

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

WEN  
3/14/12

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, the CPP RUSHMORE LLC, hereinafter referred to as the "Company," 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 5A, 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 Company 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 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.

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 Company 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)

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.

**CPP RUSHMORE LLC, a Delaware limited liability company**

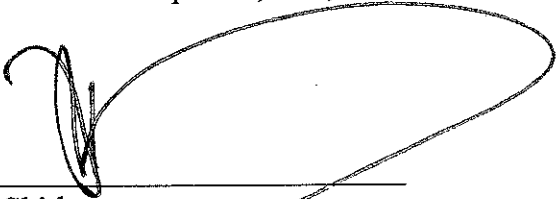
By: CPP Rushmore Venture LLC, an Ohio limited liability company, its Sole Member

By: CPP Rushmore Investors LLC, an Ohio limited liability company, its Managing Member

By: CPP Manager LLC, an Ohio limited liability company, its Managing Member

By: Columbus Pacific Properties, Ltd., an Ohio limited liability company, its Manager

By:

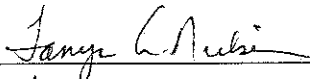
  
\_\_\_\_\_  
Brian Shirken  
a Managing Member

STATE OF CALIFORNIA)  
COUNTY OF LOS ANGELES) SS

On August 22, 2012 before me, Tanya A. Nielsen, Notary Public, personally appeared Brian Shirken, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

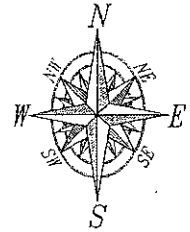
  
\_\_\_\_\_  
Signature

(Seal)



