

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

WEN
4/6/12

STATE OF SOUTH DAKOTA)
)SS. RELEASE AND HOLD HARMLESS
COUNTY OF PENNINGTON) AGREEMENT

For and in consideration of the City of Rapid City allowing the non-conforming water and sewer service lines to be located under Lot 5A, JOHNSTOWN, LLP, hereinafter referred to as the "Partnership," does hereby fully release, acquit and forever discharge the CITY OF RAPID CITY, together with all of its agents, employees, successors, and assigns, all for the purposes herein referred to as "City," from any and all actions, causes of action, claims, demands, disabilities, known and unknown damages, losses, and expenses relating to any and all water and sewer service line problems that may arise on the real property legally described as:

Lot 4A, Block Two (2) of Rushmore Crossing Subdivision, located in the West Half of the Southwest Quarter (W½SW¼) of Section Twenty-nine (29), and the East Half of the Southeast Quarter (E½SE¼) of Section Thirty (30), Township Two North (T2N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

Water and sewer service lines are located in an easement that extends across Lot 5A. The water and sewer lines are shown on the attached site plan and marked as Exhibit "A" and incorporated herein by reference.

It is understood that this Release and Hold Harmless Agreement is the compromise to allow the service lines to be located under Lot 4A and Lot 5A and is entered into to address possible future claims, the validity of which the City would dispute. The terms herein are not to be construed as an admission of liability on the part of the parties hereby released, by whom liability is expressly denied.

It is further agreed that the Partnership shall defend, indemnify, and save and hold harmless the City and each of them from any loss, liability, damage or cost they may incur arising out of or related to the water and sewer service lines located under the above referenced property, whether caused by the actions or omissions of the City or otherwise.

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 Partnership, 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 provisions of South Dakota statutes.

This Release and Hold Harmless Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital.

The Partnership further states that it has carefully read the foregoing Release and Hold Harmless Agreement, knows and understands the contents thereof, and an authorized person has signed the same as its own free act.

Dated this _____ day of _____, 2012.

CITY OF RAPID CITY


By: _____
Mayor

ATTEST:

Finance Officer

(SEAL)

JOHNSTOWN, LLP

By:  Guy Mann
Its: Partner

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2012, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, 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 Covenant Agreement 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, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the 29TH day of AUGUST, 2012, before me, the undersigned officer personally appeared GUY MANN, who acknowledged himself to be the PARTNER of JOHNSTOWN, LLP, and that he, as such PARTNER, being authorized so to do, executed the foregoing Covenant Agreement for the purposes therein contained by signing the name of JOHNSTOWN, LLP by himself as PARTNER.

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


Notary Public, South Dakota

My Commission Expires: 9-18-2012

(SEAL)

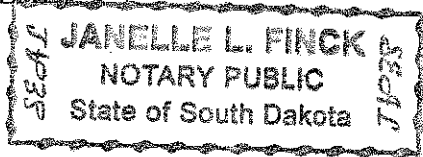
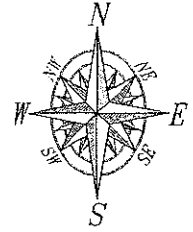


