

Prepared by:  
 James F. Margadant  
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 P.O. Box 1870  
 Rapid City, SD 57709  
 (605) 342-2909

**AGREEMENT TO ALLOW LANDSCAPING IN  
 CITY OF RAPID CITY EASEMENT**

THIS LANDSCAPE AND MAINTENANCE AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF RAPID CITY, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as the "City," and FERDINAND DIRT, L.L.C., a Wyoming limited liability company, of 801 Ferdinand Place, Scottsbluff, Nebraska 69361, hereinafter referred to as the "Owner:"

WHEREAS, on June 11, 1993, Robert F. Rossum and Eugene P. Neal, owners of the real property described as;

Lot 1 of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 34, Township 2 North, Range 7 East of the Black Hills Meridian, as shown on the plat recorded in Book 3 of Plats on page 104 in the office of the Register of Deeds, Pennington County, South Dakota;

and

Lot 5 of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 34, Township 2 North, Range 7 East of the Black Hills Meridian, as shown on the plat recorded in Book 13 of Plats on page 97 in the office of the Register of Deeds, Pennington County, South Dakota;

granted the City a permanent easement to construct and maintain a sanitary sewer on the following described real property:

The north portion of Lot 5 of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 34, Township 2 North, Range 7 East of the Black Hills Meridian,

and said easement was duly recorded on July 28, 1993, in Book 50 on Page 9033 in the office of the Pennington County Register of Deeds; and

WHEREAS, on January 11, 2012, the Estate of Eugene P. Neal, deceased, and Lois E. Rossum and Wells Fargo Bank, N.A., co-trustees of the Robert F. Rossum Family Trust sold, transferred and conveyed to the Owner, Ferdinand Dirt, L.L.C., the following described real property:

Lot 1 of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 34, Township 2 North, Range 7 East of the Black Hills Meridian, as shown on the plat recorded in Book 3 of Plats on page 104 in the office of the Register of Deeds, Pennington County, South Dakota;

and

Lot 5 of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 34, Township 2 North, Range 7 East of the Black Hills Meridian, as shown on the plat recorded in Book 13 of Plats on page 97 in the office of the Register of Deeds, Pennington County, South Dakota;

subject to the terms of the utility easement previously granted to the City on June 11, 1993; and

WHEREAS, the Owner, Ferdinand Dirt, L.L.C., is constructing a new retail business on the property purchased from the Estate of Eugene P. Neal, deceased, and Lois E. Rossum and Wells Fargo Bank, N.A., co-trustees of the Robert F. Rossum Family Trust on January 11, 2012, and desires to place landscaping in the aforesaid utility easement held by the City;

NOW THEREFORE, the Owner hereby requests permission to place <sup>and</sup> maintain landscaping features, including fencing, irrigation, and lighting in the City's utility easement on the following described property:

The north portion of Lot 5 of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 34, Township 2 North, Range 7 East of the Black Hills Meridian, recorded on July 28, 1993, in Book 50 on Page 9033 in the office of the Pennington County Register of Deeds.

In consideration for the City granting permission to place and maintain landscaping features within the easement, the Owner acknowledges that any permission given by the City to

Owner to place landscaping in said dedicated easement does not waive or modify the City of Rapid City's rights as the easement holder. The Owner understands and agrees that the City of Rapid City or its authorized contractor may at any time and for any reason perform work within the aforesaid easement and that the City shall have no liability to Owner for any damage to landscaping features in the easement and that the Owner shall be responsible for any costs incurred in repairing or replacing such landscaping features. The Owner shall inform any successor Owner of the terms and conditions of this Agreement.

The City of Rapid City hereby grants Ferdinand Dirt, L.L.C., permission to place landscaping features, including fencing, irrigation, and lighting, within its aforesaid utility easement subject to these terms and conditions.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF RAPID CITY,

FERDINAND DIRT, L.L.C.,

By: \_\_\_\_\_  
Mayor

By: Rick J. Bentley 11/16/2012  
Manager

ATTEST:

\_\_\_\_\_  
Finance Officer

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

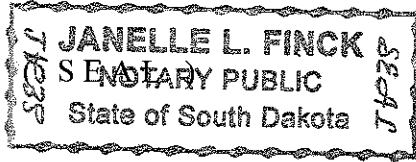
RJEN 11/26/12  
Attorney Date

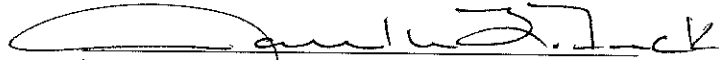
State of Nebraska SD )  
:ss.  
County of PENNINGTON )

On this the 16<sup>TH</sup> day of NOVEMBER, 2012, before me the undersigned notary public, personally appeared, RICK J. BENTLEY, who acknowledged himself to be the manager of Ferdinand Dirt, L.L.C., a Wyoming limited liability company, and that he, as such manager, being authorized to do so, executed the foregoing instrument for the

purposes therein contained, signing the name of Ferdinand Dirt, L.L.C., by himself as its manager.