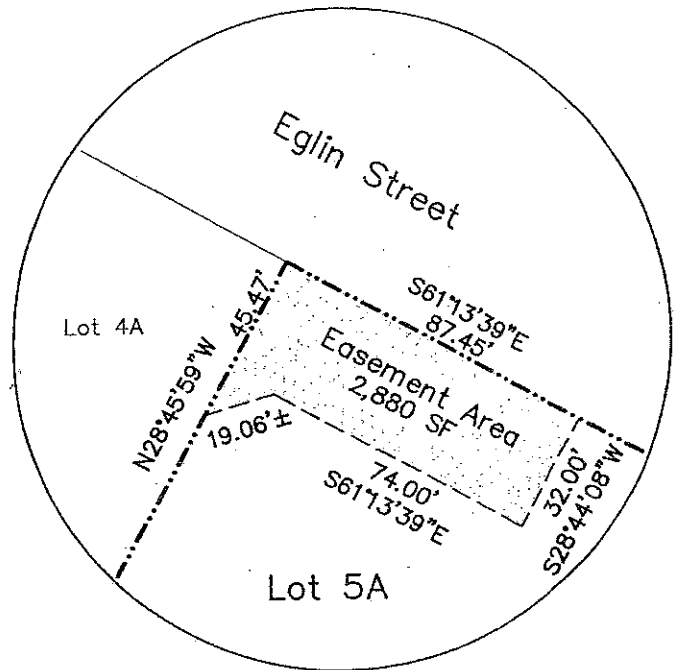
# EXHIBIT A

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

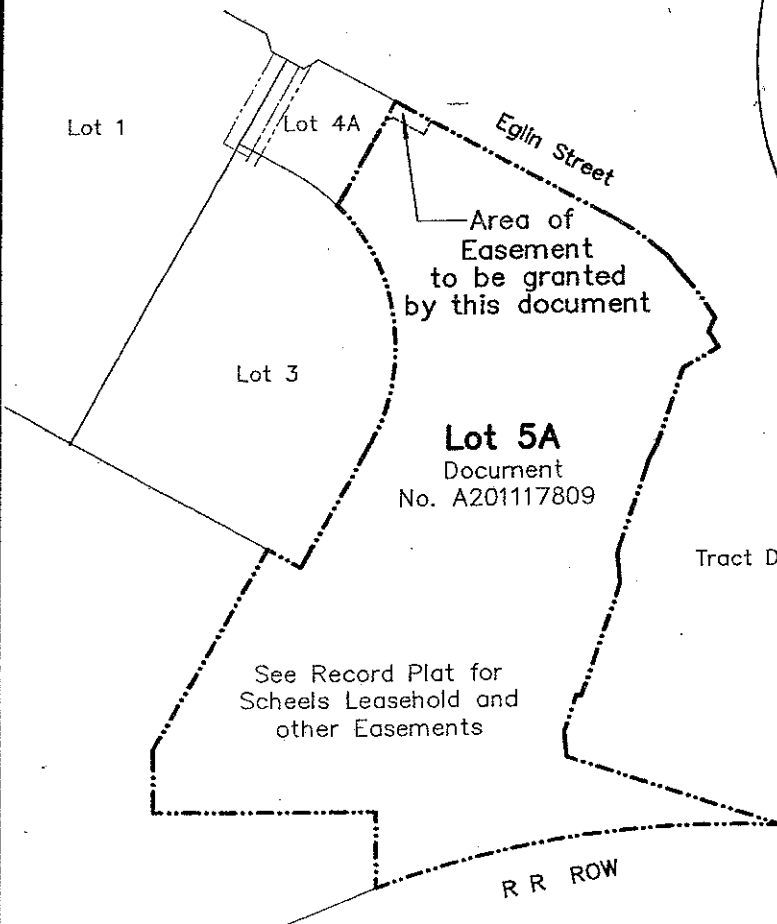


1"=50'

Detail Map  
1"=50'



Vicinity Map  
1"=400'



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

WGA  
8/14/12

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

This declaration of covenant and agreement ("Agreement") is entered into this day of \_\_\_\_\_, 2012, by and between the CPP RUSHMORE LLC, a Delaware limited liability company, ("Company"), c/o Columbus Pacific Properties, 429 Santa Monica Boulevard, Suite 600, Santa Monica, California, 90401, and the City of Rapid City ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

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

Lot 5A, 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, Company 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 Company 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. Company hereby covenants and agrees to convert the existing 8" water service into a conforming water main, and replace the existing sewer service with a conforming 8" sanitary sewer main, when utility services are required for Lot 5A or other adjacent lots.

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

4. It is understood by Company that the City's primary consideration for the granting of the exception to the City's Standard Specifications on the above described property is Company'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)

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)

**CPP RUSHMORE LLC, a Delaware limited liability company**

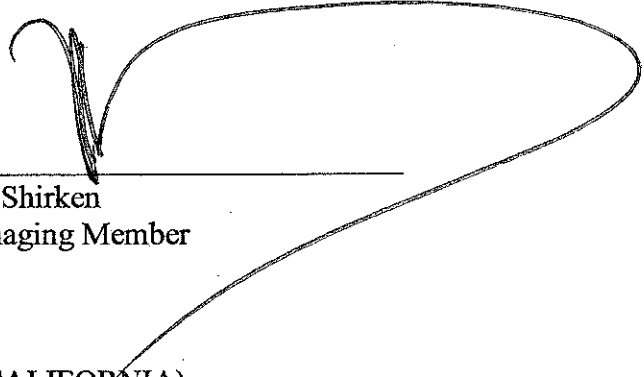
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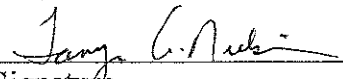
  
\_\_\_\_\_  
Brian Shirken  
a Managing Member

STATE OF CALIFORNIA)  
COUNTY OF LOS ANGELES) SS

On August 22, 2012 before me, Tanya A. Nielsen, Notary Public, personally appeared Brian Shirken, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

  
\_\_\_\_\_  
Signature

(Seal)





RECEIVED

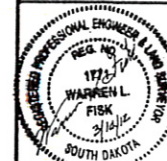
APR 03 2012

Rapid City Community Planning  
& Development Services



1" = 20'  
February 17, 2012

Fisk Land Surveying & Consulting Engineers, Inc.  
1022 Main Street - P.O. Box 8154  
Rapid City, South Dakota 57709  
(605) 346 1538 (ph) (605) 341-1112 (fx)  
fisk@midconetwork.com



The information herein is copyrighted material, and specific to the date, client and purpose as stated.  
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

