

Prepared by:  
Richard E. Huffman  
DEMERSSEMAN JENSEN CHRISTIANSON  
STANTON & HUFFMAN, LLP  
516 5th Street, PO Box 1820  
Rapid City, SD 57709-1820  
(605) 342-2814

### PERMANENT UTILITY EASEMENT

The Evangelical Lutheran Good Samaritan Society, a North Dakota 501(c)(3) nonprofit corporation, (hereinafter "Grantor"), for ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey to the City of Rapid City, a municipal corporation and its authorized agents, whose address is 300 Sixth Street, Rapid City, South Dakota 57701 (the "City") a permanent utility easement, subject to the conditions hereinafter set forth as shown on the attached Exhibits 1-7 prepared by the Grantor located on the following described real property:

NE ¼ and the SE ¼ all located in Section 29, Township 2 North, Range 7 East, BHM, Rapid City, Pennington County, South Dakota.

Such easement shall include the right to enter upon the easement property to construct, install, operate, inspect, maintain and repair public roads and public utilities and related appurtenant facilities upon said property. Grantor agrees that the subject of this easement shall be kept free of all obstacles including fences, shrubs, walls or other items which obstruct the visibility or usefulness of the easement and Grantee(s) shall be responsible for surface restoration on and over all disturbed areas and must return the area disturbed to as good a condition as prior to the commencement of their work.

Grantor additionally grants to Black Hills Power, Inc., its successors and assigns, a perpetual right-of-way and easement to construct, operate and maintain, repair, alter, inspect, remove, upgrade, enhance and replace an electrical power system consisting of buried cables or wires, surface terminals, surface markers, transformer pads or vaults, and an electrical power line with poles, wires and associated equipment, and all necessary attachments and appurtenances, with the right of ingress and egress therefore. Additionally, this grant shall go to Montana-Dakota Utilities Company, Midcontinent Communications, Knology of the Black Hills, LLC and such other private utility as the Grantor may designate in writing, the right to use

any pole or trench placed pursuant to the provisions hereof upon, over and across the real property described above. This grant includes the right to cut, trim or remove from the designated right-of-ways any brush, trees, stumps or roots where necessary to secure a clearance of at least 10 feet on each side of the outside conductors. The center line of the power line as constructed by Black Hills Power is the center line of the easement and, in addition to other electric facilities, may lie outside of the platted utility easement to comply with electric code and requirements. No utility can be closer than 5 feet from the water and sewer lines. This grant of right-of-way shall go to such other places as the owner of the property may direct for the purposes of connecting service lines to individual units, such as service wires to meter locations.

All providers are responsible for surface restoration on and over all disturbed areas and must return the area disturbed to as good a condition as prior to the commencement of their work.

Grantees acknowledge that since the Grantor is using the entirety of its property for a retirement village, that in addition to the streets dedicated to the public, there are three cul-de-sacs which are private road and the Grantor acknowledges that the maintenance of which are the Grantor's responsibility however the Grantee(s) shall be responsible for all utilities located under and/or alongside said public streets and private cul-de-sacs once completed by the Grantor.

1. **Use and Indemnification.** This easement shall include the right to construct, operate, maintain, inspect and repair utilities, water and sewer, and telecommunication lines on, over, across and underneath the easement area as described and depicted on the attached exhibits at the sole expense of the providers of such services, and to enter upon the real property above described for the limited purpose of repairing, maintaining or relocating the utilities and other services located on the described exhibits, and to restore the surface affected to the condition that existed prior to entry and all users other than the City of Rapid City shall indemnify and hold Declarant and its assigns harmless from all liability, claims or loss arising from such construction, use or maintenance, except as may be due to the negligent act of Declarant or its assigns.

2. **Relocation Costs.** In the event that at any time in the future the utility lines located on, over, across or underneath the easement area need to be relocated, the rules and regulations of Black Hills Power, as set forth in its tariffs on file with the Public Utilities Commission, shall be followed.

