

Prepared by City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4140

WEN  
9-25-13

**PERPETUAL CONSERVATION EASEMENT AGREEMENT  
BETWEEN THE CITY OF RAPID CITY AND THE RAPID CITY AREA SCHOOL  
DISTRICT #51-4 FOR PROPERTY LOCATED NEAR PARKVIEW DRIVE AND  
ENCHANTED PINES DRIVE**

This Perpetual Conservation Easement Agreement is entered into by and between the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, South Dakota, and the **RAPID CITY AREA SCHOOL DISTRICT #51-4 OF PENNINGTON COUNTY, SOUTH DAKOTA**, a South Dakota school corporation, of 300 Sixth Street, Rapid City, South Dakota.

WHEREAS, the City of Rapid City is the applicant for Department of the Army permit Number NWO-2013-0412-PIE to place fill material in or otherwise remove wetlands located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, T1N, R7E, BHM, Pennington County, South Dakota; and

WHEREAS, the U.S. Army Corps of Engineers has regulatory jurisdiction over the discharge of dredged or fill material into said wetlands pursuant to Section 404 of the Clean Water (33 USC 1344); and

WHEREAS, the Rapid City Area School District #51-4 is the owner of the real estate described in Exhibits A and B, which encompasses 2.18 acres +/-, and is located in Lot 2 of Block 11 of Robbinsdale Addition Number Ten to the City of Rapid City, Pennington County, South Dakota; and

WHEREAS, the Rapid City Area School District #51-4 and the City of Rapid City entered into a Memorandum of Understanding (MOU) dated February 19, 2001, with regard to the City of Rapid City's use of specific parcels of land within the boundaries of the above-referenced real estate; and

WHEREAS, the modification or dissolution of the original MOU does not affect the protection of natural resources or the perpetual easements described herein; and

WHEREAS, the City of Rapid City and the Omaha District of the U.S. Army Corps of Engineers have reached an agreement whereby the City of Rapid City will be permitted to

discharge fill material in wetlands in accordance with the terms and conditions of Department of the Army permit Number NWO-2013-0412-PIE; and that in consideration for said discharge of fill material in the wetland, the City of Rapid City will provide mitigation for the adverse environmental effects resulting from the placement of fill material in the wetland by causing the dedication of the easements shown in Exhibits A and B hereto for perpetual use as a conservancy area in accordance with the terms and conditions of this document and the above-mentioned permit; and

WHEREAS, the above-mentioned dedication shall consist of the execution of this document by all parties necessary to restrict the use and title of the land and the recording of this document in the Office of the Register of Deeds for Pennington County, South Dakota; and

WHEREAS, the terms and conditions of this Conservation Easement shall, as of the date of execution of this document, bind the Rapid City Area School District #51-4 and the City of Rapid City to the extent of their legal and/or equitable interest in the land; and that this Covenant shall run with the land and be binding on the Rapid City Area School District #51-4 and the City of Rapid City and their successors and assigns; and

WHEREAS, the terms and conditions of this Conservation Easement shall be both implicitly and explicitly included in any transfer, conveyance, or encumbrance of the Land or any part thereof, and that any instrument of transfer, conveyance, or encumbrance affecting all or any part of the Land shall set forth the terms and conditions of this document either by reference to this document or set forth in full text.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby covenant and agree as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Conservation Easement Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Grant of Easement. The Rapid City Area School District #51-4 does hereby grant and dedicate a Perpetual Conservation Easement on, over, and across the Easement Areas, as described below.

3. Easement Areas. The easement areas shall be as depicted on Exhibits A and B, attached hereto and specifically incorporated herein by this reference, over and across the following property:

**Lot 2 of Block 11 of Robbinsdale Addition Number Ten (10) to the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 26 on Page 30, in the office of the Register of Deeds, Pennington County, South Dakota.**

4. Consideration. The parties agrees that the mutual agreements and covenants between the parties, and the granting of the permit mentioned above constitute good and valuable consideration for the grant of easement contained in this Conservation Easement Agreement.

5. Restrictions on Use. The easement areas shall have the following restrictions on use:

- a. There shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, on the land.
- b. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials.
- c. There shall be no building of roads or paths for vehicular or pedestrian travel or any change in the topography of the land.
- d. There shall be no removal, destruction, or cutting of trees or plants; spraying with biocides, insecticides, or pesticides; grazing of animals, farming, tilling of soil, or any other agricultural activity. Management activities are acceptable upon approval from the Corps via a Preconstruction Notification.
- e. There shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the land without authorization from the Corps.
- f. This Covenant of Dedication may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the U.S. Army Corps of Engineers. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the State of South Dakota.
- g. This Covenant is made in perpetuity and shall run with the land such that the present owner and its heirs and assigns forever shall be bound by the terms and conditions set forth herein.

6. Retained Rights. The Rapid City Area School District #51-4 shall retain all rights to the Easement Areas not granted by this Conservation Easement Agreement.

