

PARKING LOT DEVELOPMENT AGREEMENT

This Agreement is made and executed this 6<sup>th</sup> day of July, 2004, by and between the City of Rapid City, a municipal corporation, herein after referred to as "City" and Dr. James Evans d/b/a Evans Orthodontics, herein after referred as "Evans." This Agreement is made subject to the following terms and conditions:

Section 1.

AGREEMENT:

The City expressly agrees to allow Evans to construct a parking lot and sidewalk on city owned property at the north end of Tract 11, Rapid City Greenway Tracts, as shown on Exhibit "A", the Preliminary Topographic Map and Parking Lot Design prepared by Fisk Land Surveying on May 27, 2004, which has been attached hereto and incorporated herein by this reference. Such permission shall be in no way construed as a relinquishment of any ownership or interest the City has in the property. Evans agrees that the parking lot and sidewalk will comply with applicable city ordinances and specifications. Evans also agrees that the parking lot and sidewalk will not exceed the dimensions shown on Exhibit "A" and that any substantial changes in size or configuration must be approved by a written amendment to this Agreement.

Section 2.

CONSIDERATION:

The City agrees that the mutual fulfillment of the terms and conditions set forth herein result in a direct benefit to the City, specifically an added public parking area at a municipal park. Evans agrees that in consideration for building and maintaining the

public parking lot, Evans derives a direct benefit in that Evans shall enjoy convenient, adjacent, additional parking spaces and better traffic control.

Section 3.

PUBLIC ACCESS:

The parking lot herein described shall be designated public parking and posted as such with a closing time of 10:00 o'clock p.m. and shall be subject to all applicable rules and regulations which apply to other public, municipal parking lots.

Section 4.

LANDSCAPING:

Evans agrees that he will meet all landscaping requirements associated with development of the parking lot in addition to any other landscaping requirements which may be required for the property he is developing adjacent to the parking lot.

Section 5.

OTHER IMPROVEMENTS:

Evans may add other public improvements which could consist of a sprinkler system, picnic shelter, or other park equipment to the surrounding park property of the described parking lot, subject to the approval of the Rapid City Parks Department.

Section 6.

MAINTENANCE:

Evans agrees to provide all maintenance to the improvements installed, for the duration of this agreement, which will consist of maintenance to the parking lot and sidewalk, including snow removal, vegetation care and control, striping, resurfacing, and all other normal and usual maintenance of the parking lot so as to conform with the

maintenance requirements of the City. If a sprinkler system is installed maintenance shall consist of necessary winterizing and repairs.

Section 7.

HOLD HARMLESS AND INDEMNIFY:

Evans agrees to hold the City harmless and indemnify it from any and all claims arising out of the negligent construction or maintenance of the parking lot and sidewalk. Evans further agrees to name the City of Rapid City as an additional insured on said policy insuring the parking lot. No less than a \$1,000,000 liability policy per incident shall be maintained, proof of which shall be forwarded to the City along with any cancellation notices by Evans' insurance carrier.

Section 8.

OWNERSHIP:

All future improvements to the property described on Exhibit "A" shall immediately become and remain the sole and exclusive property of the City upon execution of this Agreement.

Section 9.

COSTS:

Evans agrees that all costs associated with the construction and maintenance of said parking lot shall be his responsibility.

Section 10.

RIGHT TO ASSIGN

The parties agree that Evans has the right to assign his interest in this agreement subject to approval of the assignment by the City.

Section 11.

FUTURE USE, TERMINATION AND DEFAULT:

The initial duration of this agreement is ten (10) years. The City agrees that so long as Evans fulfills all terms, conditions, and obligations of this Agreement, the City shall in no way, for a period of ten (10) years, hinder the use by Evans of this particular parking lot, excepting the use of the general public which from time to time may occupy many or all spaces. The City reserves the right to terminate this Agreement at any time in the event Evans fails to fulfill all of the terms and conditions herein. Should the City desire to rescind this Agreement prior to the end of the term of the lease, the City shall pay a pro rated cost to Evans for the improvements made on this piece of property. If Evans is in compliance with the lease, the City agrees to automatic one-year renewal periods, under the same terms and conditions, unless the City or Evans gives a six-month written notice of intent to terminate this Agreement.