3. **Easement to Run With Land.** The easement described herein is to and shall run with the land as described above, and shall be for the benefit and use of public authorities and providers and carriers of utilities, sewer, water, telecommunication services electric and gas services and their assigns. Such easement shall include the right to enter upon the easement property to construct, install, operate, inspect, maintain, and repair utilities and related appurtenant facilities upon said property. The undersigned Grantor shall have the right to landscape and use the easement surface

area for parking and streets including the placement of asphalt, curb and gutter, and for any other use or purpose not inconsistent with Grantee(s) use and enjoyment of the easement as an underground easement area and not in violation of current utility code, provided that Grantor shall not construct any building or permanent structure on, over or beneath the easement property. Grantee(s) shall repair and restore to its former condition, at Grantee(s) expense, any surface area including landscaping, asphalt, curb or gutter, disturbed or damaged by Grantee(s) or its/their agents or contractors in the course of entering upon the easement property to construct, install, operate, inspect, maintain or repair the utilities and related appurtenant facilities upon the easement property

Dated this 28<sup>th</sup> day of September 2010.

Grantor:

The Evangelical Lutheran Good Samaritan Society

BY: *Cynthia L Moegenburg*

Name: Cindy Moegenburg  
Title: Executive Vice President & Chief Operating Officer

ATTEST:

BY: *Sylvia Gause*

Name: Sylvia Gause  
Title: Secretary

CITY OF RAPID CITY

\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

\_\_\_\_\_  
Pauline Sumption, Finance Officer

(SEAL)



(SEAL)

STATE OF SOUTH DAKOTA )  
 ) : SS CORPORATE ACKNOWLEDGEMENT  
COUNTY OF MINNEHAHA )

On this 28th day of September, 2010, before me, the undersigned officer, personally appeared Cindy Moegenburg and Sylvia Gause, who acknowledged themselves to be the Executive Vice President & Chief Operating Officer, and Secretary, respectively, of The Evangelical Lutheran Good Samaritan Society, a North Dakota 501(c)(3) corporation, and that being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as the Executive Vice President & Chief Operating Officer, and Secretary.

In witness whereof, I hereunto set my hand and official seal.



