

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

STATE OF SOUTH DAKOTA)
) ss. PERMANENT ACCESS EASEMENT
 COUNTY OF PENNINGTON)

This Agreement is made and entered into on this _____ day of July, 2010 by and between the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota, 57701, herein after referred to as the "City", and McCarthy Properties, LLC, a South Dakota limited liability company, located at 2834 Jackson Boulevard, Ste. 202, Rapid City, South Dakota, 57702-3809, herein after referred to as "McCarthy."

WHEREAS, the parties have previously entered into an Agreement dated September 5, 1995 entitled "Revocable Non-Build Easement" and recorded with the Pennington County Register of Deeds in Book 60, Page 2498 which granted McCarthy a revocable non-build easement over the eastern most 10 feet of the City owned Lot 23, Block 75, Original Townsite, Rapid City; and

WHEREAS, the above-referenced easement agreement provided that the City could revoke the easement on 6 months' notice to McCarthy; and

WHEREAS, McCarthy desires to obtain a permanent access easement over the eastern most fifteen feet of Lot 23; and

WHEREAS, McCarthy is willing to waive the 6 month notice provision of the Revocable Non-Build Easement in exchange for the 15 foot access easement; and

WHEREAS, it is the intent of this Agreement to revoke the "Revocable Non-Build Easement" and replace it with a Permanent Access Easement.

NOW THEREFORE, the parties hereby agree as follows:

1. The "Revocable Non-Build Easement" agreement entered into on the 5th day of September, 1995 and recorded with the Pennington County Register of Deeds at Book 60, Page 2498 is hereby revoked without further notice.

2. The City of Rapid City grants to McCarthy Properties, LLC a Permanent Access Easement as hereinafter described, subject to the terms and conditions as hereinafter set forth, over and upon the following described real property:

East Fifteen Feet (E15') of Lot 23 of Block 75, Original Town of Rapid City, located in Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota as shown on Exhibit "A".

3. The City shall keep the easement free of all structures that would require McCarthy to remove the windows from the west side of the building located on Lots 24-27.
4. This easement shall include the right to erect awnings on the west side of McCarthy's building located on Lots 24-27.
5. This easement shall include the right to enter upon the aforesaid real property and otherwise do those things reasonably necessary to effectuate its purpose.

Dated this _____ day of _____, 2010.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

McCARTHY PROPERTIES, LLC.

BY: _____
ITS: _____

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 and that he, 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, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged himself to be the _____ of McCarthy Properties, LLC and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Notary Public, South Dakota