EXHIBIT A

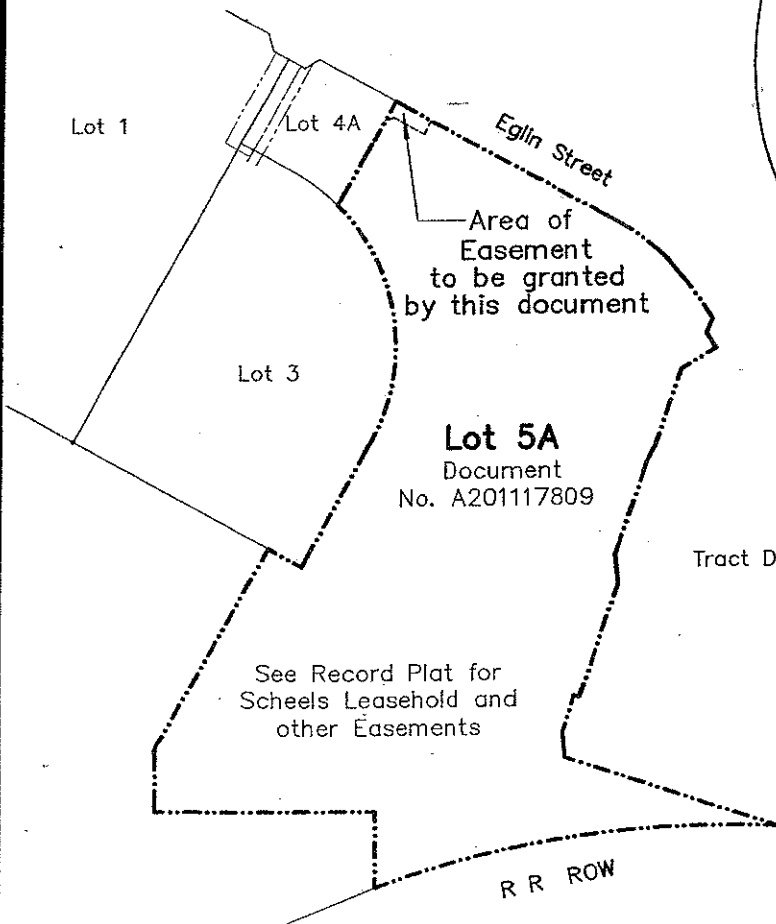
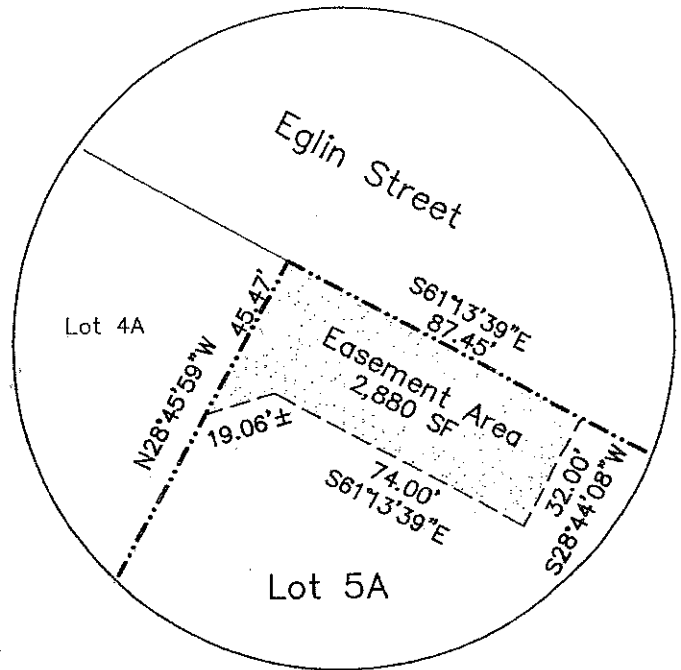
Utility Easement
Lot 5A, Block 2 of Rushmore Crossing Subdivision
located in Sections 29 and 30, T2N, R8E, BHM,
Rapid City, Pennington County, South Dakota



1"=50'

Detail Map
1"=50'

Vicinity Map
1"=400'



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

WEN
9/6/12

STATE OF SOUTH DAKOTA)
)SS. COVENANT AGREEMENT
COUNTY OF PENNINGTON)

This declaration of the covenant and agreement ("Agreement") is entered into this day of _____, 2012, by and between the JOHNSTOWN, LLP, a South Dakota limited liability partnership, ("Partnership"), 6609 Sunridge Road, Rapid City, South Dakota, 57702-2829, and the City of Rapid City ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

