

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND FOUNDER'S PARK, LLC. REGARDING THE VACATION OF WEST STREET.

This Agreement is made and entered into between the City of Rapid City, a municipal corporation, located at 300 Sixth Street, Rapid City, SD, herein after referred to as the "City" and Founder's Park, LLC., a South Dakota corporation, located at 325 Mt. Rushmore Rd., Custer, SD, herein after referred to as the "Developer."

WHEREAS, the Developer is the owner of property located at 1350 West Chicago Street within the City of Rapid City; and

WHEREAS, the Developer has submitted a layout plat and master plan for the development of the above described property; and

WHEREAS, the Developer has requested that the City vacate West Street in conjunction with the development of its property; and

WHEREAS, West Street must be vacated in order for the setbacks shown on the layout plat and master plan to be in compliance with the City's ordinances; and

WHEREAS, the layout plat and master plan identify a new north-south commercial street to be built by the Developer on its property; and

WHEREAS, the City's staff has reviewed the proposed north-south commercial street through the Developer's property and determined that it provides roadway and utility continuity to adjacent properties; and

WHEREAS, the Developer needs to begin the removal of West Street once the right of way has been vacated in order to proceed with its proposed development plan; and

WHEREAS, the City supports the Developer's plan to revitalize an economically depressed and blighted area of the City; and

WHEREAS, the City finds that it is in the City's long term best interests to allow the immediate vacation and removal of West Street in order to facilitate the Developer's proposed development plan; and

WHEREAS, staff has requested that the Developer enter into an agreement with the City concerning the proposed work that the Developer intends to do as a stipulation for approval of the Developer's request to immediately vacate and remove West Street.

NOW THEREFORE, the parties agree as follows:

1. The City agrees to vacate West Street adjacent to the Developer's property legally described as:

West ½ of NW ¼ of the SE ¼ , except Block 1 of North Riverside Addition, located in Section 35, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota.

and generally located at 1350 W. Chicago Street within the City of Rapid City, as shown on Exhibit "A," which has been attached hereto and incorporated herein by this reference.

2. Once West Street has been vacated, the City further grants the Developer permission to enter onto the portions of the greenway tract owned by the City that are adjacent to the Developer's above described property for the following purposes:
 - a. removal of West Street including curb and gutter;
 - b. constructing improvements to West Chicago Street;
 - c. constructing a drainage channel in the former West Street right of way;
 - d. installing and/or burying private utilities;
 - e. installing and or burying of water and sewer;
 - f. grading;
 - g. relocating the fence along the golf course;
 - h. reseeding/landscaping work;
 - i. constructing/installing irrigation;
 - j. any other work that is necessary to complete the work authorized in sub-paragraphs a through i.

3. The City agrees to grant a 50 foot wide utility easement for any private utilities within the same area as the current West Street right of way as shown on the Developer's layout plat.

4. The City agrees to authorize the Developer's engineer to prepare an H-Lot that encompasses the improvements to W. Chicago Street and further authorizes the Mayor and Finance Officer to sign the H-Lot document once it is completed.

5. The Developer agrees that any work done in the greenway tracts owned by the City will not interfere with the use, operation or maintenance of the neighboring Executive Golf Course. The Developer agrees to coordinate its activities with the golf course superintendent prior to entering onto the golf course property to do any work. For purposes of this agreement any work that is done beyond the current boundaries of the cable fence will be considered to be on golf course property.

6. Once West Street has been removed and the utility and grading work are completed, the Developer agrees to reseed the area and install irrigation. The irrigation system constructed by the Developer will be connected to the irrigation system on the golf course. The installation of the irrigation system shall be coordinated with the golf course superintendent. The Developer will pay to install the irrigation to the City's satisfaction. After the irrigation system has been installed and accepted, the City will assume all responsibility for its maintenance and replacement. Any additional

landscaping that the Developer wishes to install on City property must be approved by the City's Parks Director or their designee.

7. It is contemplated by the parties that the reseeded and irrigation required in Paragraph 4 will be completed no later than May 1, 2007. The Developer may, by showing good cause why the improvements will not be finished by this date, request that the City Council allow additional time to complete these improvements. If no extension is granted and the improvements are not completed by the above date the Developer will be responsible to pay the City for all reasonable attorney's fees incurred in securing compliance with this requirement.

8. The Developer agrees that if any work that it does impedes the City's use of the current maintenance approach on the north side of W. Chicago Street it will provide or help facilitate an alternative means of access to the golf course. The maintenance approach must be repaired or replaced by the Developer if damaged as part of this project.

9. The Developer agrees to maintain passable access across its property for the City's Fire Dept.

10. Prior to submittal of a final plat the developer agrees to install a temporary asphalt connection twenty feet wide between the proposed north-south commercial street and the existing Philadelphia Street. The Developer will be responsible for maintaining this temporary connection in good condition until such time as a permanent connection is made between the proposed north-south commercial street and Philadelphia Street or an alternative east-west connector street.

