



July 16, 2010

VIA HAND DELIVERY

Marcia Eklins
Growth Management
300 Sixth Street
Rapid City, South Dakota 57701

RE: Waiver Assessment

Marcia,

Pursuant to our conversation on June 9, 2010, I would formally request the City to remove the proposed Wal-Mart tract from the property burdened by the Agreement waiving the Right to Protest attached hereto. Please let me know the process needed to revise the existing obligation.

Attached as exhibits are the following:

1. Existing ground encumbered by Agreement
2. Portion to be removed from Agreement

Kindest Regards,
THF Realty, Inc.



Robert Green

RG/slg

Enclosures

Development | Leasing | Management

2127 Interstate Business Center Dr.
Suite 250
Rapid City, SD 57701
314-477-0300 phone
314-477-0333 fax
www.thfrealty.com



17

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

JA
11-15-05

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RCS-22401.8 Page: 081 of 085
11/18/2004 09:15:28
Pennington County, South Dakota
Darre A. Meyer, Clerk

AGREEMENT WAIVING RIGHT TO PROTEST
(SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this 21st day of November, 2005, by and for STONERIDGE, LLC, and CATRON BOULEVARD INVESTORS, LLC, hereinafter called "Developers," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developers have submitted a proposed subdivision plat; and

WHEREAS it is the intended purpose of the Developers to obtain final approval for this subdivision plat; and

WHEREAS the City of Rapid City's subdivision regulations require installation of curb, gutter, sidewalk, street light conduit, water, sewer, and pavement which in this instance would require the Developers to install curb, gutter, sidewalk, street light conduit, water, sewer, and additional pavement width along Catron Boulevard as it abuts the unplatted portion of the SE1/4 NW1/4 and the SW1/4 NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS it is the intent and purpose of both the Developers and the City to enter into an agreement whereby the Developers will consent to a future assessed project for the installation of curb, gutter, sidewalk, street light conduit, water, sewer, and additional pavement width along Catron Boulevard as it abuts the unplatted portion of the SE1/4 NW1/4 and the SW1/4 NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, in exchange for the City not requiring immediate installation of the improvements as required by Rapid City Subdivision Regulations;

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

1. This agreement pertains to, and includes those properties which are designated and identified as follows:

The unplatted portion of the SE1/4 NW1/4 and the SW1/4 NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the installation of curb, gutter, sidewalk, street light conduit, water, sewer, and additional pavement width along Catron Boulevard as it abuts the unplatted portion of the SE1/4 NW1/4 and the SW1/4 NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

3. The Developers acknowledge the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Developers agree that if at any time in the future the City determines it is necessary or desirable to install curb, gutter, sidewalk, street light conduit, water, sewer, and additional pavement width along Catron Boulevard as it abuts the unplatted portion of the SE1/4 NW1/4 and the SW1/4 NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, through an assessed project, Developers or their heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate installation of curb, gutter, sidewalk, street light conduit, water, sewer, and additional pavement width along Catron Boulevard as it abuts the unplatted portion of the SE1/4 NW1/4 and the SW1/4 NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota. It is understood by the Developers that the City of Rapid City's primary consideration for the granting of the approval for a subdivision plat on the herein described property and forbearance from requiring Developers to immediately install curb, gutter, sidewalk, street light conduit, water, sewer, and additional pavement width along Catron Boulevard as it abuts the unplatted portion of the SE1/4 NW1/4 and the SW1/4 NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, is the Developers' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project.

wgila

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of curb, gutter, sidewalk, street light conduit, water, sewer, and additional pavement width along Catron Boulevard as it abuts the unplatted portion of the SE1/4 NW1/4 and the SW1/4 NE1/4, Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, which is required in the City subdivision regulations will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. Should the weather prevent immediate installation of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Developers.

*Installation
required
immediately*

5. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Developers, 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 the provisions of South Dakota statutes.

6. 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.


