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7-2-95

ASSIGNMENT OF PARKING LOT DEVELOPMENT AGREEMENT

Parties

This Assignment of Parking Lot Development Agreement is made and entered into by and between OMAHA INVESTORS, LLC, a Wyoming limited liability company (hereafter called "Assignor"), and 2020 WEST OMAHA, LLC, a South Dakota limited liability company of 2020 West Omaha, Rapid City, South Dakota 57702-8061 (hereafter called "Assignee").

Recitals

WHEREAS, contemporaneously with the execution of this Assignment, Assignor has sold and conveyed unto Assignee the following described real property located at 2020 West Omaha, Rapid City, South Dakota:

Lot RU-104 of U – R No. 1 Addition to the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 17, Page 12;

and

WHEREAS, appurtenant to the above described property is a certain Parking Lot Development Agreement dated August 21, 1995, by and between the City of Rapid City, a municipal corporation, and Assignor, a copy of which, together with its referenced exhibits are attached hereto and incorporated herein by this reference; and

WHEREAS, Assignor desires to assign to Assignee all of its right, title and interest in and to the Parking Lot Development Agreement and Assignee agrees to accept the same;

NOW, THEREFORE, for valuable consideration received, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

Agreement

1. *Assignment.* Assignor does hereby assign, set over and transfer unto Assignee all of Assignor's right, title and interest under that certain Parking Lot Development Agreement dated August 21, 1995, attached hereto.

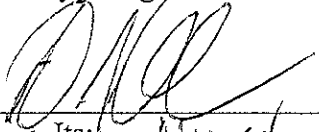
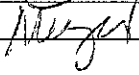
2. *Assumption.* Assignee does hereby agree to assume all rights and duties of Assignor thereunder and shall otherwise fully comply with all of the terms and conditions of the Parking Lot Development Agreement as therein set forth.

3. *Indemnification.* Assignor does hereby indemnify and hold Assignee harmless from all claims, liabilities and damages whatsoever arising out of or in any manner connected with the Parking Lot Development Agreement prior to the date hereof and Assignee does hereby indemnify and hold Assignor harmless from all claims, liabilities and damages arising out of or in any manner connected with the Parking Lot Development Agreement from and after the date of this Assignment.

DATED: July 15, 2005.

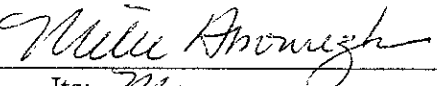
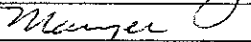
Assignor:

OMAHA INVESTORS, LLC,
a Wyoming limited liability company

By 
Its: 

Assignee:

2020 WEST OMAHA, LLC,
a South Dakota limited liability company

By 
Its: 

PARKING LOT DEVELOPMENT AGREEMENT

This Agreement made and executed this 21 day of August, 1995, by and between the City of Rapid City, a municipal corporation (City) and Omaha Investors, LLC, a Wyoming corporation (Omaha) does hereby state the following terms and conditions to be agreed upon and fully complied with by each party.

Section 1.

AGREEMENT:

The City expressly agrees to allow Omaha to construct a parking lot on the property described on Exhibit A, 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. Omaha agrees that the parking lot shall consist of twenty (20) spaces and shall have such configuration as to strictly conform to Exhibit B.

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 of Rapid City, specifically an added public parking area at a municipal park and additional public access to the municipal bike path. Omaha agrees that in consideration for building and maintaining the public parking lot, it derives a direct benefit in that Omaha shall enjoy convenient, adjacent, additional parking spaces.

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. Omaha shall grant to the City a perpetual easement of access for public use to the parking lot. Only existing curb cuts shall be used for access to the new parking lot. Omaha further agrees to construct an asphalt walkway from the parking lot to the Rapid City bike path as described on Exhibit B.

Section 4.

LANDSCAPING:

Omaha agrees that it will meet all landscaping requirements associated with parking lot development and all other landscaping requirements which may be required for the Omaha property.

Section 5.

OTHER IMPROVEMENTS:

Omaha agrees that the portion of graveled parking lot on the east side of Omaha property shall be seeded and landscaped as required by the City pursuant to Exhibit B. An asphalt extension to accommodate existing parking stalls on the east side of Omaha property shall be constructed as described on Exhibit B.