Eloye A. Farrell  
Notary Public  
My commission expires 9-5-15

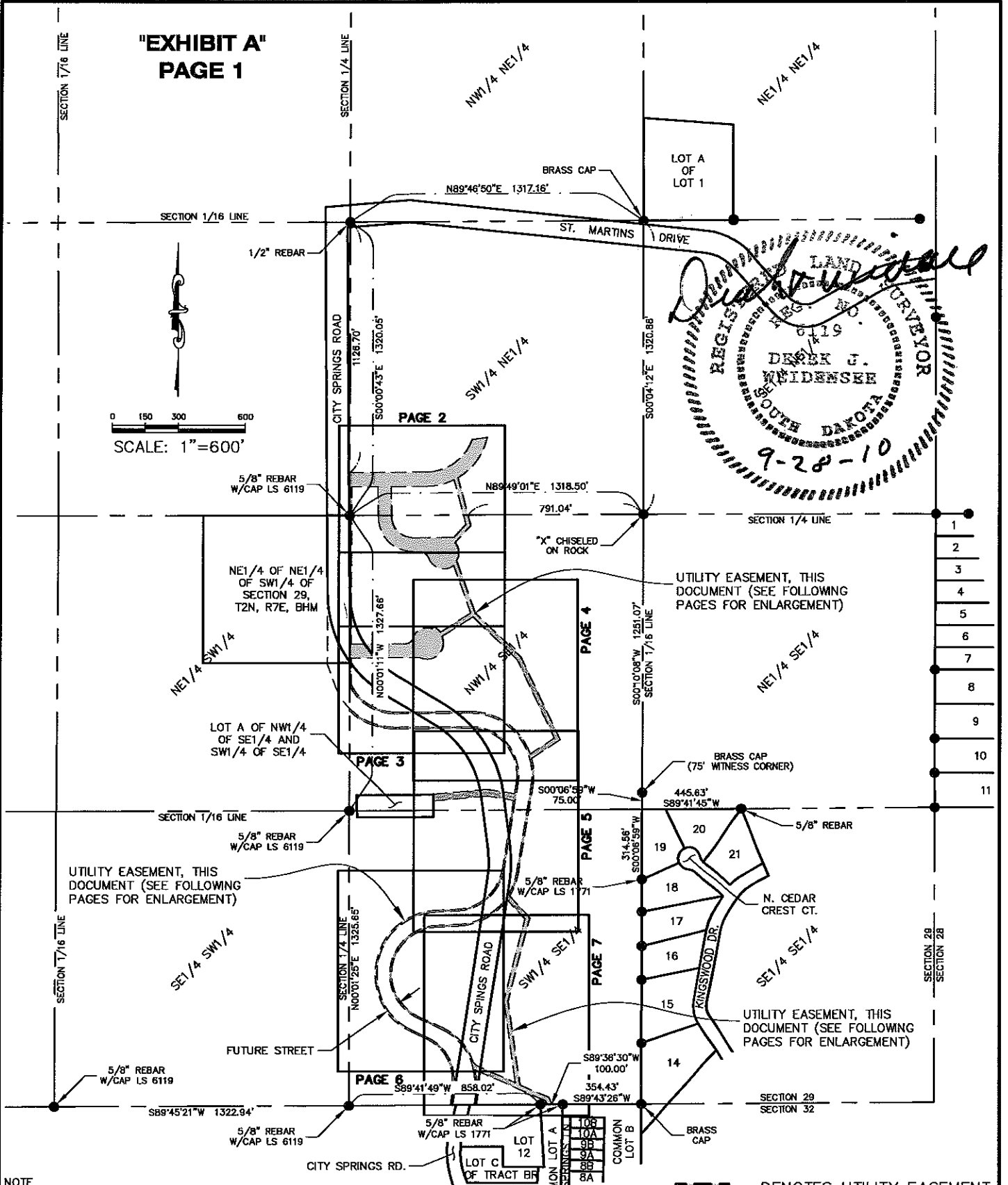
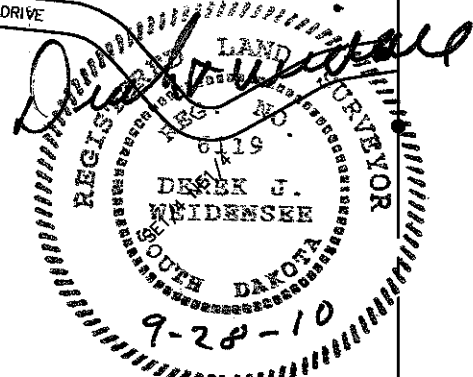
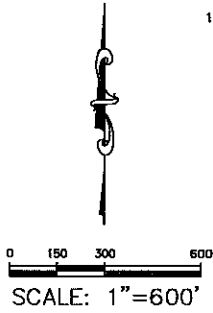
STATE OF SOUTH DAKOTA )  
 ) : SS  
COUNTY OF PENNINGTON )

On this \_\_\_\_\_ 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 instrument for the purposes therein contained by signing the name of the corporation by themselves as the Mayor and Finance Officer.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota  
My commission expires \_\_\_\_\_