11. The Developer agrees to maintain passable access across its property to the properties legally described as:

Lot A of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the Rapid City Founders Site; and
 NW $\frac{1}{4}$, Less the north 400 feet of the west 400 feet; NW $\frac{1}{4}$ of the NE $\frac{1}{4}$; NW $\frac{1}{4}$
 SW $\frac{1}{4}$, Less Tract A; and NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 35, T2N, R7E, BHM,
 Rapid City, Pennington County, South Dakota.

for the purposes of allowing the City to maintain park land, structures and communications equipment.

12. This document represents the entire agreement of the parties. No other writing is a part of this agreement. All other prior representations, writings, oral statements or negotiations have been merged into this document and are either included herein or intentionally excluded.

13. The parties rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute

concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

DATED this _____ day of _____, 2006.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

FOUNDER'S PARK, LLC.

By: _____
Its: _____

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

On this _____ day of _____, 2006, 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 ____ day of _____, 2006, before me, the undersigned
officer, personally appeared _____, who acknowledged themselves to
be the _____ of Founder's Park, LLC, and that as such, being duly
authorized so to do, executed the foregoing instrument for the purposes herein contained.

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

[SEAL]

Notary Public, State of South Dakota
My Commission Expires:_____

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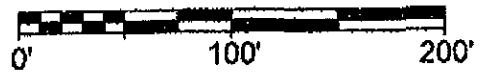
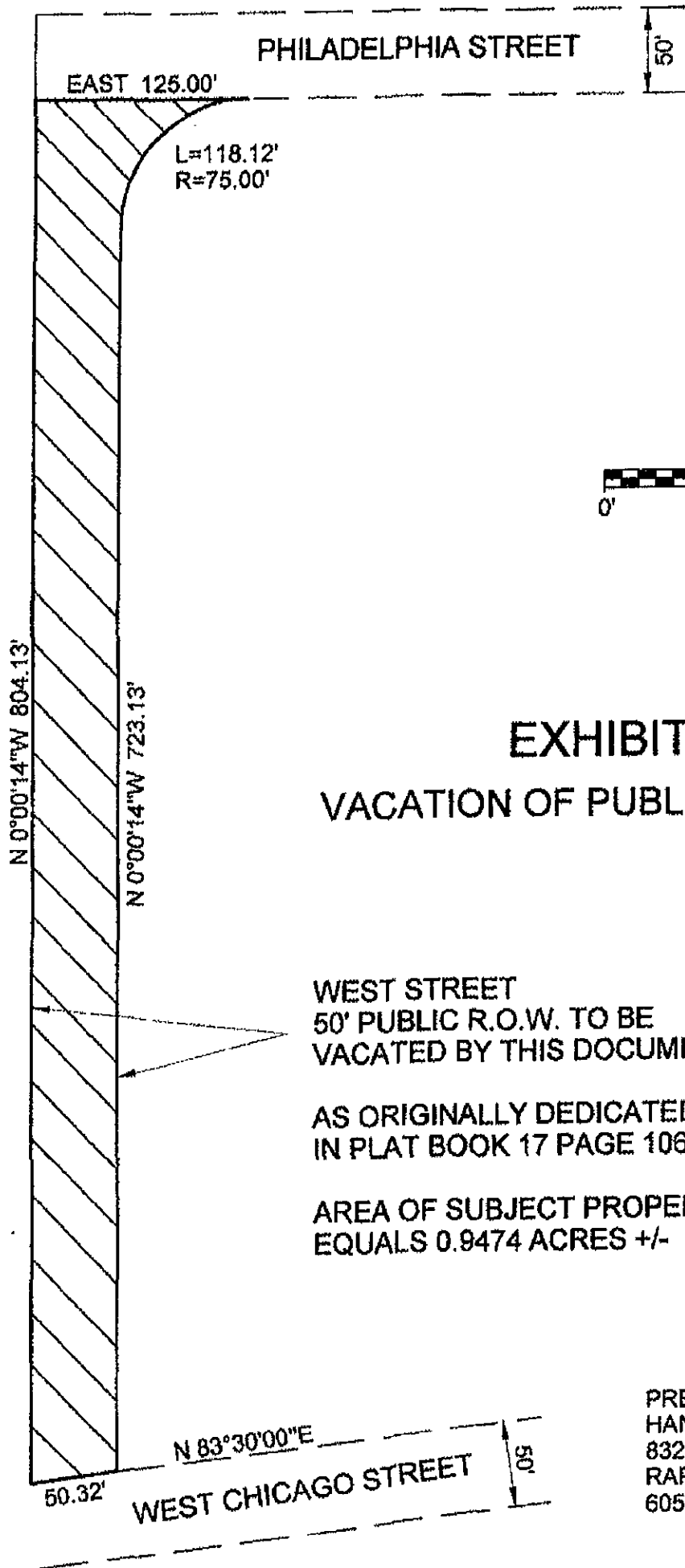


EXHIBIT A

VACATION OF PUBLIC RIGHT OF WAY

PREPARED BY:
HANSON SURVEYING & MAPPING
832 HORACE MANN DRIVE
RAPID CITY, SD 57701
605-388-9652