Section 12.

ENTIRE AGREEMENT:

This Agreement shall constitute the entire agreement between the parties hereto. All other agreements, promises, or understandings between the parties herein, written or otherwise, are void except as set forth in this Agreement. Any and all changes and understandings shall be subject to the written consent of the other party and made part of this Agreement.

Section 13.

AMENDMENT

This Agreement can only be amended by a written instrument approved by both parties.

CITY OF RAPID CITY



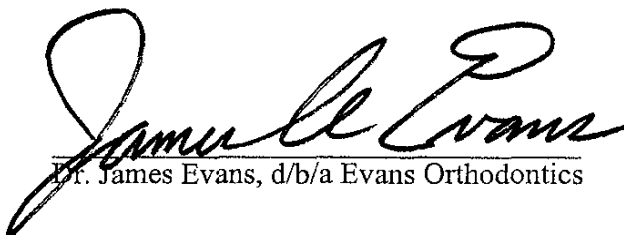
Jim Shaw, Mayor

ATTEST:



Finance Officer

(SEAL)



Dr. James Evans, d/b/a Evans Orthodontics

State of South Dakota )

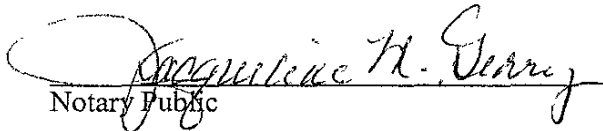
County of Pennington )

) ss.

ACKNOWLEDGMENT

On this the 12th day of July, 2004, before me, the undersigned officer, personally appeared Jim Shaw and James F. Hutto 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.

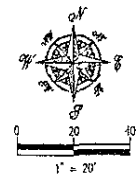
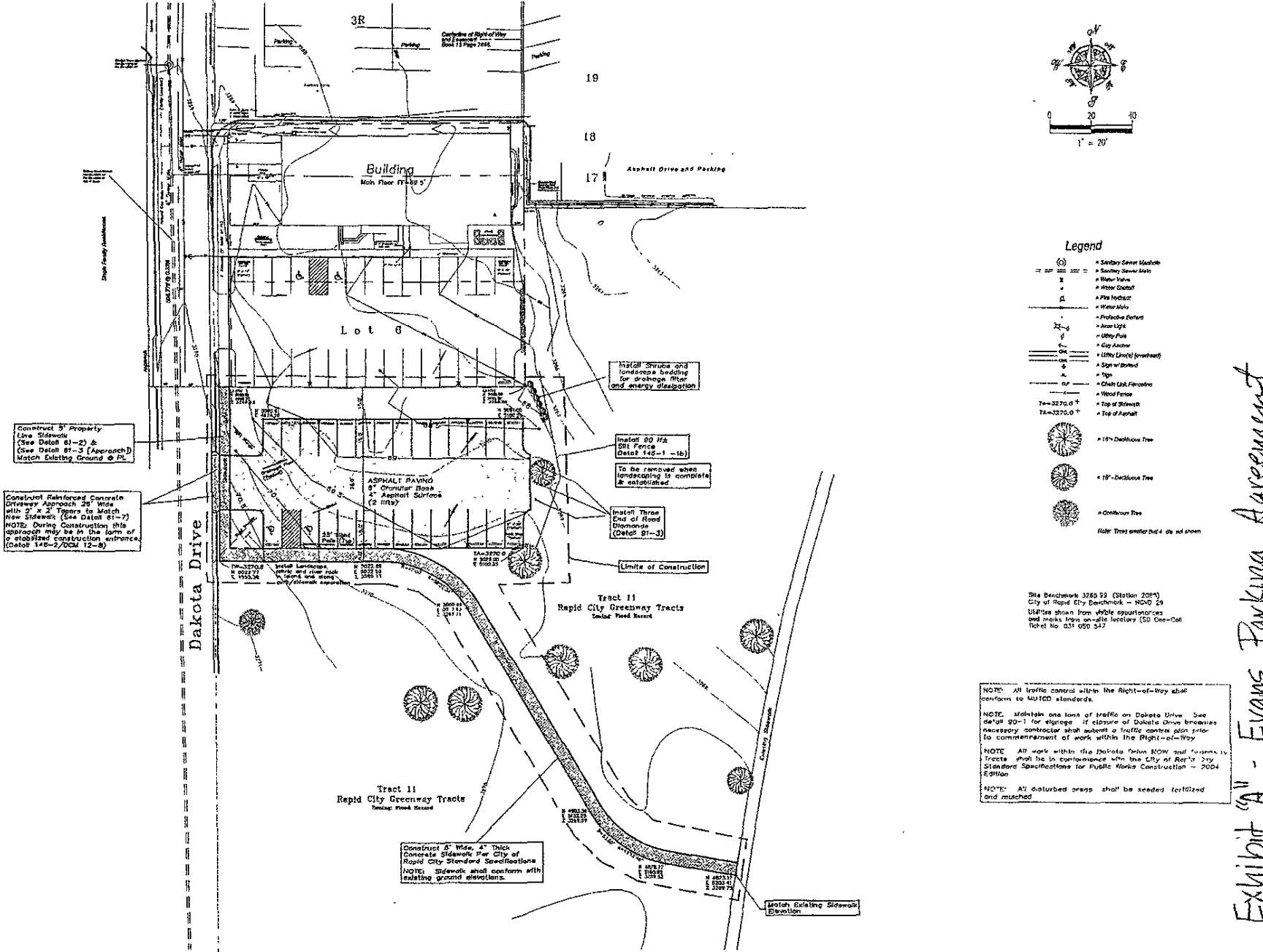