"EXHIBIT A"  
PAGE 1



NOTE  
CITY SPRINGS ROAD IS ALSO KNOWN AS  
ACADEMY ROAD AND ST. MARTINS DRIVE



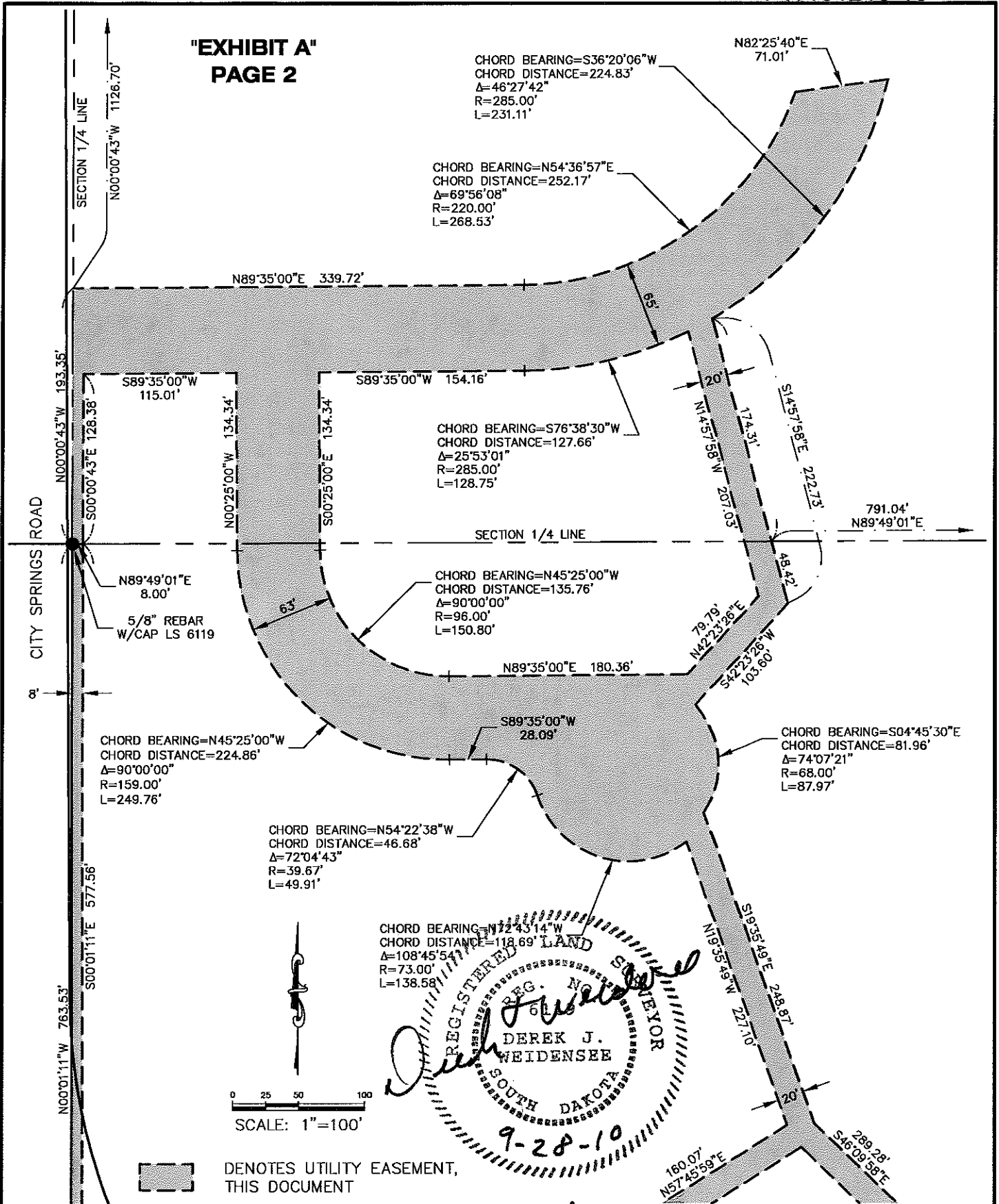
DENOTES UTILITY EASEMENT,  
THIS DOCUMENT

**UTILITY EASEMENTS**  
LOCATED IN NE1/4 AND IN SE1/4 SECTION 29, T2N, R7E, BHM  
RAPID CITY, SOUTH DAKOTA

Surveyed By: DW/MM  
Date: APRIL 2008  
Drawn By: KJS  
Checked By: DW  
Location:  
SECTION 29  
T2N, R7E, BHM

**F M G, Inc.**  
3700 Sturgis Road  
Rapid City, SD 57702-0317  
(605) 342-4105 FAX (605) 342-4222  
www.fmgengineering.com

