

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 covenant and agreement ("Agreement") is entered into this _____ day of _____, 2007, by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, hereinafter referred to as the "City", and Horst Developments, L.L.C., a limited liability corporation organized under the laws of the State of South Dakota, hereinafter referred to as the "Developer".

WHEREAS, the Developer wishes to develop property located within City jurisdictional limits, and wishes to connect to the sanitary sewer system of the City, and the City desires to provide such sanitary sewer service; and

WHEREAS, the Developer is required by the Subdivision Ordinances of the City to pay for the cost of providing adequate sanitary sewer service for its development; and

WHEREAS, the cost of the Offsite Sewer Improvements was determined to be \$36,737.98, which does not include the cost of constructing sanitary sewer mains within the Developer's property.

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

1. The Developer hereby covenants and agrees to construct and pay for approximately 400 lineal feet of off-site 8 inch (8") PVC sanitary sewer main along Centre Street as per plans prepared by Ferber Engineering Company, Inc. entitled "Horst Sanitary Sewer Extension, Project No. J04-105" dated February 23, 2006.

2. The City hereby covenants and agrees to identify property, hereinafter referred to as the “Benefiting Area” shown on Exhibit A attached hereto and incorporated herein, that may benefit from the above-described sewer system improvements.
3. The City hereby covenants and agrees to present a proposed Sanitary Sewer Utility Construction Fee Resolution to its Common Council which would establish the fees to be levied against the identified benefiting property in the Benefiting Area at such time as said property or a division thereof requests to connect to the above-described sanitary sewer main.
4. The proposed Sewer Utility Construction Fee shall be based on the total calculated costs of the offsite sewer improvement which include engineering and construction costs.
5. The proposed Sewer Utility Construction Fee for properties within the Benefiting Area and serviced by the offsite sanitary sewer main shall be established by dividing the total calculated costs of the offsite sanitary sewer main extension of \$36,737.98 with the entire amount to be paid by landowners within the Benefiting area with direct frontage to the sanitary sewer main, excluding the Developer’s property. Thus, the proposed Sewer Construction Fee may be established at \$18,368.99 for the existing property identified within the benefiting area.
6. In the event that the Sanitary Sewer Utility Construction Fee Resolution is established by the Common Council, the Sanitary Sewer Construction Fee shall be paid by each parcel in the Benefiting Area currently described or by any future subdivided properties within the Benefiting Area requiring sanitary sewer service and obtaining a sewer connection directly from the above-described sanitary sewer main. In the event the parcel in the benefiting area is subdivided, the subdivided properties must pay its proportional share which shall be calculated by dividing the number of parcels within the benefiting area by the established sewer construction fee.
7. In the event that the Sewer Utility Construction Fee Resolution is established by the Common Council, the City hereby covenants and agrees to collect the construction fees from the identified properties at the time said properties request to connect to the above-described sanitary sewer main.
8. In the event the that Sewer Utility Construction Fee Resolution is established by the Common Council, the City hereby covenants and agrees to reimburse the Developer all of the sanitary sewer construction fees within sixty (60) days of receipt of the fees by the City. In no case

will the Developer be reimbursed in excess of the total calculated costs of construction. Payments to the Developer will cease if and when the total costs of construction are reimbursed.

9. The Developer hereby covenants and agrees to furnish the City Finance Office with a current mailing address and update that address as is needed in order to facilitate disbursement of collected construction fees.
10. The proposed Sanitary Utility Construction Fee will be in addition to any existing connection fees established for this benefiting area.
11. This Agreement does not bind the City to reimburse Developer for the sewer extension project. Rather, by this Agreement the option of imposing sewer construction fees upon the identified benefiting properties will be presented to the Common Council for consideration.
12. Developer shall indemnify, defend, and hold the City, harmless from any and all damages, claims, suits, demands, or asserted obligations for injuries or damages arising out of the omission of, or inability of the City to furnish sanitary sewer service as herein provided.
13. 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, Horst Developments, L.L.C., its heirs, beneficiaries assignees, or successors in interest agree the City may recover from them its reasonable expenses, including attorney's fees incurred with respect to such action.
14. 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 Horst Developments, L.L.C, 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.
15. 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).

- 16. 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.
- 17. 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.

Dated this _____ day of _____, 2007.