Notary Public

(SEAL)

My Commission Expires:

My Commission Expires ...  
July 15, 2008



- Legend**
- ⊕ Secondary Sewer Main
  - ⊕ Sanitary Sewer Main
  - ⊕ Water Main
  - ⊕ Water Main
  - ⊕ Fire Hydrant
  - ⊕ Water Main
  - ⊕ Protection Barrier
  - ⊕ Area Light
  - ⊕ 200V Pole
  - ⊕ Gas Valve
  - ⊕ Utility Line(s) (overhead)
  - ⊕ Sign or Marker
  - ⊕ Sign
  - ⊕ Chain Link Fencing
  - ⊕ Wood Fence
  - ⊕ Top of Sidewalk
  - ⊕ Top of Asphalt
  - ⊕ 18" Deciduous Tree
  - ⊕ 15" Deciduous Tree
  - ⊕ Coniferous Tree
- Note: Trees are to be planted on all streets.

Site Benchmark 3785.99 (Station 2001)  
 City of Rapid City Benchmark - NVD 28  
 Utilities shown from visible opportunities  
 and marks from on-site locators (SD One-Call  
 Trace No. 031 059 2-7)

**NOTE:** All traffic control within the Right-of-Way shall conform to MUTCD standards.

**NOTE:** Maintain one lane of traffic on Dakota Drive. See detail 90-1 for signage. If closure of Dakota Drive becomes necessary contractor shall submit a traffic control plan prior to commencement of work within the Right-of-Way.

**NOTE:** All work within the Dakota Drive ROW and adjacent to Tracts shall be in conformance with the City of Rapid City Standard Specifications for Public Works Construction - 2004 Edition.

**NOTE:** All disturbed areas shall be seeded, fertilized and mulched.

**TOPOGRAPHIC MAP AND PARKING LOT DESIGN**  
**Tract 11**  
**Rapid City Greenway Tracts**  
**SE1/4 SEC. 3, T1N, R7E, BHM**  
**RAPID CITY, SOUTH DAKOTA**

1101 1/2 West Street  
 Rapid City, South Dakota  
 (605) 348-1538  
 (605) 347-3152 (fax)

**Exhibit "A" - Evans Parking Agreement**

**Fisk Land Surveying & Consulting Engineers, Inc.**



Date: 3/27/04  
 Surveyed by: RWP  
 Drawn by: LAR  
 Checked by: WF  
 Revision: 4/13/04  
 8/24/04 - RAR  
 Project No: 00-02-C1

State of South Dakota

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) ss.

ACKNOWLEDGMENT

County of Pennington

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On this the 6<sup>th</sup> day of July, 2004, before me, the undersigned officer, personally appeared Dr. James Evans, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Jule Steinman  
Notary Public

(SEAL)

My Commission Expires: March 15, 2010