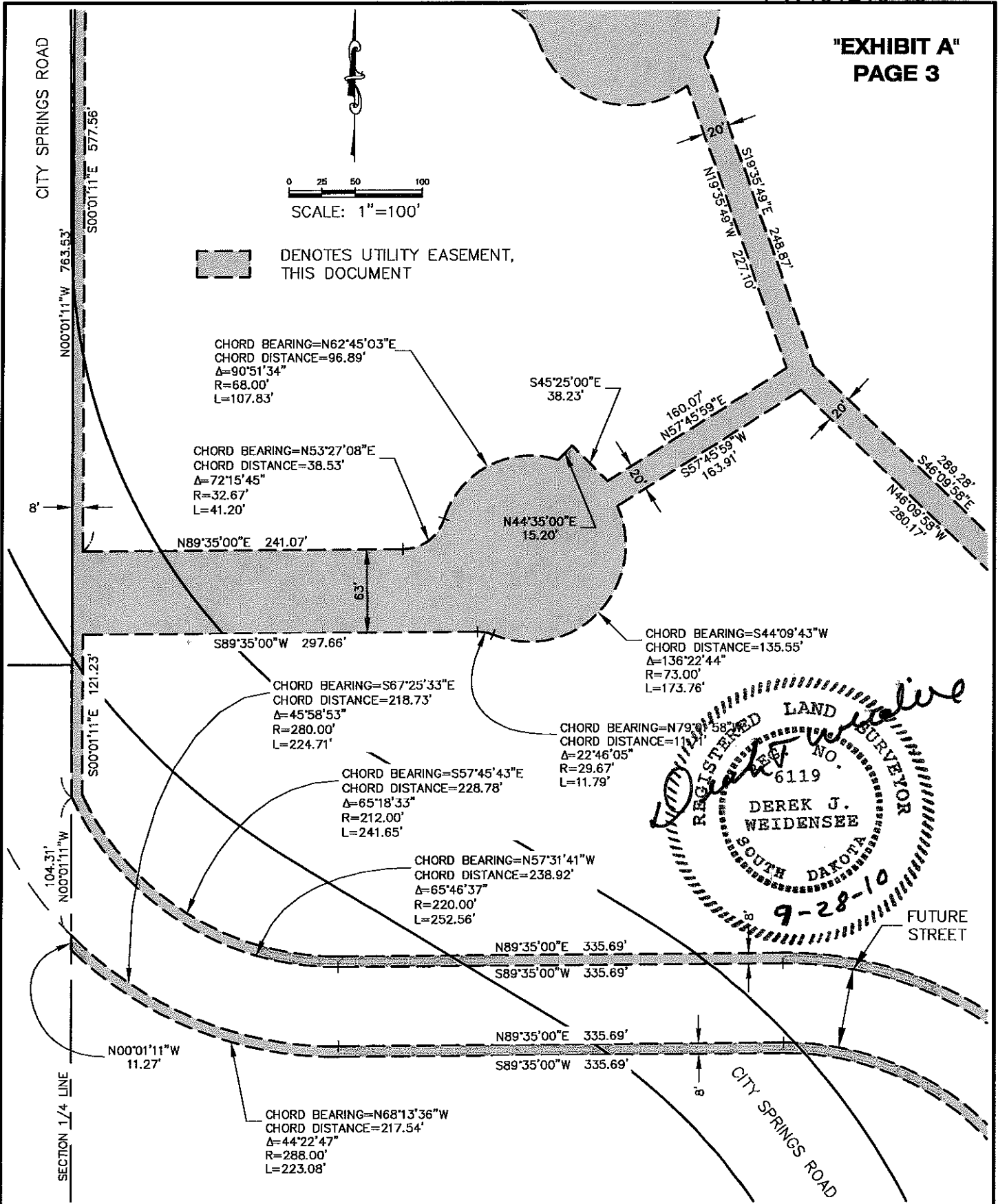
"EXHIBIT A"  
PAGE 2



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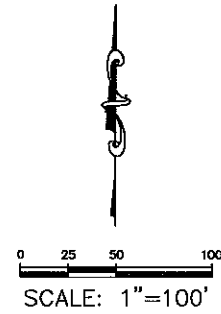