7. If any section(s), or provision 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.

8. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

9. If the Developer 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.

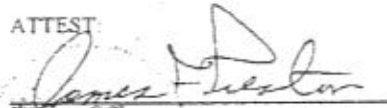
DATED this 21st day of NOVEMBER, 2005.

CITY OF RAPID CITY



Jim Shaw, Mayor

ATTEST:



James F. Hunter
Finance Officer
(SEAL)

STONERIDGE, LLC

By: 

Joseph B. Hall, Managing Partner

CATRON BOULEVARD INVESTORS, LLC



Joseph B. Hall, Managing Partner

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11/28/2005 80:11a 23.99
Pennington County, South Dakota
George A. Meyer, Notary Public

State of South Dakota)
) ss.
County of Pennington)

On this the 28th day of November, 2005, 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 Agreement Consenting to Assessed Project 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.

George A. Meyer
Notary Public, South Dakota

My Commission Expires: 7-15-2006

(SEAL)

State of South Dakota)
) ss.
County of Pennington)

On this the 21 day of November, 2005, before me, the undersigned officer personally appeared Patrick B. Hall, who acknowledged himself to be the Managing Partner of STONERIDGE, LLC, and that he, as such Managing Partner, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of STONERIDGE, LLC by himself as Managing Partner

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

Virginia Purcell
Notary Public, South Dakota

My Commission Expires: July 27th, 2011

(SEAL)



State of South Dakota)
)
County of Pennington)

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1/30/2005 00:11:24 24.96
Pennington County, South Dakota
Deanna J. Purcell Notary Seal



On this the 21 day of November, 2005, before me, the undersigned officer personally appeared Patrick F. Hill, who acknowledged himself to be the member of CATRON BOULEVARD INVESTORS, LLC, and that he, as such member, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of CATRON BOULEVARD INVESTORS, LLC by himself as member.

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

Virginia Purcell
Notary Public, South Dakota

My Commission Expires: July 27th 2011

(SEAL)