Partnership hereby acknowledges that it is the owner of record of the property in Rapid City, South Dakota which is legally described as:

Lot 4A, Block Two (2) of Rushmore Crossing Subdivision, located in the West Half of the Southwest Quarter (W½SW¼) of Section Twenty-nine (29), and the East Half of the Southeast Quarter (E½SE¼) of Section Thirty (30), Township Two North (T2N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

WHEREAS, Partnership has applied for a Planned Development; and

WHEREAS, as a result of the building permit, the water and sewer service lines will be located on adjacent properties; and

WHEREAS, the City's Standard Specifications do not allow service lines to cross over another lot unless an Exception has been granted; and

WHEREAS, it is the parties' intention that an exception be granted to allow the building permit to be approved if the Partnership agrees to certain stipulations.

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

1. Partnership hereby covenants and agrees to consent to an assessed project to install conforming water and sewer service lines in the future.

2. Partnership hereby covenants and agrees that, in the event of a break in one of the existing service lines, it will install conforming water and sewer service lines in accordance with City specifications in effect at such time.

3. Partnership hereby covenants and agrees to hold the City harmless from all claims related to the non-standard service lines.

4. It is understood by Partnership that the City's primary consideration for the granting of the exception to the City's Standard Specifications on the above described property is Partnership's covenant and promise to complete the Agreement conditions outlined in paragraphs 1, 2, and 3 above.

5. The parties agree that the terms of this agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling without regard to the principles of conflict of laws. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court for the State of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.

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

8. If any section(s), or provisions 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.

9. If the landowner 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.

CITY OF RAPID CITY

By: _____
Mayor

ATTEST:

Finance Officer

(SEAL)

JOHNSTOWN, LLP

By: Guy Mann
Its: partner

State of South Dakota)
 ss.
County of Pennington)

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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)

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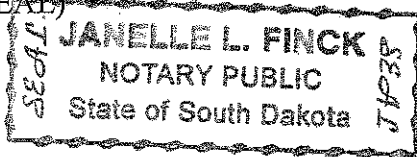
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Notary Public, South Dakota

My Commission Expires: 9-18-2012

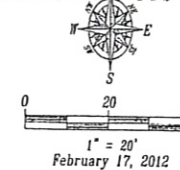
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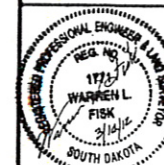
RECEIVED

APR 03 2012

Rapid City Community Planning
& Development Services



Fisk Land Surveying & Consulting Engineers, Inc.
1022 Main Street - P.O. Box 8154
Rapid City, South Dakota 57709
(605) 348-1538 (ph) (605) 341-1112 (fx)
fisk@midconetwork.com