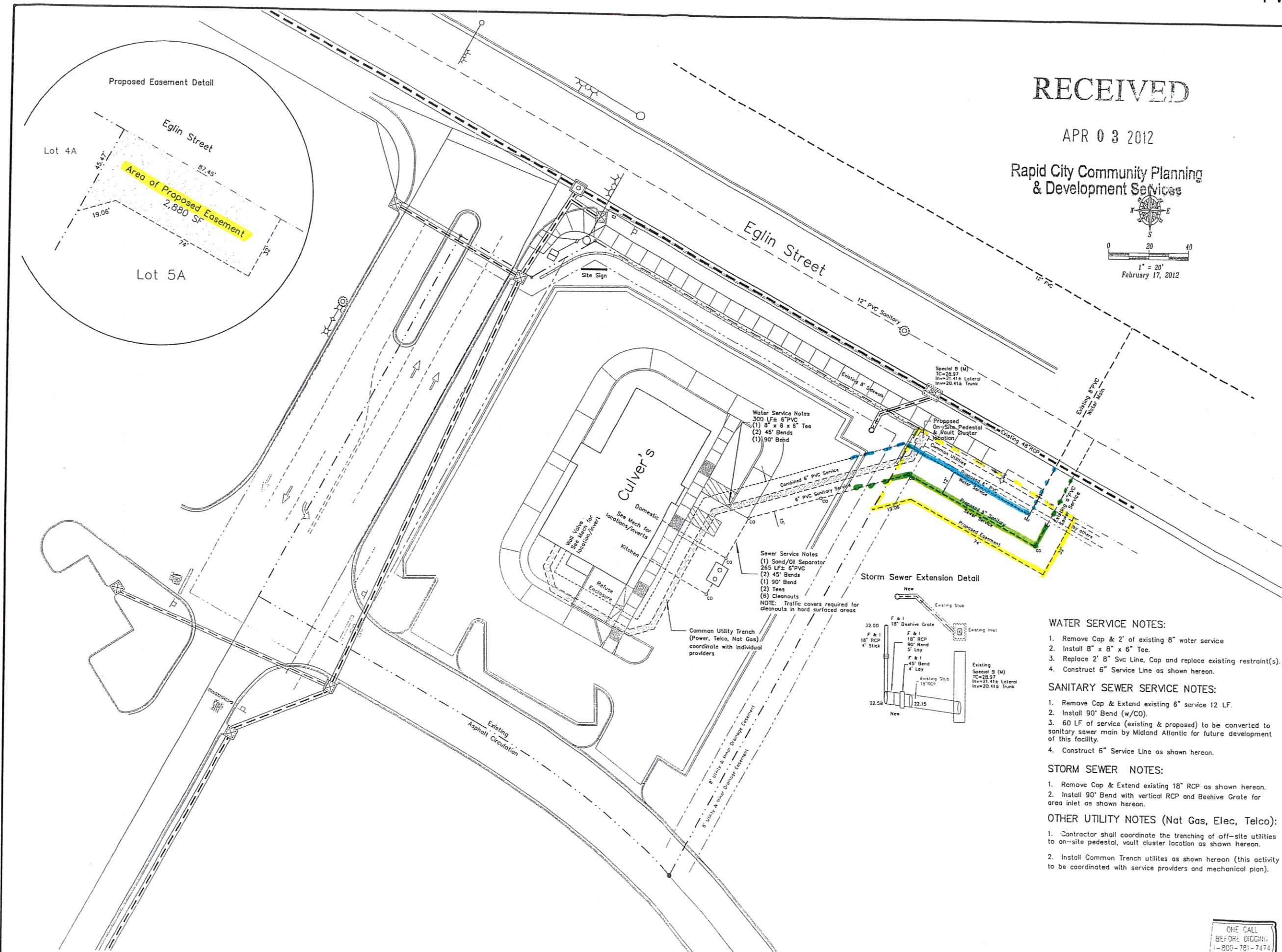
Surveyed by: ML  
Date: 1/17/12  
Drawn by: RWF  
Date: 1/25/12  
Checked by: WF  
Revisions  
Swr. Wtr - 3/14/12