Section 6.

MAINTENANCE:

Omaha agrees to provide all maintenance to the parking lot, 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.

Section 7.

HOLD HARMLESS AND INDEMNIFY:

Omaha 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. Omaha 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 Omaha's insurance carrier.

Section 8.

OWNERSHIP:

All future improvements to the property described on Exhibit B, outside the boundaries of the real property owned by Omaha, shall immediately become and remain the sole and exclusive property of the City upon execution of this Agreement.

Section 9.

COSTS:

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

Section 10.

FUTURE USE, TERMINATION AND DEFAULT:

The City agrees that so long as Omaha fulfills all terms, conditions, and obligations of this Agreement, the City shall in no way, for a period of fifteen (15) years, hinder the use by Omaha of the West parking lot, excepting the use of the general public which from time to time may occupy some or all of the parking spaces. The City reserves the right to terminate this Agreement at any time in the event Omaha fails to fulfill all of the terms and conditions herein; however, the City shall give Omaha ninety (90) days written notice to cure any default before termination.

Section 11.

Miscellaneous Provisions:

(1) This agreement shall be automatically be renewed for additional one (1) year terms following the expiration of the initial agreement term set forth above unless either party gives a 12-month notice to terminate said lease prior to the first day of the renewal.

(2) Omaha shall be entitled access to its property on the east side of its building as shown by Exhibit B, which will make the east ten (10) parking spaces of Omaha as shown by the Exhibit B in compliance with all of the City's requirements for parking.

Section 12.

RIGHT TO ASSIGN:

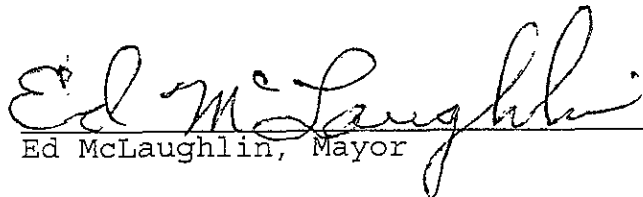
The parties agree that Omaha has the right to assign their interest in this agreement.

Section 13.

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.

CITY OF RAPID CITY


Ed McLaughlin, Mayor

ATTEST:


Finance Officer

(SEAL)

STATE OF SOUTH DAKOTA:

SS

COUNTY OF PENNINGTON :

On this the 21 day of August, 1995, before me, the undersigned officer, personally appeared Ed McLaughlin and Coleen J. Schmidt, 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.

Jeri Lynn
NOTARY PUBLIC

(SEAL)

My Commission Expires: 9-3-2003

OMAHA INVESTORS, LLC

By: Richard Kahler
Richard Kahler, President

STATE OF SOUTH DAKOTA:
SS
COUNTY OF PENNINGTON :

On this the 31 day of August, 1995, before me, the undersigned officer, personally appeared Richard Kahler, who acknowledged himself to be the President of Omaha Investors, LLC, a South Dakota corporation, and acknowledged that he, as such President, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of the corporation by himself as President.

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

Mary Ann
NOTARY PUBLIC

(SEAL)

My Commission Expires: 4/22/2000

... OF 22½ OF SECTION 33; vacated portions of West St., Mills,
 Reitt, Cross, Canal and Oakkosh Streets; and vacated