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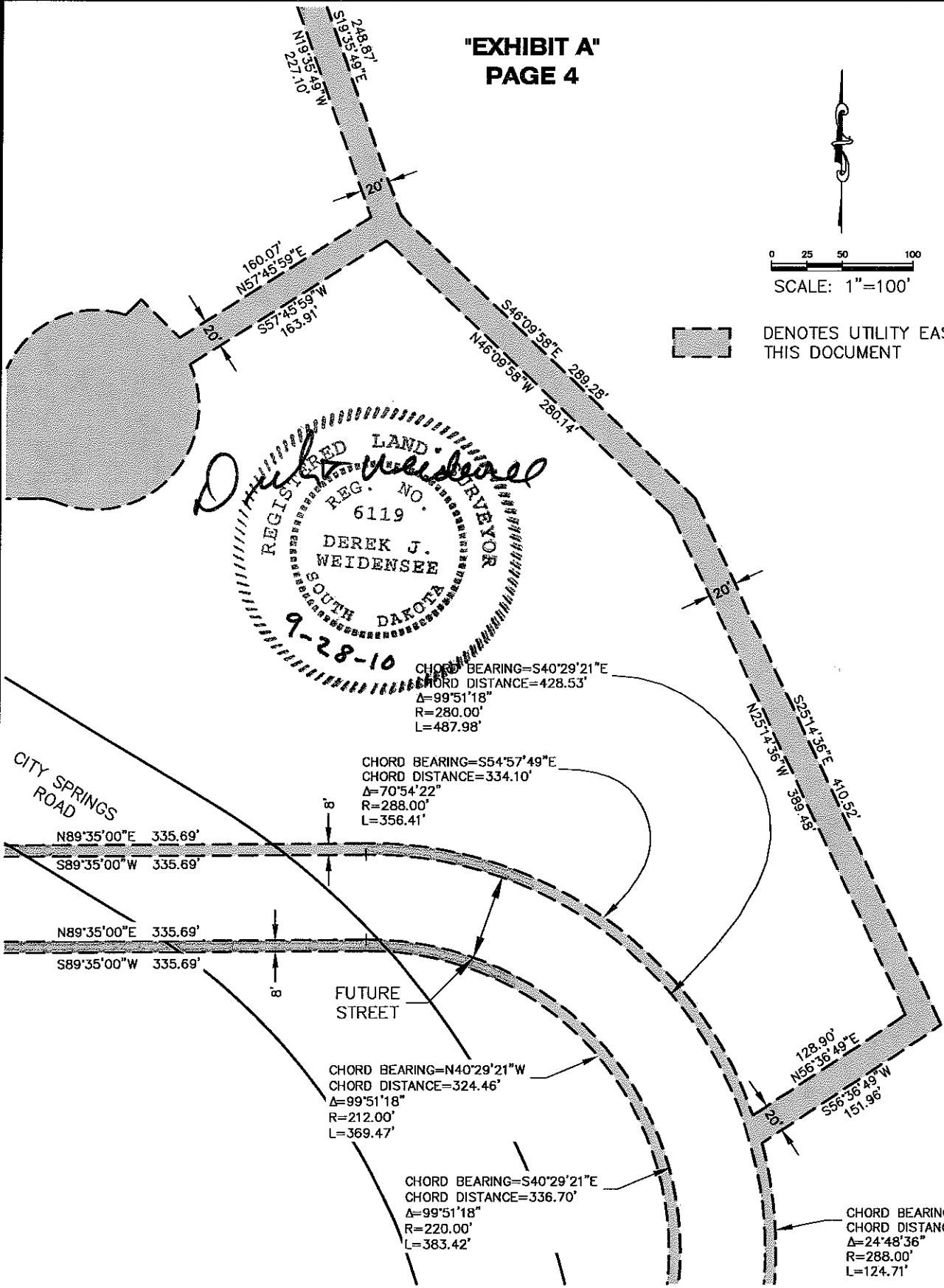
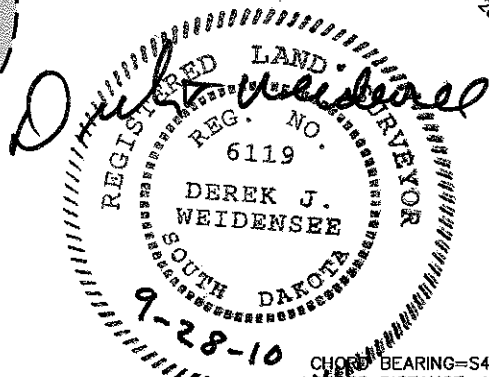
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**"EXHIBIT A"**  
**PAGE 4**