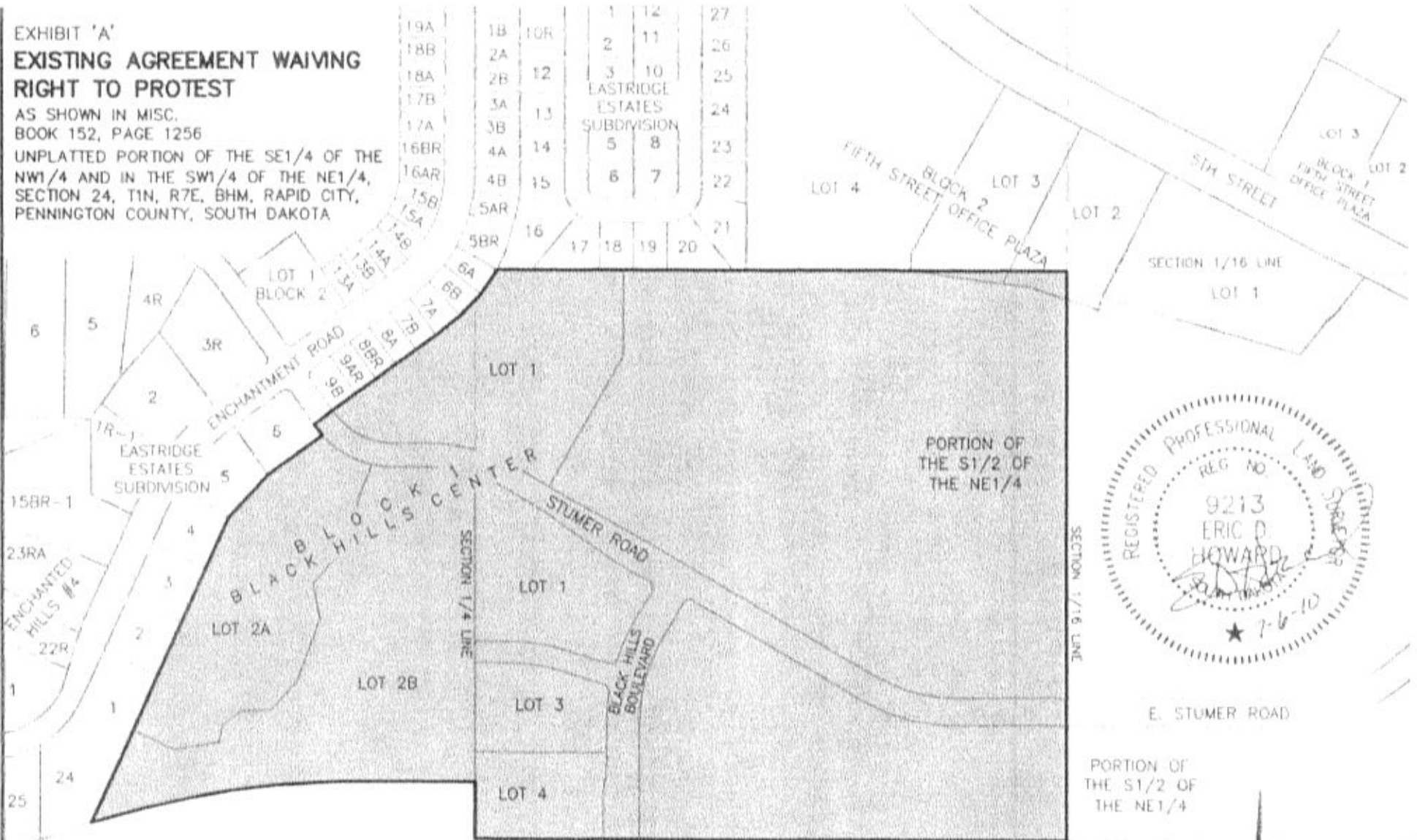
EXHIBIT 'A'

EXISTING AGREEMENT WAIVING
RIGHT TO PROTEST

AS SHOWN IN MISC.
BOOK 152, PAGE 1256

UNPLATTED PORTION OF THE SE1/4 OF THE
NW1/4 AND IN THE SW1/4 OF THE NE1/4,
SECTION 24, T1N, R7E, BHM, RAPID CITY,
PENNINGTON COUNTY, SOUTH DAKOTA

19A	1B	10R	1	12	27
18B	2A		2	11	26
18A	2B	12	3	10	25
17B	3A		EASTRIDGE ESTATES SUBDIVISION		
17A	3B	13	5	8	24
16BR	4A	14	6	7	23
16AR	4B	15			22
15BR	5AR	16	17	18	19
15A	5BR	17	18	19	20
14A		18	19	20	21
14B		19	20		
13A		20			
13B					



E. STUMER ROAD

PORTION OF
THE S1/2 OF
THE NE1/4

SECTION 1/4 LINE

E. CATRON
BOULEVARD

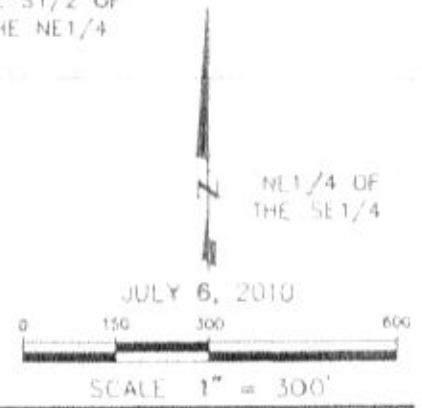
NW1/4 OF
THE SE1/4

NE1/4 OF
THE SE1/4



RENNER & ASSOCIATES, LLC.