In Witness Whereof, I hereunto set my hand and official seal.



  
Notary Public - Nebraska SD  
My commission expires: 9-18-18

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

On this the \_\_\_\_ day of \_\_\_\_\_, 2012, before me the undersigned notary public, 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 to do so, executed the foregoing instrument for the purposes therein contained, signing the name of the City of Rapid City, by themselves as Mayor and Finance Officer.

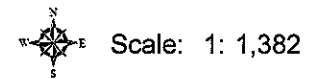
In Witness Whereof, I hereunto set my hand and official seal.

( SEAL )

\_\_\_\_\_  
Notary Public – South Dakota  
My commission expires: \_\_\_\_\_

**Legend**

- Roads**
  - Interstate
  - US highway
  - SD highway
  - County highway
  - Main road
  - Minor arterial
  - Collector
  - Ramp
  - Paved road
  - Unpaved road
  - FS Highway
  - Driveway
  - Paved Alley
  - Unpaved Alley
  - Unimproved road
  - Trail
  - Airport Runway
  - Not yet coded
- Township/Section Lines**
  - 0
  - 7
- Tax Parcels**
- Lot Lines**
  - all other values-
  - Lot Line
  - Parcel Line
- County Line**
- Sewer Manholes**
  - StandardManhole, Public
  - DropManhole, Public
  - StandardManhole, Private
  - DropManhole, Private
- Sewer Lift Stations**
- Sewer Forced Main**
- Sewer Gravity Mains**
  - Collector, Public
  - Trunk, Public
  - Interceptor, Public
  - Collector, Private
  - Trunk, Private



**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.



STATE OF SOUTH DAKOTA )  
 ) SS. ACKNOWLEDGEMENT  
COUNTY OF PENNINGTON )

On this, the 6 day of July, 1993, before me, the undersigned officer, personally appeared Edward R. McLaughlin and Richard Wahlstrom, 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 and being authorized so to do, executed the foregoing instrument 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

[Signature]  
Notary Public

My Commission Expires:  
9-3-95  
(seal)

STATE OF SOUTH DAKOTA )  
 ) SS. ACKNOWLEDGEMENT  
COUNTY OF PENNINGTON )

On this, the 11th day of June, 1993 before me, the undersigned officer, personally appeared Robert F. Rossum and Eugene P. Neal who acknowledged himself/themselves to be the owners ~~and~~ and respectively, of Robert ~~xxxxxxx~~ F. Rossum & Eugene P. Neal and known to me or satisfactorily proved to be, the person(s) whose name is subscribed to the within instrument and acknowledged that he(they) executed the same for the purposes therein contained.

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

[Signature]  
Notary Public

My Commission Expires:  
4-13-2001  
(SEAL)

STATE OF SOUTH DAKOTA )  
 )  
COUNTY OF PENNINGTON )  
 )  
CITY OF RAPID CITY )

I, Richard K. Wahlstrom, the duly appointed, qualified and acting Finance Officer of the City of Rapid City, South Dakota do hereby certify that the foregoing is a true, correct and complete copy of a

Caution  
and that the same was accepted in the regular meeting of the Common Council on 7-6-93 or appears upon the files in my office.

Dated at Rapid City, South Dakota, this 13 day of July, 1993

Finance Officer of the City of  
Rapid City, South Dakota  
[Signature]

STATE OF SOUTH DAKOTA  
THIS IS TO CERTIFY THAT THE MICROGRAPHIC IMAGE APPEARING ON THIS SIDE OF MICROFILM IS AN ACCURATE REPRODUCTION OF THE ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SECTION 1-27-4 OF THE SOUTH DAKOTA CODIFIED LAWS. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER AND ON MICROFILM WHICH MEET THE RECOMMENDED GUIDELINES OF ADMINISTRATIVE RULES OF SOUTH DAKOTA 10 04 01 AND TO 04 02 FOR MICROGRAPHIC REPRODUCTIONS

Shirley Beagle  
(AMT) OPERATOR SIGNATURE

7-28-93  
(101) AMT (101) (101)

251  
264  
REDUCTION RATIO  
ROLL NUMBER

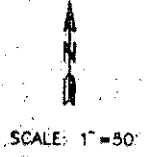
### EXHIBIT 'A'

MAP OF EASEMENT PARCEL FOR  
PUBLIC UTILITIES LOCATED IN  
THE NORTH PORTION OF LOT 5 OF THE  
SE 1/4, SW 1/4, SE 1/4,  
SECTION 34, T2N, R7E B.H.M.  
PENNINGTON COUNTY, SOUTH DAKOTA