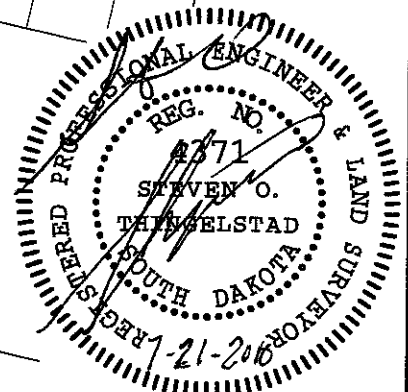
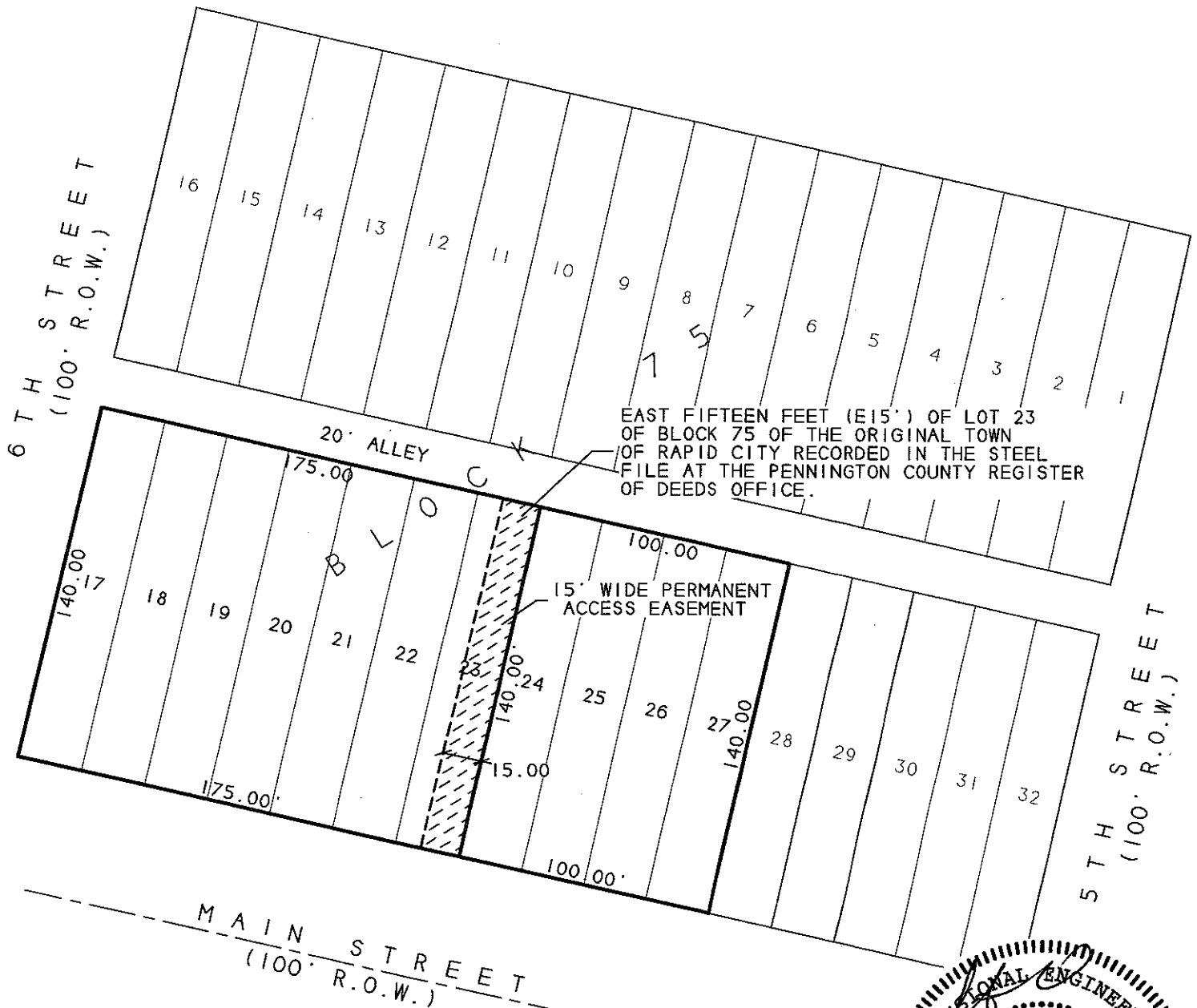
My Commission Expires:

(SEAL)

EXHIBIT "A"
OF
15' WIDE PERMANENT ACCESS EASEMENT
OF LOT 23 OF BLOCK 75, ORIGINAL
TOWN OF RAPID CITY, LOCATED IN
SECTION 1, T1N, R7E, BHM RAPID CITY,
PENNINGTON COUNTY, SOUTH DAKOTA



SCALE: 1" = 60'
JULY 20, 2010



PREPARED BY: STEVEN O. THINGELSTAD
BRITTON ENGINEERING & LAND SURVEYING, INC.
8035 BLACK HAWK ROAD, SUITE 5
BLACK HAWK, SOUTH DAKOTA 57718
TELEPHONE: (605) 716-7988

Item #5

FILE:

SLZ MAIN STR

REVOCABLE NON-BUILD EASEMENT

Agreement made as of the 5 day of September, 1995, by and between the City of Rapid City and Stephen F. McCarthy and Liz McCarthy.

I.

RECITALS

1. The City of Rapid City is the owner of certain real property legally described as Lots 17 through 23, Block 75, Original Townsite, Rapid City, Pennington County, South Dakota.

2. Stephen F. McCarthy and Liz McCarthy are, as of this date, the owners of certain real property legally described as Lots 24 through 27, Block 75, Original Townsite, Rapid City, Pennington County, South Dakota.

3. Stephen F. McCarthy and Liz McCarthy wish to construct windows in the west side of the building located upon their property, which wall is located on the property line between Lot 23 and Lot 24. Under building codes such construction is not permitted unless a separation of at least ten (10) feet separation is maintained between buildings.

4. The City of Rapid City is willing to grant a revocable non-build easement as hereinafter described with the clear understanding that such easement is revocable by the City in its sole discretion and without compensation to Stephen F. McCarthy and Liz McCarthy or their successors in interest.

5. Stephen F. McCarthy and Liz McCarthy understand that the non-build easement granted hereinafter is revocable by the City in its sole discretion and without compensation and further understands that if such easement is revoked that the right to have the windows on the common boundary will lapse and the windows will have to be removed, the openings closed, and the building brought into full compliance with applicable codes to the same extent as if this easement had not been granted.