616 SIXTH ST. • RAPID CITY, SD 57701
PHONE: 605/721-7310 • FAX: 605/721-7313
EMAIL: GARY@RENNERASSOC.COM

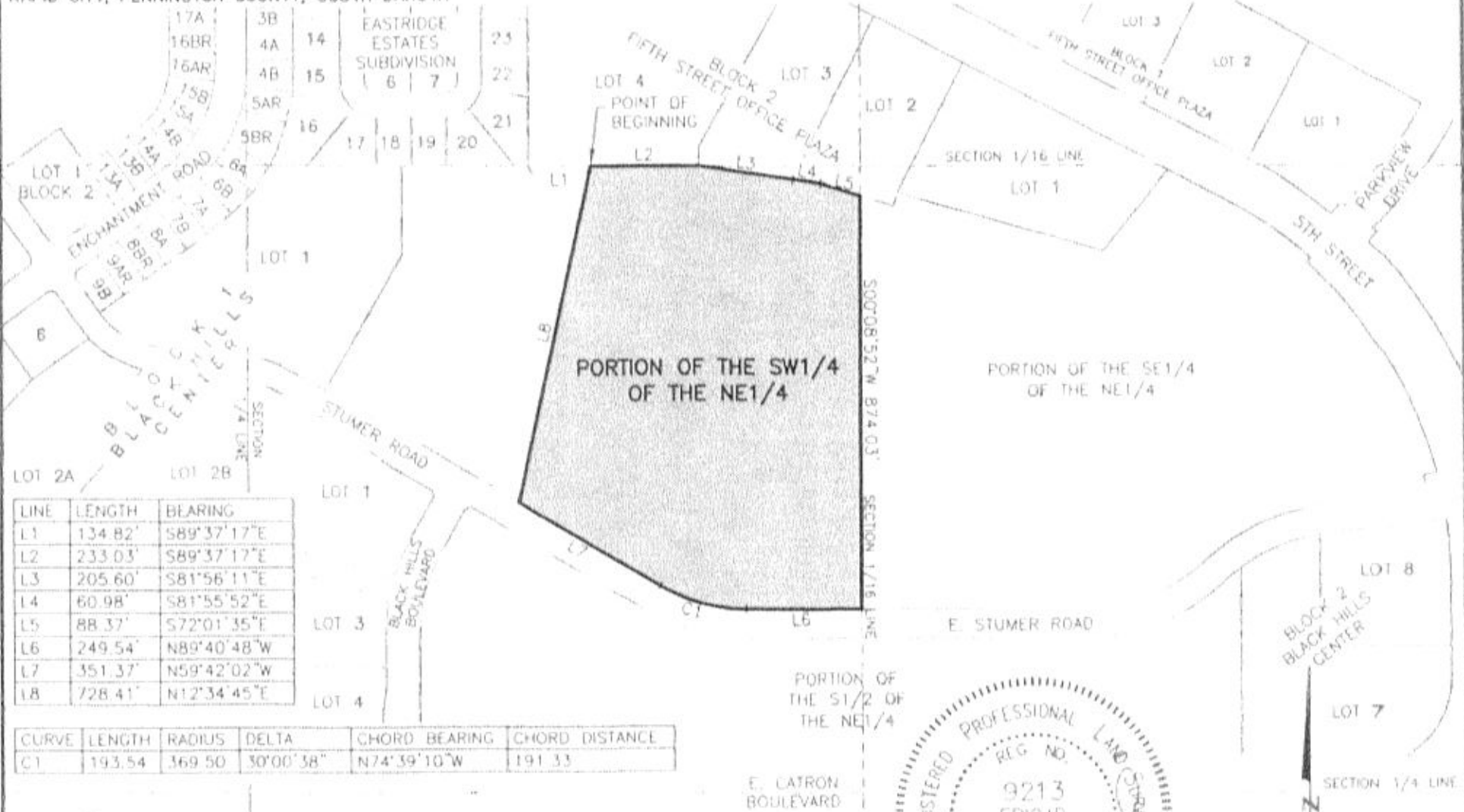


JULY 6, 2010

METES AND BOUNDS

PORTION TO BE REMOVED FROM AGREEMENT WAIVING RIGHT TO PROTEST

LOCATED IN THE SW1/4 OF THE NE1/4,
SECTION 24, T1N, R7E, BHM,
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA



PORTION OF THE SW1/4 OF THE NE1/4

PORTION OF THE SE1/4 OF THE NE1/4

LINE	LENGTH	BEARING
L1	134.82'	S89°37'17"E
L2	233.03'	S89°37'17"E
L3	205.60'	S81°56'11"E
L4	60.98'	S81°55'52"E
L5	88.37'	S72°01'35"E
L6	249.54'	N89°40'48"W
L7	351.37'	N59°42'02"W
L8	728.41'	N12°34'45"E

CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD DISTANCE
C1	193.54	369.50	30°00'38"	N74°39'10"W	191.33

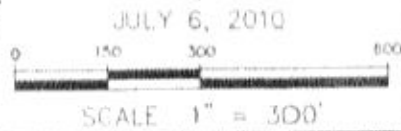


E. CATRON BOULEVARD



RENNER & ASSOCIATES, LLC.

616 SIXTH ST. * RAPID CITY, SD 57701
PHONE: 605-721-7310 * FAX: 605-721-7313
EMAIL: GARY@RENNERASSOC.COM



JULY 6, 2010

Metes and Bounds Description
Portion to be removed from Agreement Waiving Right to Protest.
A portion of the SW ¼ of the NE ¼,
Section 24, T1N, R7E, B1M,
Rapid City, Pennington County, South Dakota

More fully described as follows:

Commencing at southeasterly corner of Lot 21 of Block 4 Eastridge Estates Subdivision, common to the southwesterly corner of Lot 4 of Block 2 of Fifth Street Office Plaza, thence S89°37'17"E, along the southerly boundary of said Lot 4 of Block 2, a distance of 134.82 feet, to the point of beginning.