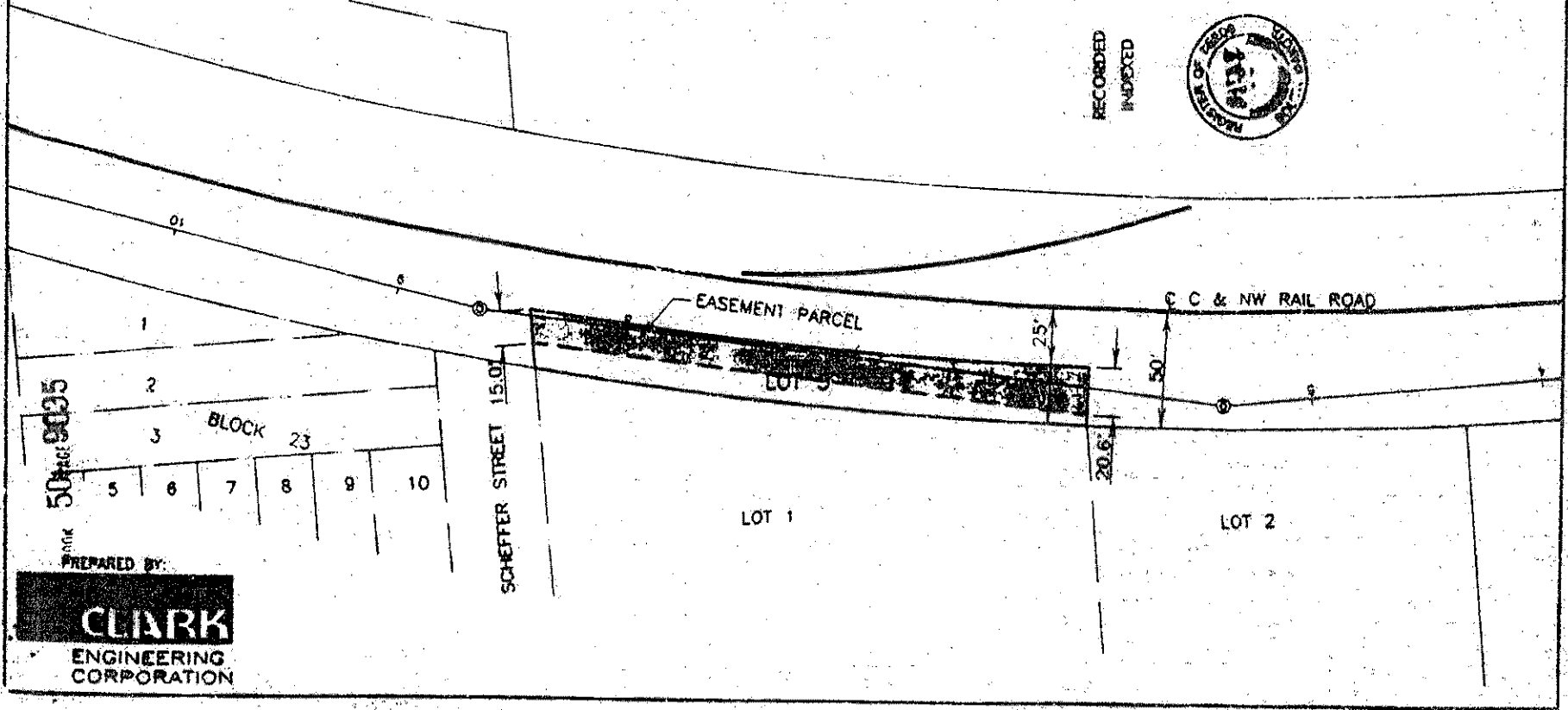
DCC NO. \_\_\_\_\_  
BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
FEE \_\_\_\_\_  
93 JUL 14 AM 11:26  
PENNINGTON COUNTY  
REGISTER OF DEEDS

D.C. NO. 19419  
BOOK 22 PAGE 2233  
FEE \$20.00  
93 JUL 20 PM 12:29

MARKER LABEL  
PENNINGTON COUNTY  
REGISTER OF DEEDS



RECORDED  
INDEXED



50' x 90' 35'

PREPARED BY:

**CLARK**  
ENGINEERING  
CORPORATION

STATE OF SOUTH DAKOTA  
MICROFILM CERTIFICATE OF AUTHENTICITY  
THIS IS TO CERTIFY THAT THE MICROGRAPHIC IMAGE APPEARING ON THIS SLIDE OF MICROFILM IS AN ACCURATE REPRODUCTION OF THE ORIGINAL RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SECTION 1-27.4 OF THE SOUTH DAKOTA COPIED LAW. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF ADMINISTRATIVE RULES OF SOUTH DAKOTA 10-04.01 AND 10-04.02 FOR MICROGRAPHIC REPRODUCTIONS.  
REDUCTION RATIO: 25:1  
ROLL NUMBER: 264  
DATE MICROFILMED: 7-28-93  
CAMERA OPERATOR SIGNATURE: *Shirley Angles*