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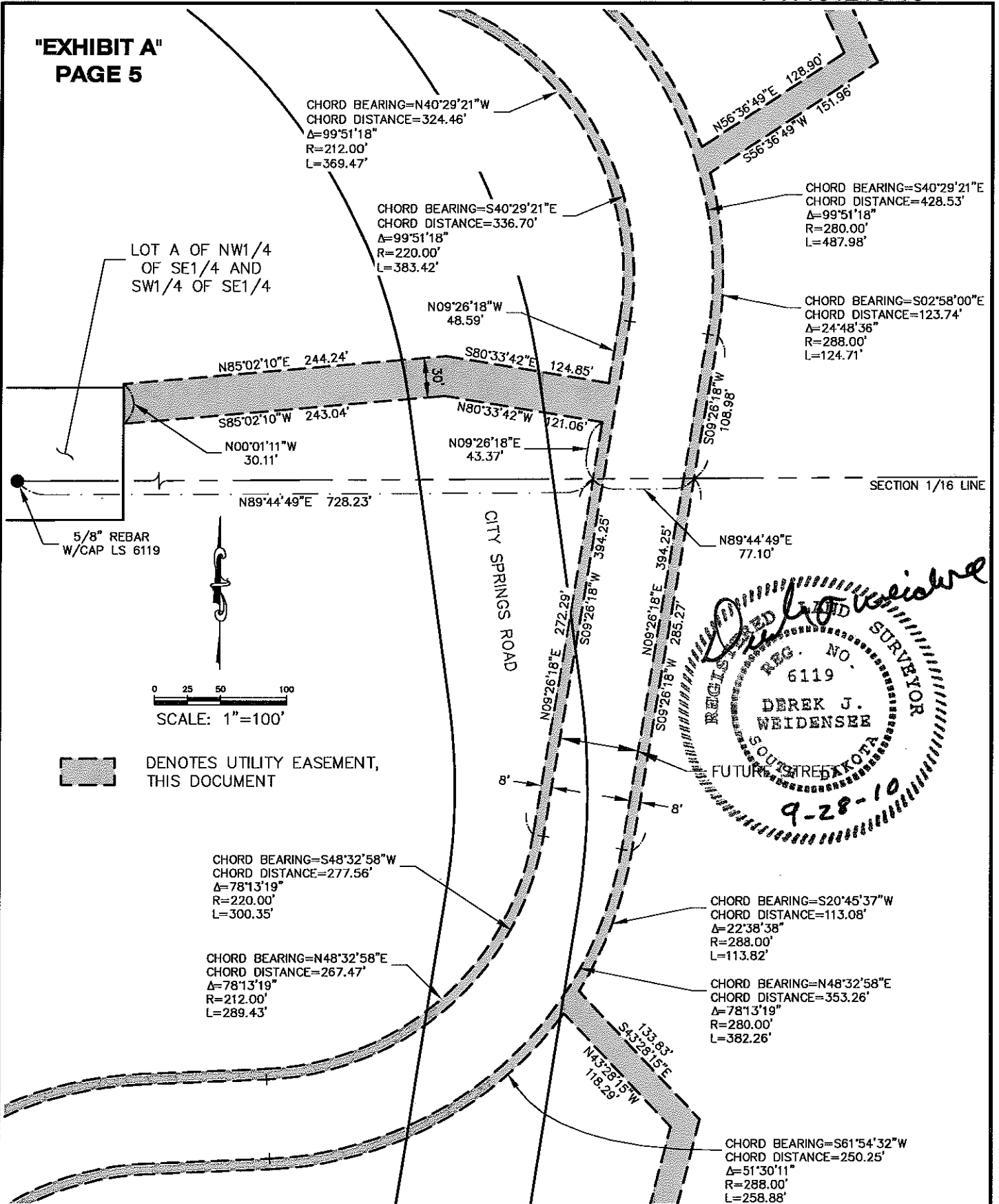
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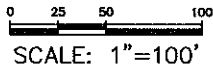
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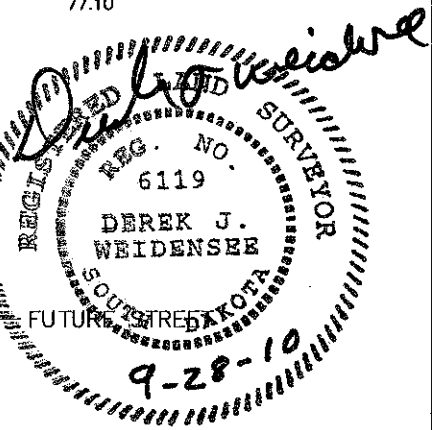
**"EXHIBIT A"**  
**PAGE 5**