7. Binding Effect. The covenants and agreements contained in this Conservation Easement Agreement, except as otherwise expressly provided herein, are intended to run with the land and shall apply to, inure to the benefit of, and are binding upon the parties hereto and their respective successors administrators, executors, and assigns.

8. Integration. This Conservation Easement Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

9. Amendments. This Conservation Easement Agreement may only be amended by a written document duly executed by all parties.

10. Counterparts. This Conservation Easement Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

11. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments as shall be necessary or convenient to effectuate the purposes contemplated by this Conservation Easement Agreement.

12. Construction. The language in all parts of this Conservation Easement Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Conservation Easement Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Conservation Easement Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Conservation Easement Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Conservation Easement Agreement.

13. Severability. The invalidity of all or any part of any section of this Conservation Easement Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

14. Applicable Law and Venue. This Conservation Easement Agreement shall be interpreted under the laws of the State of South Dakota without regard to provisions on conflict of laws. All litigation under this Agreement shall be take place in the Circuit Court of Pennington County, South Dakota.

*[Signature pages follow]*

**RAPID CITY AREA SCHOOL DISTRICT 51-4**

\_\_\_\_\_  
School Board President

ATTEST

\_\_\_\_\_  
Business Manager

(seal)

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared \_\_\_\_\_ and \_\_\_\_\_, who acknowledged themselves to be the School Board President and Business Manager, respectively, of the Rapid City Area School District No. 51-4, and that they, as such School Board President and Business Manager, being authorized so to do, executed the foregoing Agreement for the purposes therein contained by signing the name of the Rapid City Area School District No. 51-4 by themselves as School Board President and Business Manager.

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

(seal)

\_\_\_\_\_  
Notary Public – South Dakota  
My Commission Expires \_\_\_\_\_

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

ATTEST

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

(seal)

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, 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 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.

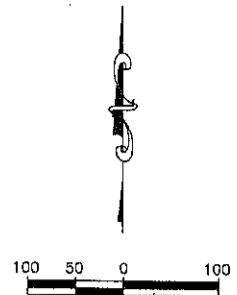
(seal)

\_\_\_\_\_  
Notary Public – South Dakota  
My Commission Expires \_\_\_\_\_

**PERPETUAL CONSERVATION EASEMENT**

LOT 2 OF BLOCK 11 OF  
ROBBINSDALE ADDITION NO. 10  
LOCATED IN THE SE 1/4 OF SECTION 13  
AND THE N1/2 OF SECTION 24 BOTH  
IN T1N, R7E, BHM,  
RAPID CITY, PENNINGTON COUNTY, SD