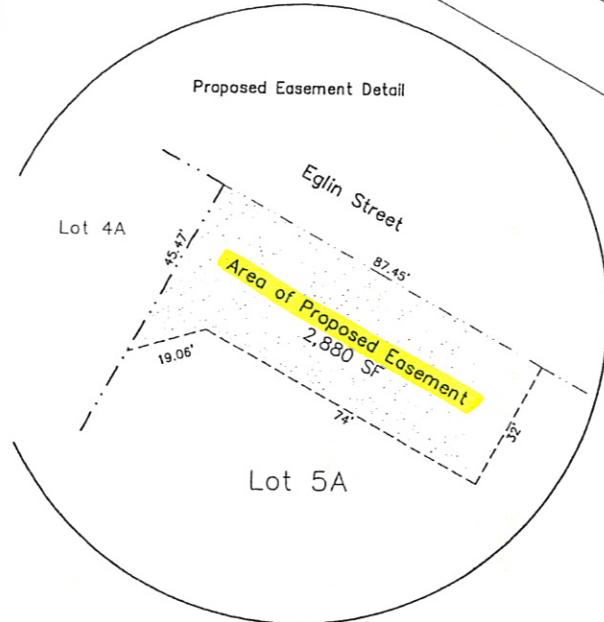
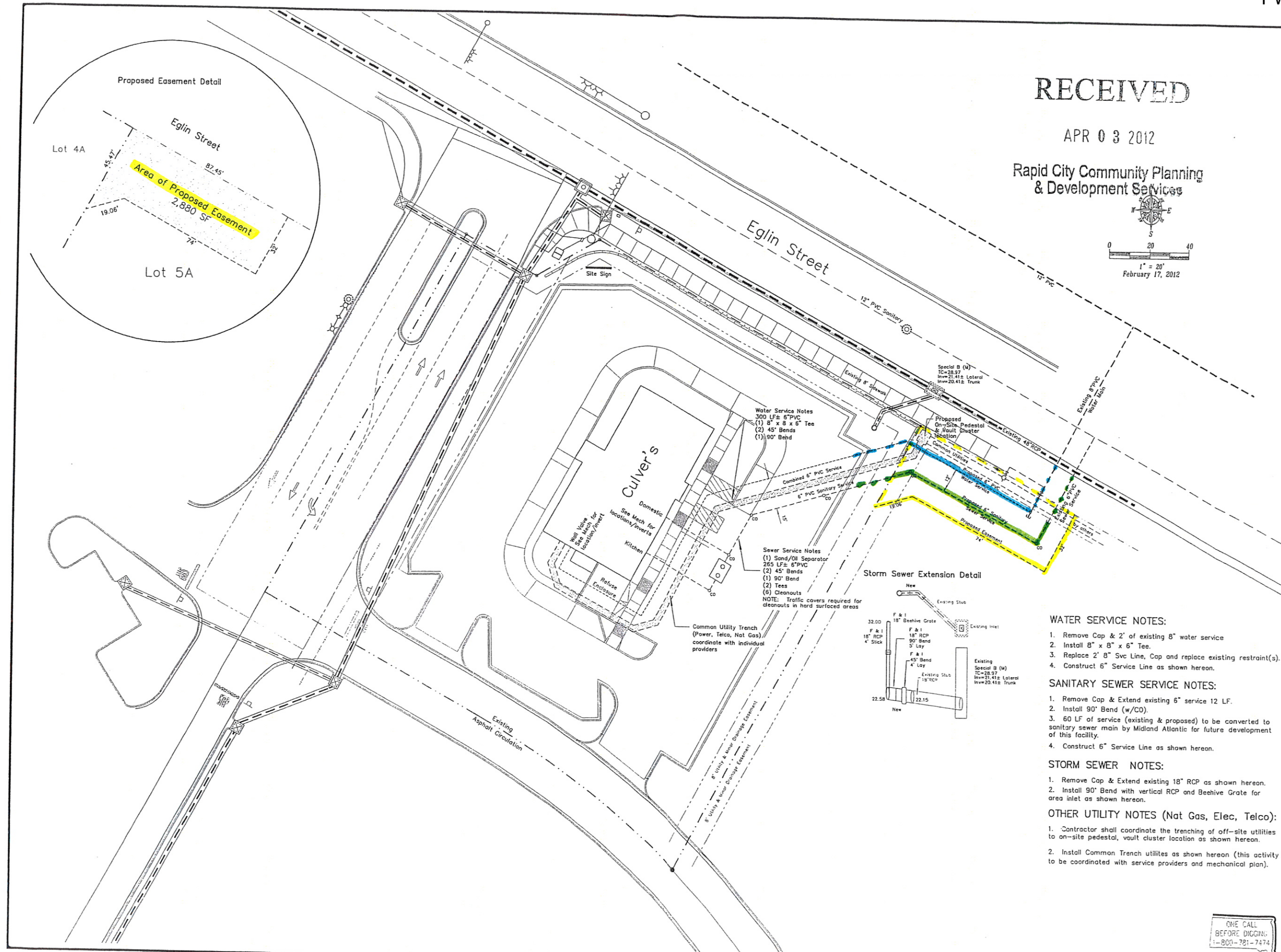
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No warranty or guarantee is expressed or implied to any party, for any other purpose at any time except as stated.