SE¼ OF SE¼ OF SECTION 34 AND IN S¼ OF SE¼ AND
 E SECTION 35, T2N, R7E,
 T, PENNINGTON COUNTY, SOUTH DAKOTA

*AREA WHERE
 NEW PARKING
 LOT WILL BE
 CONSTRUCTED*

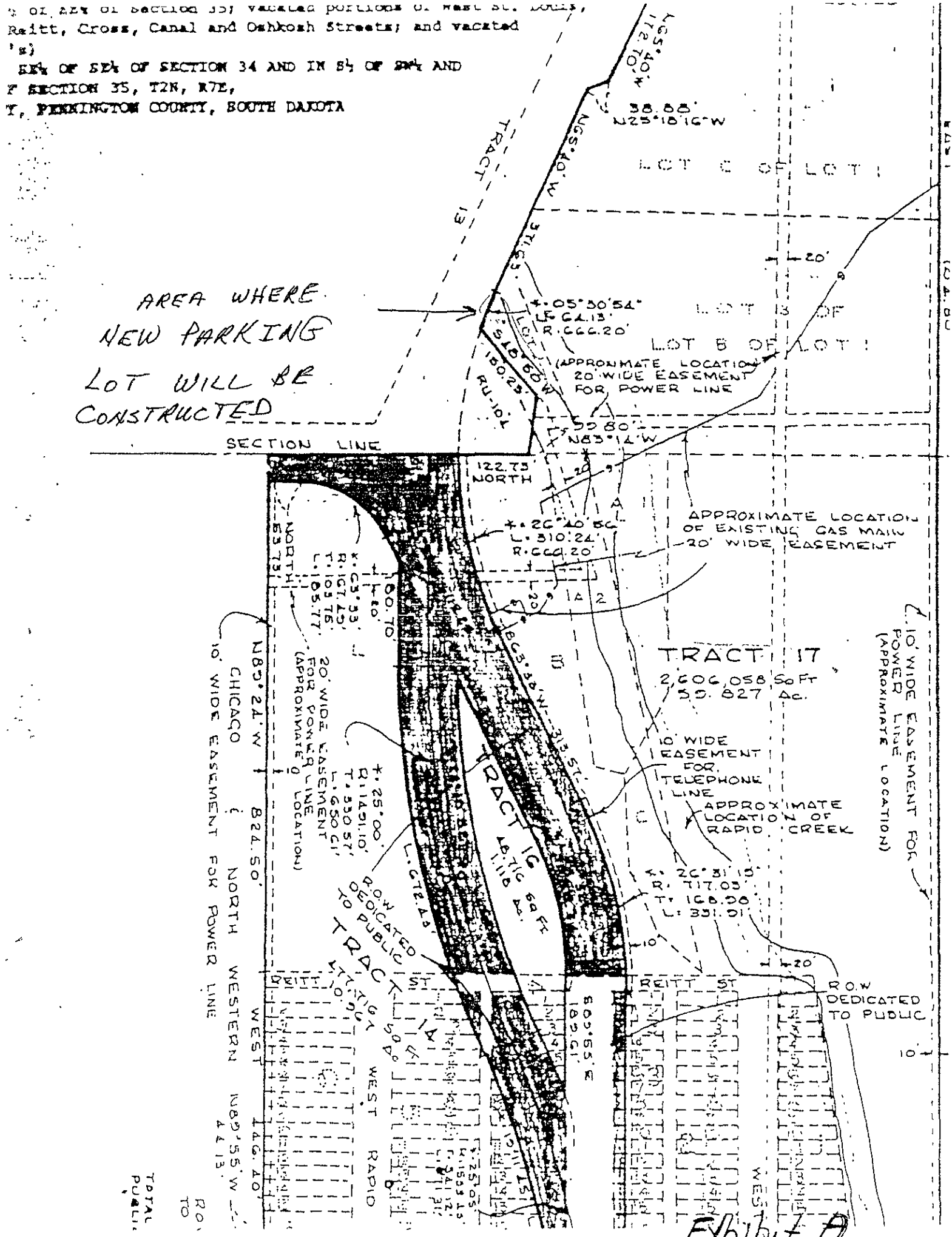
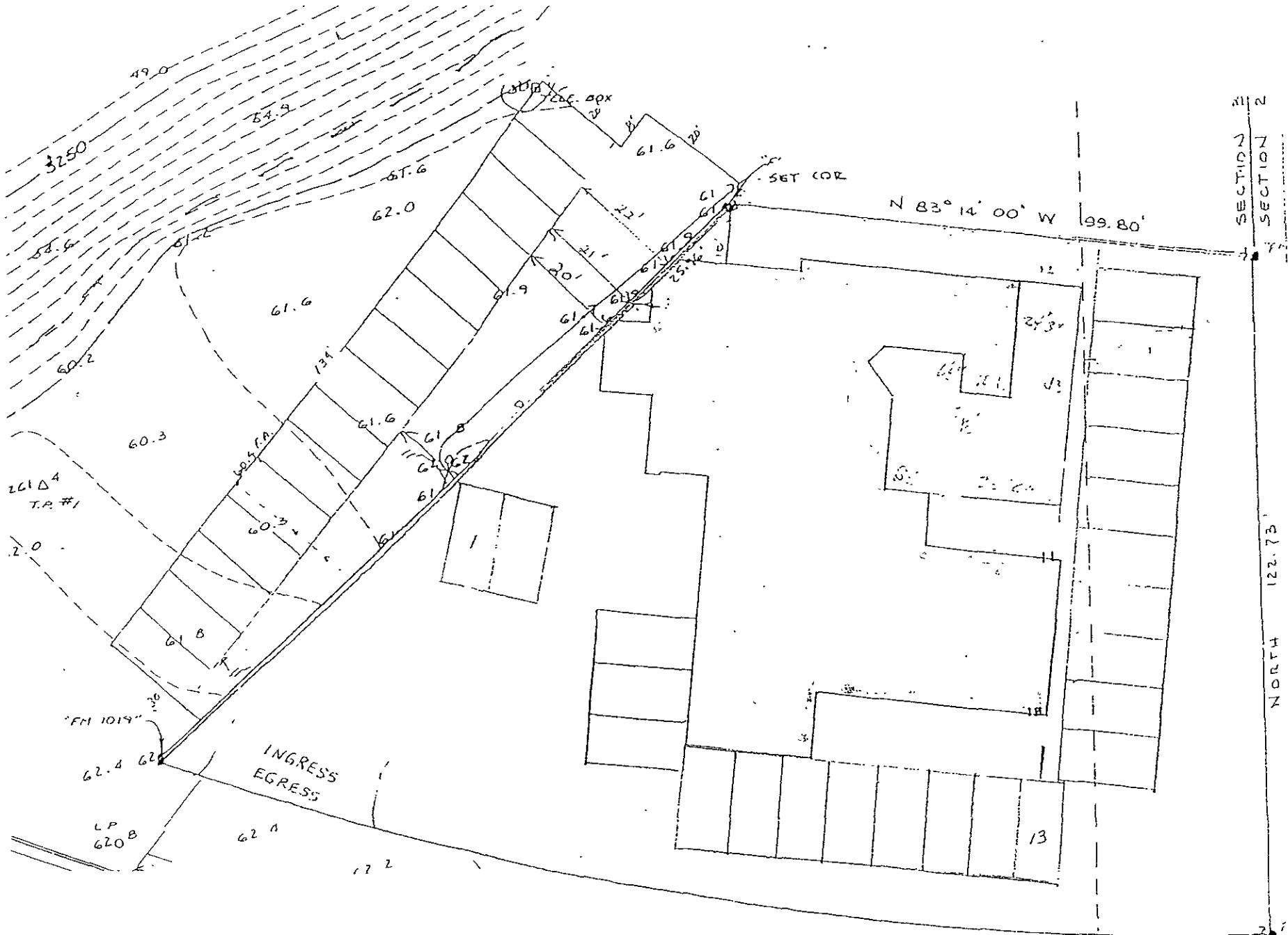