II.

EASEMENT

For and in consideration of the sum of One Dollar (\$1.00) the City of Rapid City grants to Stephen F. McCarthy and Liz McCarthy a revocable non-build easement as hereinafter described, subject to the terms and conditions

as hereinafter set forth, over and upon the East Ten Feet (E10') of Lot 23, Block 75, Original Townsite, Rapid City, Pennington County, South Dakota.

1. The City agrees that during the period this easement is in effect that it will not build any structure in the area covered by the easement which would cause the building on Lot 24 to be in violation of City building codes or restrictions.

2. The City shall have the right in its sole discretion, and for any purpose whatsoever, to terminate this easement upon six (6) months written notice to the owners of Lot 24. Such notice shall be effective upon mailing by certified mail to the address of the then current owner as shown on the records of the Director of Equalization of Pennington County.

3. Stephen F. McCarthy and Liz McCarthy agree that in the event this easement is terminated they will promptly and within the six (6) months notice period cause the windows to be removed, cause the openings to be closed, and otherwise make such changes to the building as will correct any condition relating to such windows and openings as are in violation of any building code or restriction.

4. Stephen F. McCarthy and Liz McCarthy further agrees that any termination of this easement or expense occasioned thereby shall be without recourse and that the City of Rapid City, and its successors in interest, shall not be liable for any damage resulting from such termination.

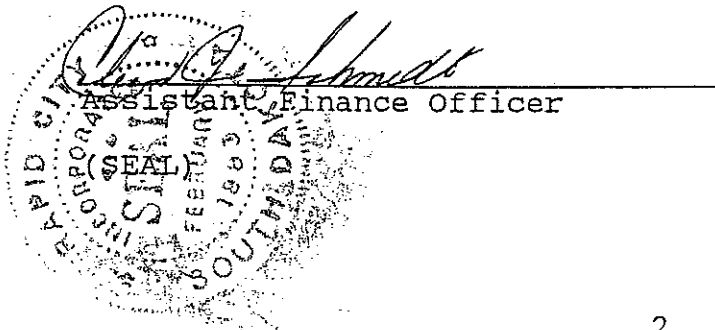
5. The rights, duties, obligations, and responsibilities set forth herein shall be binding upon the respective parties, their heirs, executors, and assigns.

6. It is understood and agreed that time is of the essence of this agreement.

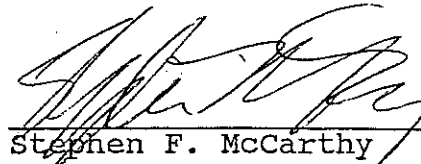
CITY OF RAPID CITY

Ed McLaughlin
 Mayor 9-5-95

ATTEST:



60 PAGE 2500


 Stephen F. McCarthy


 Liz McCarthy

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

On this the 6th day of Sept., 1995, before me, the undersigned officer, personally appeared Ed McLaughlin and Coleen F. Schmidt, who acknowledged themselves to be the Mayor and Assistant Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Assistant 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 Assistant Finance Officer.

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

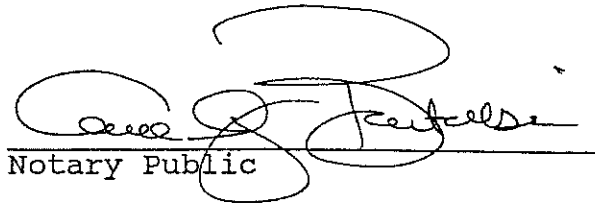


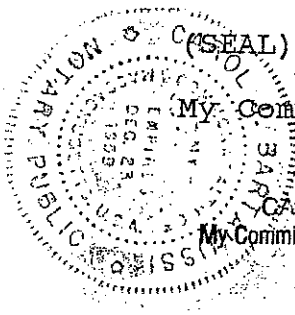

 Notary Public

~~MASSACHUSETTS~~
 State of South Dakota)
) ss. ACKNOWLEDGMENT
 County of Pennington)

On this the 14 day of September, 1995, before me, the undersigned officer, personally appeared Stephen F. McCarthy and Liz McCarthy, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

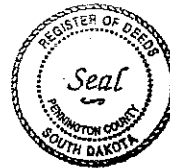

Notary Public



My Commission Expires:

CAROL J. BARTALUSSI
My Commission Expires December 23, 1999

DOC NO. 58219
BOOK 60 PAGE 2498
FEE 11.00 Misc



95 SEP 19 PM 1:50

MARLYS FABER
PENNINGTON COUNTY
REGISTER OF DEEDS