

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

a/l/l/10 MCS

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

This declaration of the covenant and agreement ("Agreement") is entered into this _____ day of _____, 2010, by and between Presbyterian Retirement Village, ("Owner"), 255 Texas Street, Rapid City, SD 57701, and the City of Rapid City ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

Owner hereby acknowledges that it is the owner of record of property in Rapid City, South Dakota which is legally described as:

Lot 1R, Robbinsdale #10, Section 13, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

WHEREAS, Owner has experienced drainage problems on the property; and

WHEREAS, a private engineer has provided plans for a private storm sewer system to address the drainage issues; and

WHEREAS, the private storm sewer system will consist of an 8 inch (8") under drain and approximately 40 linear feet of 12 inch N-12 pipe; and

WHEREAS, the plans call for the private storm sewer system to tie into a Type E inlet located in the right-of-way northeast of the described property; and

WHEREAS, it is the parties' intention that the Owner be allowed to tie into the City's storm sewer system if the Owner 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. Owner hereby covenants and agrees that the private storm sewer system shall be wholly owned by Owner and maintained at the Owner's expense.

2. Owner hereby covenants and agrees to defend, indemnify and hold the City harmless from all claims related to the private storm sewer system.
3. It is understood by Owner that the City's primary consideration for allowing the private storm sewer system to be tied into the City's storm sewer system is Owner's covenant and promise to abide by the Agreement conditions outlined in paragraphs 1 and 2 above.
4. 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.
5. 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.
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 Owners, 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.
7. 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 _____, 2010.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)

ss.

County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer, personally appeared Alan 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 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 _____, 2010.

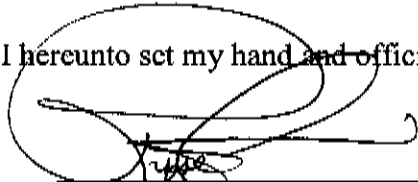
PRESBYTERIAN RETIREMENT
VILLAGE

By: *[Signature]*
Its: Plant Operation Manager

State of South Dakota)
 ss.
County of Pennington)

On this the 3RD day of SEPTEMBER, 2010, before me, the undersigned officer personally appeared CURTIS CRESSY, who acknowledged himself to be the ~~PLANT OPERATIONS MANAGER~~ ^{PLANT OPERATIONS MANAGER} of Presbyterian Retirement Village and that he, as such ~~PLANT OPERATIONS MANAGER~~ being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of Presbyterian Retirement Village by himself as PLANT OPERATIONS MANAGER.

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



Notary Public, South Dakota

My Commission Expires: 11/10/15

(SEAL)