Site Plan
for Proposed Culver's Restaurant
Lot 4A of Block 2 of
Rushmore Crossing Subdivision
Rapid City, Pennington County, South Dakota

Surveyed by: ML
Date: 1/17/12
Drawn by: RWF
Date: 1/25/12
Checked by: WF
Revisions
Swr. Wtr - 3/14/12

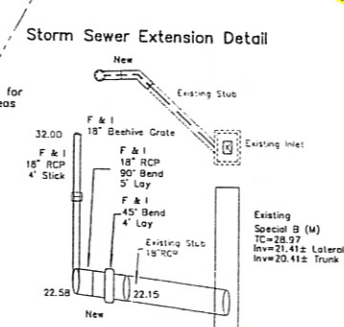
Project No.
12-01-03
Utility Plan
5 of 7

ONE CALL
BEFORE DIGGING
1-800-781-7474



Water Service Notes
300 LF ± 8" PVC
(1) 8" x 8" x 6" Tee
(2) 45° Bends
(1) 90° Bend

Sewer Service Notes
(1) Sand/Oil Separator
265 LF ± 6" PVC
(2) 45° Bends
(1) 90° Bend
(2) Tees
(6) Cleanouts
NOTE: Traffic covers required for cleanouts in hard surfaced areas

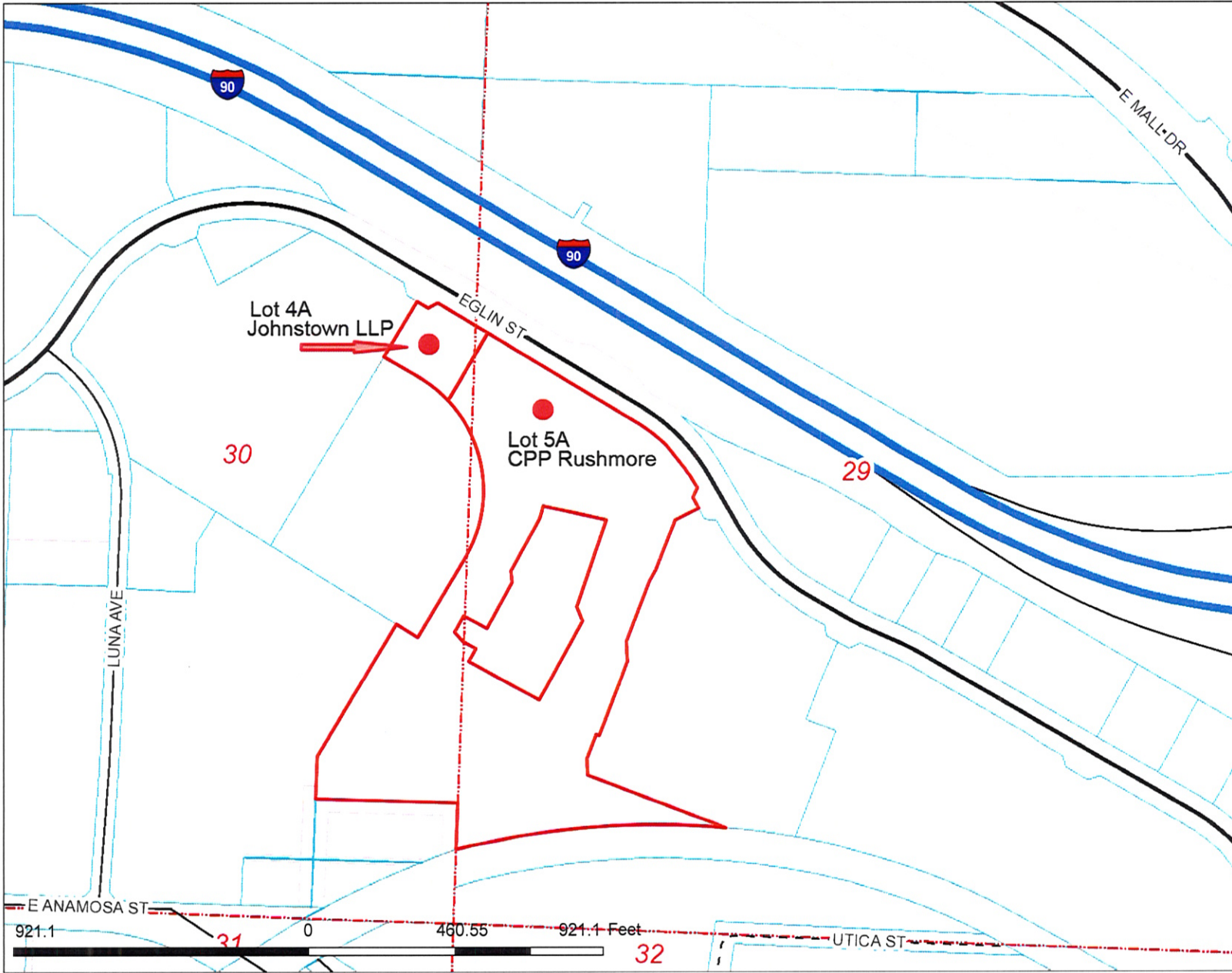


- WATER SERVICE NOTES:**
1. Remove Cap & 2' of existing 8" water service
 2. Install 8" x 8" x 6" Tee.
 3. Replace 2' 8" Svc Line, Cap and replace existing restraint(s).
 4. Construct 6" Service Line as shown hereon.

- SANITARY SEWER SERVICE NOTES:**
1. Remove Cap & Extend existing 6" service 12 LF.
 2. Install 90° Bend (w/CO).
 3. 60 LF of service (existing & proposed) to be converted to sanitary sewer main by Midland Atlantic for future development of this facility.
 4. Construct 6" Service Line as shown hereon.

- STORM SEWER NOTES:**
1. Remove Cap & Extend existing 18" RCP as shown hereon.
 2. Install 90° Bend with vertical RCP and Beehive Grate for area inlet as shown hereon.

- OTHER UTILITY NOTES (Nat Gas, Elec, Telco):**
1. Contractor shall coordinate the trenching of off-site utilities to on-site pedestal, vault cluster location as shown hereon.