Project No.  
12-01-03

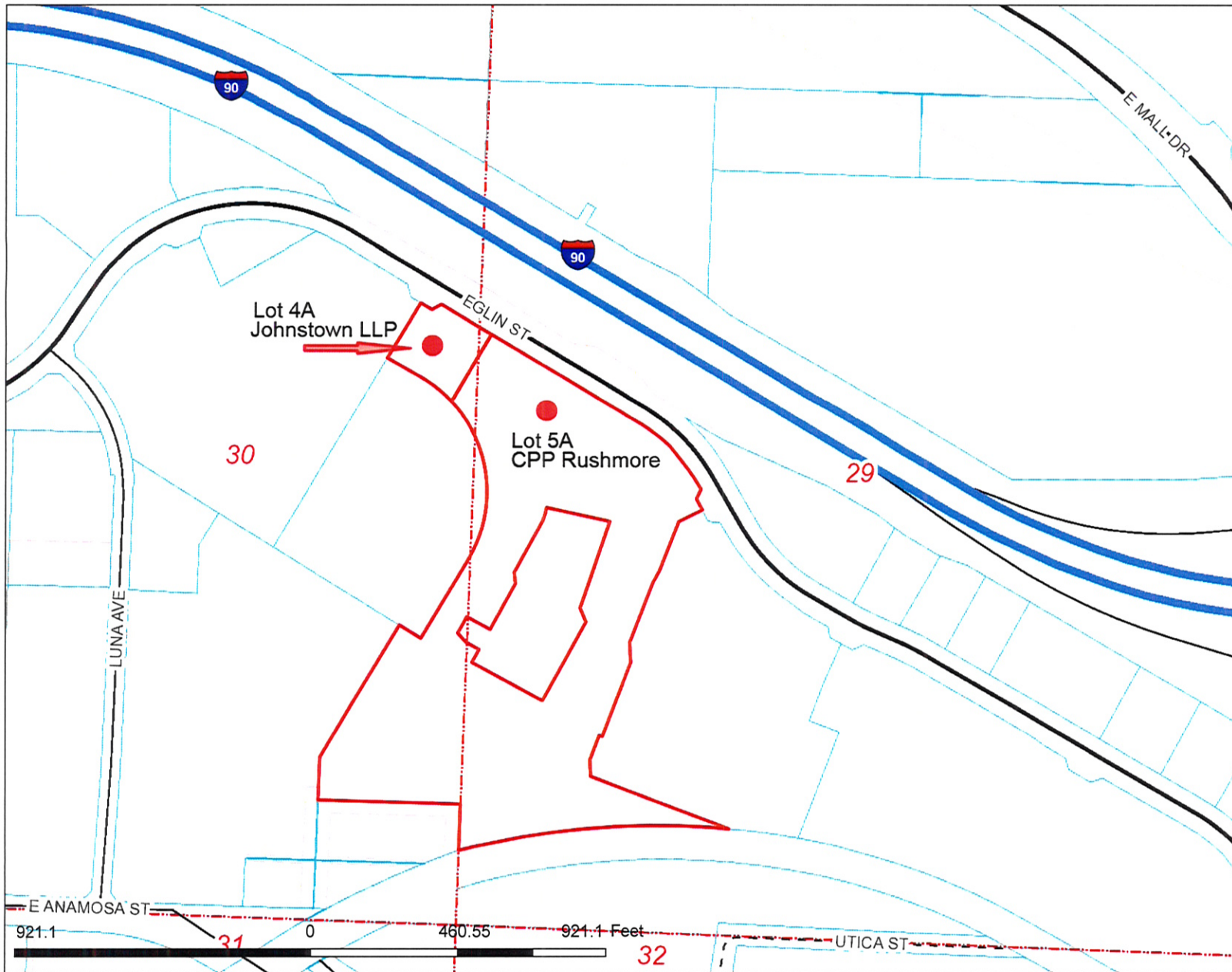
Utility  
Plan

5 of 7

ONE CALL  
BEFORE DIGGING  
1-800-781-7474







- 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



Scale: 1: 5,527

**Map Notes:**

**DISCLAIMER:** This map is provided 'as is' without warranty of any representation to accuracy, timeliness, or completeness. The burden of 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 documents 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.