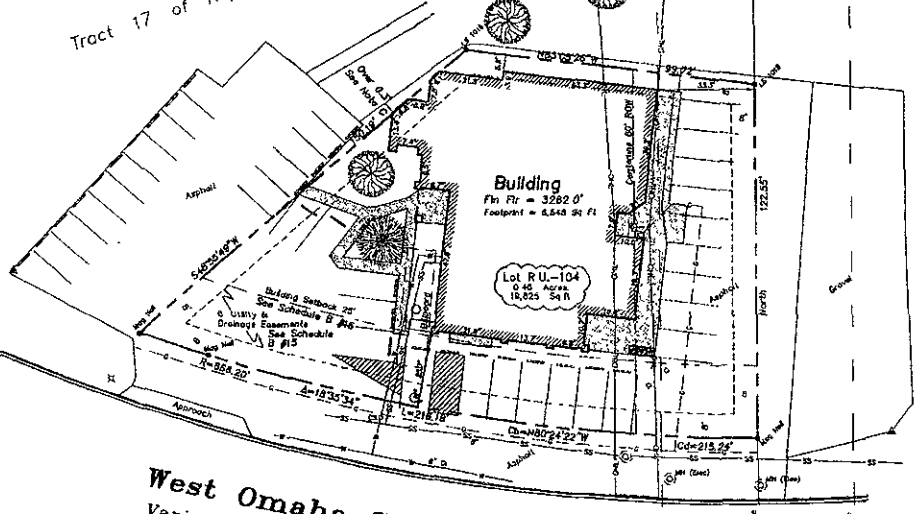
Exhibit A



Existing
Possible Expansion



Tract 17 of Rapid City Greenway Tracts



West Omaha Street
Variable Width Right-of-Way

- LEGEND**
- ⊗ = Sanitary Sewer Manhole (Unless noted)
 - = Gully Stop
 - = Utility Pole
 - ⊕ = Light
 - ⊞ = Electric Box
 - = Overhead Utility Line
 - = Natural Gas Meter
 - ⊞ = Telecommunications Pedestal
 - ⊞ = Found Survey Monument as noted
 - = Tree (Coniferous)
 - = Tree (Deciduous)
 - ▲ = Control Point

SCHEDULE A

First American Title Insurance Company
Commitment No. 8970664 - Effective Date: Apr 26, 2001

4. The land referred to in this Commitment is described as follows:
Lot R.U. 104 of U - R No. 1 Addition to the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 17, Page 12.

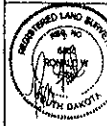
SURVEYOR'S NOTES

- A. Easement and Right of Way for "existing billboard" dated December 30, 2004. No recording information is provided with this document. The easement is not geographically described and is not shown this survey.
- B. Parking Lot Develop Agreement dated August 21, 1995. No recording information is provided with this document. The agreement is not geographically described and is not shown this survey. We note that the current parking configuration does not conform to Exhibit B attached to the agreement.
- C. Portions of the building facade are located on (1) onto adjoining lands as shown herein.
- D. The location of utilities as shown herein is based on measurements observed at the time of survey. The location of underground service lines as shown is based on record sketch information provided by the City of Rapid City and MDU. The actual location of utilities may vary and those utilities not known to us or observed at the time of survey are not shown.
- E. Portions of parking and drives are located on adjoining lands and within adjoining street right-of-way.
- F. Portions of the building are located within several easements as identified in the title commitment provided and as shown on page 7 of this survey.
- G. Some building facade encroachments are not shown this survey.

Boundary Survey & Site Plan
 RU 104 of U - R NO. 1 Addition
 to the City of Rapid City
 2020 West Omaha Street
 Rapid City, South Dakota

1825 Main Street
P.O. Box #104
Rapid City, South Dakota
57709
(605) 346-1830
(605) 341-1121 (fax)

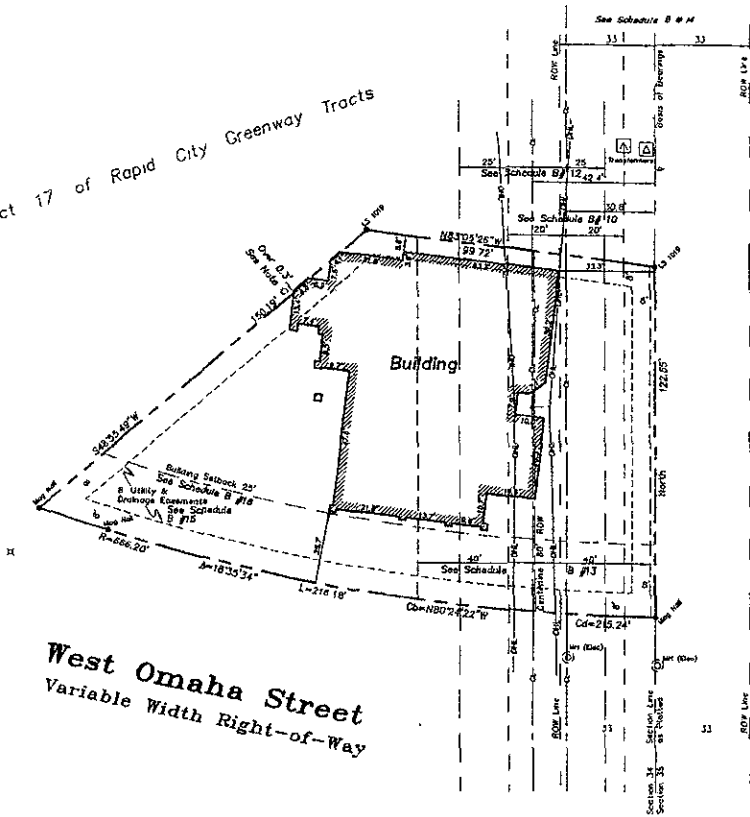
Fisk Land Surveying
 & Consulting
 Engineers, Inc.



