall be signed by a representative of the City following the review. Following completion of the construction, the Developer's engineer shall provide certification that the installation has been completed in substantial conformance with the plans and specifications, except for any variations or deficiencies noted in accordance with SDCL §36-18A-46.
4. The Developer hereby covenants and agrees the entry and construction of the proposed project on the property covered by the City's easement is with the permission of the City and is not adverse or prescriptive and the easement remains fully vest in the City.
5. The Developer hereby covenants and agrees that in the event the City determines said sewer main needs to be re-routed to an alignment around the building, the Developer shall be responsible for all costs associated with the re-routing of the line including, but not limited to, obtaining and filing easements, engineering services, and construction costs. .
6. The Developer hereby covenants and agrees the City may use whatever means it deems necessary or prudent to maintain, repair or replace the sewer main and its

appurtenances and that the Developer shall hold the City harmless and defend and indemnify the City from all claims of damage arising out of such decisions and activities.

7. The Developer hereby covenants and agrees to indemnify, defend, and hold the City, its governing board, employees and agents harmless from any and all damages, claims, suits, demands, or asserted obligations for any and all injuries or damages, including death, arising from the installation of buildings over a sanitary sewer main or within the sanitary sewer easement, and any damage suffered as a result of the operation, maintenance, replacement, abandonment, or any other action or inaction by the City in regard to the location of the sewer main or other improvements.
8. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, beneficiaries, assignees, or successors in interest of the Developer, 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, beneficiary, heir, assignee, 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 Codified Law
9. 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, Developer, its heirs, beneficiaries, assignees, or successors in interest agree the City may recover its reasonable expenses, including attorney's fees incurred with respect to such action.
10. 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. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.
11. The parties agree that this writing constitutes the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.
12. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).

Dated this ____ day of _____, 2007.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

Cornerstone Rescue Mission

By: _____

Its: _____

Jim Costello
Executive Director

STATE OF SOUTH DAKOTA)

) ss.

COUNTY OF PENNINGTON)

On this ____ day of _____, 2007, 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 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 as such Mayor and Finance Officer of the City of Rapid City.

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

Notary Public, State of South Dakota

My Commission Expires: _____

[SEAL]

STATE OF SOUTH DAKOTA)

)ss.

COUNTY OF PENNINGTON)

On this 19th day of January, 2007, before me, the undersigned officer, personally appeared Jim Costello, who acknowledged himself to be the EX-DIRECTOR of Cornerstone Rescue Mission, and that as such, being

duly authorized so to do, executed the foregoing instrument by signing the name of Cornerstone Rescue Mission as its Executive Director.

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

[SEAL]



Katie S. White Calf

Notary Public, State of South Dakota

My Commission Expires: _____

Commission Expires
August 8, 2009