5/8" REBAR  
W/CAP LS 6119



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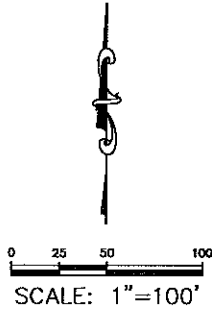


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Checked By: DW  
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NW1/4 SE1/4 SEC. 29  
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**"EXHIBIT A"**  
**PAGE 6**



DENOTES UTILITY EASEMENT,  
THIS DOCUMENT

SECTION 1/4 LINE

CHORD BEARING=N11°04'55"E  
CHORD DISTANCE=427.98'  
Δ=153°09'24"  
R=220.00'  
L=588.08'

CHORD BEARING=S48°32'58"W  
CHORD DISTANCE=277.56'  
Δ=78°13'19"  
R=220.00'  
L=300.35'

CHORD BEARING=N48°32'58"E  
CHORD DISTANCE=267.47'  
Δ=78°13'19"  
R=212.00'  
L=289.43'

93.84'  
N87°39'37"E  
S87°39'37"W  
93.84'

93.84'  
N87°39'37"E  
S87°39'37"W  
93.84'

CHORD BEARING=S61°54'32"W  
CHORD DISTANCE=250.25'  
Δ=51°30'11"  
R=288.00'  
L=258.88'

CHORD BEARING=N48°32'58"E  
CHORD DISTANCE=353.26'  
Δ=78°13'19"  
R=280.00'  
L=382.26'

CHORD BEARING=S11°04'55"W  
CHORD DISTANCE=412.42'  
Δ=153°09'24"  
R=212.00'  
L=566.69'

CHORD BEARING=N11°04'55"E  
CHORD DISTANCE=544.71'  
Δ=153°09'24"  
R=280.00'  
L=748.46'

FUTURE STREET

CHORD BEARING=N11°04'55"E  
CHORD DISTANCE=560.27'  
Δ=153°09'24"  
R=288.00'  
L=769.85'

S65°29'46"E 110.00'  
N65°29'46"W 110.00'

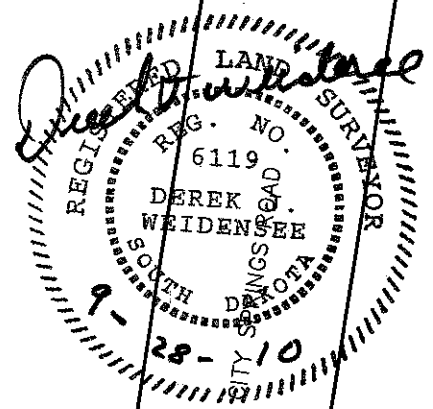
68.50'  
S65°29'46"E  
N65°29'46"W  
68.50'

CHORD BEARING=S37°07'00"E  
CHORD DISTANCE=242.41'  
Δ=56°45'32"  
R=255.00'  
L=252.61'

CHORD BEARING=S32°53'58"E  
CHORD DISTANCE=223.03'  
Δ=65°11'37"  
R=207.00'  
L=235.53'

CHORD BEARING=S41°38'14"E  
CHORD DISTANCE=212.76'  
Δ=47°43'06"  
R=263.00'  
L=219.04'

CHORD BEARING=N32°53'58"W  
CHORD DISTANCE=214.41'  
Δ=65°11'37"  
R=199.00'  
L=226.43'



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