Date: 5/20/05
 Surveyed by: M.S.L.
 Drawn by: S.S./S.M.S.
 Checked by: R.W.
 Revisions:

Tract 17 of Rapid City Greenway Tracts

West Omaha Street
Variable Width Right-of-Way



SCHEDULE B - SECTION 2

First American Title Insurance Company
Commitment No. 0670644 - Effective Date: April 26, 2005

Exemptions

9. Easement granted to Black Hills Utilities Company to construct, operate and maintain a gas pipe line through, over, under and across the SE 1/4, SE 1/4 of Section 34, T2N, R7E, together with rights appurtenant thereto, as set forth in instrument recorded June 3, 1931, in Misc. Book V, page 313. The exact route is not set forth.

Montana-Dakota Utilities Co. assigned their interest in said easement to Wilbur Basu. Interstate Pipeline Company by General Conveyance Bill of Sale and Assignment recorded March 21, 1956, in Book 27, Page 539.

Wilbur Basu Interstate Pipeline Company assigned their interest in said easement to Montana-Dakota Utilities Co. by Assignment of Easement recorded March 10, 1958, in Book 33, Page 7619.

The easement is not geographically described and is not shown this survey.

The location of utilities and appurtenances observed at the time of survey is as shown hereon.
10. Transmission Right of Way Permit granted to Black Hills Power and Light Company to construct, operate and maintain an electric power line upon, over and across Lot 1 of Lot A of the SE 1/4 SE 1/4 of Section 34, T2N, R7E, together with rights appurtenant thereon, as set forth in instrument recorded October 1, 1963, in Misc. Book 34, Page 615.

Original document is difficult to read - we believe the center-line of the easement to be 30.8 feet west of the section line. The proposed location of easement is as shown hereon in relation to the section line as identified on the plat of the subject property.

Portions of the building are located within the subject easement.

The location of utilities and appurtenances observed at the time of survey is as shown hereon.
11. Right of Way Deed Easement granted to the State of South Dakota for the purpose of opening and maintaining a highway across by, along upon and across Lot 2 of Lot A of Lot 1 and Lot 2 of Lot B of Lot 1 of the SE 1/4 SE 1/4 of Section 34, T2N, R7E, together with right of ingress and egress to enter upon the property when necessary to maintain drainage structures until the right of way is no longer used for highway purposes, as set forth in instrument recorded November 12, 1972, in Misc. Book 110, Page 387.

The right-of-way deeded easement is presumed expired per the completion of the specified highway project.

This portion of easement which is reserved for maintenance of drainage structures is not specified and is not shown this survey.
12. Right of Way Permit granted to Black Hills Power and Light Company to construct, operate and maintain electric power lines upon, over and across Lot 2 of Lot B of Lot 1 and Lot 1 of Lot A of Lot 1 of the SE 1/4 SE 1/4 of Section 34, T2N, R7E, together with rights appurtenant thereto, as set forth in instrument recorded August 24, 1976, in Book 4, Page 3119.

Location of easement is as shown hereon in relation to the section line as identified on the plat of the subject property.

Portions of the building are located within the easement.