Thence first course: S89°37'17"E, along the southerly boundary of said Lot 4 of Block 2, a distance of 233.03 feet, to the southeasterly corner of said Lot 4 of Block 2, common to the southwesterly corner of Lot 3 of Block 2 of Fifth Street Office Plaza;

Thence second course: S81°56'11"E, along the southerly boundary of said Lot 3 of Block 2, a distance of 205.60 feet, to the southeasterly corner of said Lot 3 of Block 2, common to the southwesterly corner of Lot 2 of Block 2 of Fifth Street Office Plaza;

Thence third course: S81°55'52"E, along the southerly boundary of said Lot 2 of Block 2, a distance of 60.98 feet, to a corner on the southerly boundary of said Lot 2 of Block 2;

Thence fourth course: S72°01'35"E, along the southerly boundary of said Lot 2 of Block 2, a distance of 88.37 feet, to the section 1/16" line;

Thence fifth course: S00°08'52"W, along the said section 1/16" line, a distance of 874.03 feet, to a point on the northerly edge of Stumer Road right-of-way;

Thence sixth course: N89°40'48"W, along the northerly edge of said Stumer Road right-of-way, a distance of 249.54 feet;

Thence seventh course: curving to the right, along the northerly edge of said Stumer Road right-of-way, on a curve with a radius of 369.50 feet, a delta angle of 30°00'38", a length of 193.54 feet, a chord bearing of N74°39'10"W, and chord distance of 191.33 feet;

Thence eighth course: N59°42'02"W, along the northerly edge of said Stumer Road right-of-way, a distance of 351.37 feet;

Thence ninth course: N12°34'45"E, a distance of 728.41 feet, to the point of beginning.

Said Parcel contains 581,984 square feet or 13.361 acres more or less.

July 6, 2010
Renner & Associates
616 Sixth Street
Rapid City, SD 57701
(605) 721-7310