Horst Developments, LLC

By: _____

Its: _____

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

On this the _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed within instrument and acknowledged that they executed the same for the purposes therein contained and that they had the authority to do so in the name of horst Developments, LLC, as its _____.

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

Notary Public, South Dakota
My Commission Expires:

(SEAL)

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

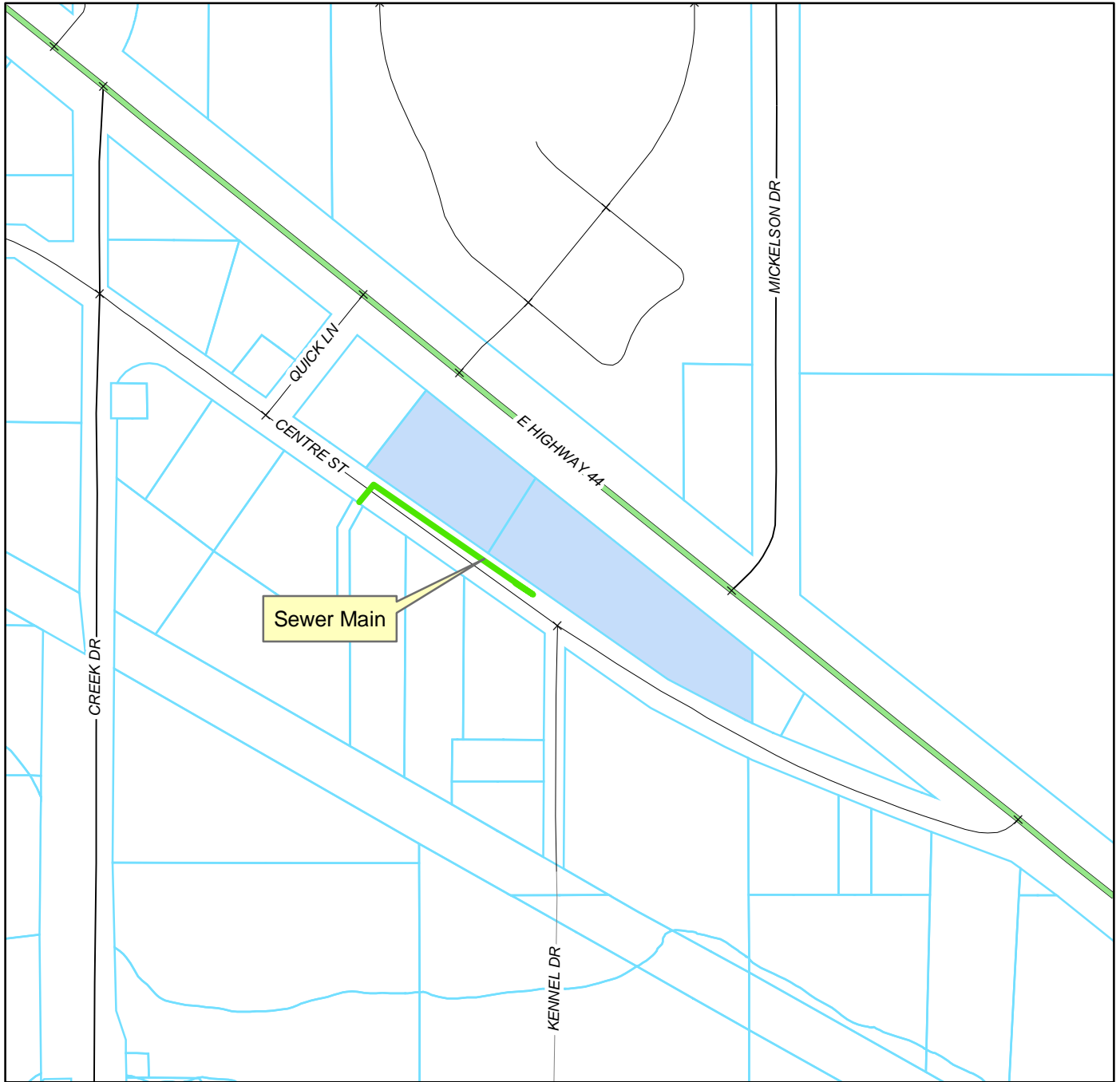
STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On this the _____ 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, 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)



Horst Centre Street Sewer Main Construction Fee Benefiting Area



Legend

-  Benefiting Area
-  Sewer Main