The location of utilities and appurtenances observed at the time of survey is as shown hereon.
13. Right of Way Easement granted to Black Hills Power, Inc. to construct, operate and maintain electric transmission line conductors, with the right of ingress and egress thereon, together with the power to enter to any communication company the right to the provisions hereof said easement being upon, over and across said Lot 113-104 of U-R #1 Addition, as set forth in instrument recorded March 29, 2005, in Book 143, Page 1799.

The graphic depiction of the narrow-line of the 80 foot right-of-way on the attached exhibit does not coincide with the center-line of the existing utility.

The easement is shown this survey per the note on said exhibit which states "The centerline of the power line as constructed is the center line of the 80 foot easement"

Portions of the building are located within the easement.

The location of utilities and appurtenances observed at the time of survey are as shown hereon.
14. Statutory section line right-of-way within the east 33' of said Lot 113-104, pursuant to SDCL, Chapter 31 18, and as shown on the filed plat of said land.

The location of the section line right of way as shown on the record plat is as shown hereon.
15. Easements for utilities and drainage 8 feet on the interior sides of all subject lot lines, as set forth on the filed plat of said land.

The location of the easements is as shown hereon.

Portions of the building are located within the subject easements.
16. All buildings shall be set back a minimum of 25 feet from street right-of-way lines, as set forth on the filed plat of said land.

The location of the set back is as shown hereon.



LEGEND

- = Utility Pole
- ⊙ = Street Light
- = Overhead Utility Line
- = Found Survey Monument as noted

Boundary Survey & Site Plan
RU 104 of U - R NO. 1 Addition
to the City of Rapid City
2020 West Omaha Street
Rapid City, South Dakota

Fisk Land Surveying
& Consulting
Engineers, Inc.



Date: 6/20/06
Surveyed by: M. Bl.
Drawn by: J. L. Bl.
Checked by: RWF
Revisions

PENNINGTON COUNTY
s/ Chairman

ATTEST:
s/ Auditor
(SEAL)

- 13. Authorize the Mayor and Finance Officer to sign a Parking Lot Development Agreement with Omaha Investors, LLC, with the suggested changes made in Section 11, Miscellaneous Provisions, subparagraph (3) *(Note Council Sec. 11 subparagraph (3) was rejected.)*
- 14. Authorize the Mayor and Finance Officer to sign the City of Rapid City's Section 9 Grant Application for Calendar Year 1996

15. RESOLUTION DECLARING PROPERTY SURPLUS

WHEREAS, the below-described property is no longer necessary, useful or suitable for municipal purposes

NOW, THEREFORE, BE IT RESOLVED by the City of Rapid City that the following described property be declared surplus and disposed of according to state statutes, including disposal, sale, or trade-in on new equipment :

Water Department

Turbidimeter DRT-100, Inv. No. 493

Parks Department:

- Canopy Tent, Inv. No. 627
- File holders, Inv. No. 6663
- All steel 12 drawer desk, Inv. No. 2638
- Mini cassette tape recorder, Inv. No. 7668
- Canyon Lake Park submersible pump, Inv. No. 100

AND BE IT FURTHER RESOLVED that the Mayor and Finance Officer may do all acts necessary to dispose of this property according to state law, including trading in on replacement equipment, disposal, or sale at public auction.

Dated this 21st day of August, 1995.

ATTEST:
s/ Coleen J. Schmidt
Asst. Finance Officer
(SEAL)

THE COMMON COUNCIL
s/ Ed McLaughlin
Mayor

- 16. Authorize the Mayor and Finance Officer to sign a Diagnostic License Agreement with Hewlett Packard
- 18. Authorize the City Attorney's Office to take legal action to obtain compliance with the Fire Code at 810 St. Joseph Street
- 19. Authorize the City Attorney's Office to take legal action to correct the nuisance problems at 2110 Wisconsin Street

Public Works Committee

- 20. Approve Change Order No. 02 US Highway 16 South Utility Extension Sewer Lift Station SSW94-531 to Morris, Inc. for an increase of \$235.65.
- 21. Approve Change Order No. 01F Block 22 Alley Improvement ST95-566 to Simon Contractors for an increase of \$2,765.61.