 2. Install Common Trench utilities as shown hereon (this activity to be coordinated with service providers and mechanical plan).



- Roads**
- Not classified
- Interstate
- US Highway
- SD Highway
- County Highway
- Main Road
- Minor Arterial
- Collector
- Ramp
- Paved Road
- Unpaved Road
- FS Unpaved Road
- Driveway
- Paved Alley
- Unpaved Alley
- Unimproved Road
- Trail
- Not yet coded
- Township/Section Lines**
- 0
- 7
- Tax Parcels**
- Lot Lines**
- <all other values>
- Lot Line
- Parcel Line
- County Line



Map Notes:

DISCLAIMER: This map is provided 'as is' without warranty of any representation to accuracy, timeliness, or completeness. The burden for determining accuracy, completeness, timeliness, merchantability, and fitness for or the appropriateness for use rests solely on the user. Rapid City and Pennington County make no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The user acknowledges and accepts the limitations of the map, including the fact that the data used to create the map is dynamic and is in the constant state of maintenance, correction, and update. This document does not represent a legal survey of the land. There are no restrictions on the distribution of printed Rapid City/Pennington County maps, other than the City of Rapid City copyright/credit notice must be legible on the print. The user agrees to recognize and honor in perpetuity the copyrights and other proprietary claims for the map(s) established or produced by the City of Rapid City or the vendors furnishing said items to the City of Rapid City.