OWNER: RAPID CITY INDEPENDENT SCHOOL DISTRICT 51-4

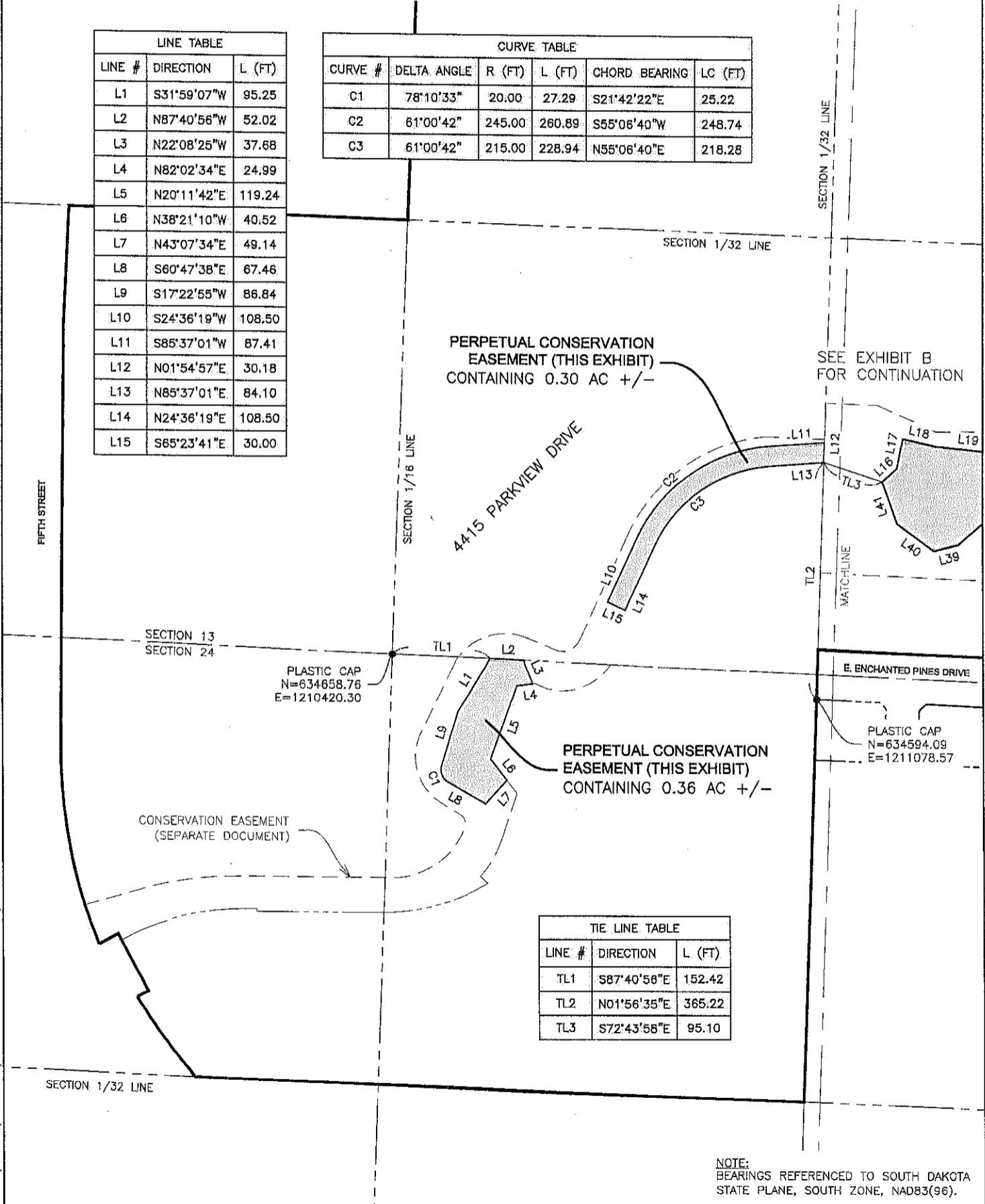


**LEGEND**

- FOUND MONUMENT
- DRAINAGE EASEMENT
- PROPERTY AS DESCRIBED
- PROPERTY LINE
- EXISTING EASEMENT

LINE TABLE		
LINE #	DIRECTION	L (FT)
L1	S31°59'07"W	95.25
L2	N87°40'56"W	52.02
L3	N22°08'25"W	37.68
L4	N82°02'34"E	24.99
L5	N20°11'42"E	119.24
L6	N38°21'10"W	40.52
L7	N43°07'34"E	49.14
L8	S60°47'38"E	67.46
L9	S17°22'55"W	86.84
L10	S24°36'19"W	108.50
L11	S85°37'01"W	87.41
L12	N01°54'57"E	30.18
L13	N85°37'01"E	84.10
L14	N24°36'19"E	108.50
L15	S65°23'41"E	30.00

CURVE TABLE					
CURVE #	DELTA ANGLE	R (FT)	L (FT)	CHORD BEARING	LC (FT)
C1	78°10'33"	20.00	27.29	S21°42'22"E	25.22
C2	61°00'42"	245.00	260.89	S55°06'40"W	248.74
C3	61°00'42"	215.00	228.94	N55°06'40"E	218.28



TIE LINE TABLE		
LINE #	DIRECTION	L (FT)
TL1	S87°40'58"E	152.42
TL2	N01°56'35"E	365.22
TL3	S72°43'58"E	95.10

NOTE:  
BEARINGS REFERENCED TO SOUTH DAKOTA  
STATE PLANE, SOUTH ZONE, NAD83(96).

08-23-13 P:\12-134\AutoCAD\Easements\CONSERVATION EASEMENT.dwg

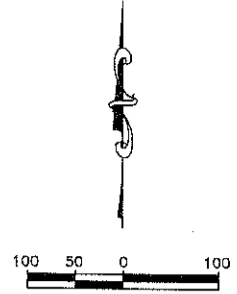
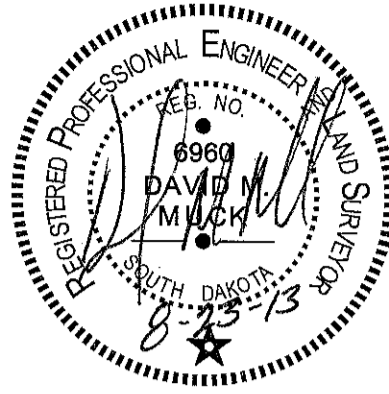


**EXHIBIT A**

PROJECT NO.  
J12-134  
FIGURE NO.  
1 OF 1

**PERPETUAL CONSERVATION EASEMENT**

LOT 2 OF BLOCK 11 OF  
 ROBBINSDALE ADDITION NO. 10  
 LOCATED IN THE SE 1/4 OF SECTION 13  
 AND THE N1/2 OF SECTION 24 BOTH  
 IN T1N, R7E, BHM,  
 RAPID CITY, PENNINGTON COUNTY, SD  
 OWNER: RAPID CITY INDEPENDENT SCHOOL DISTRICT 51-4

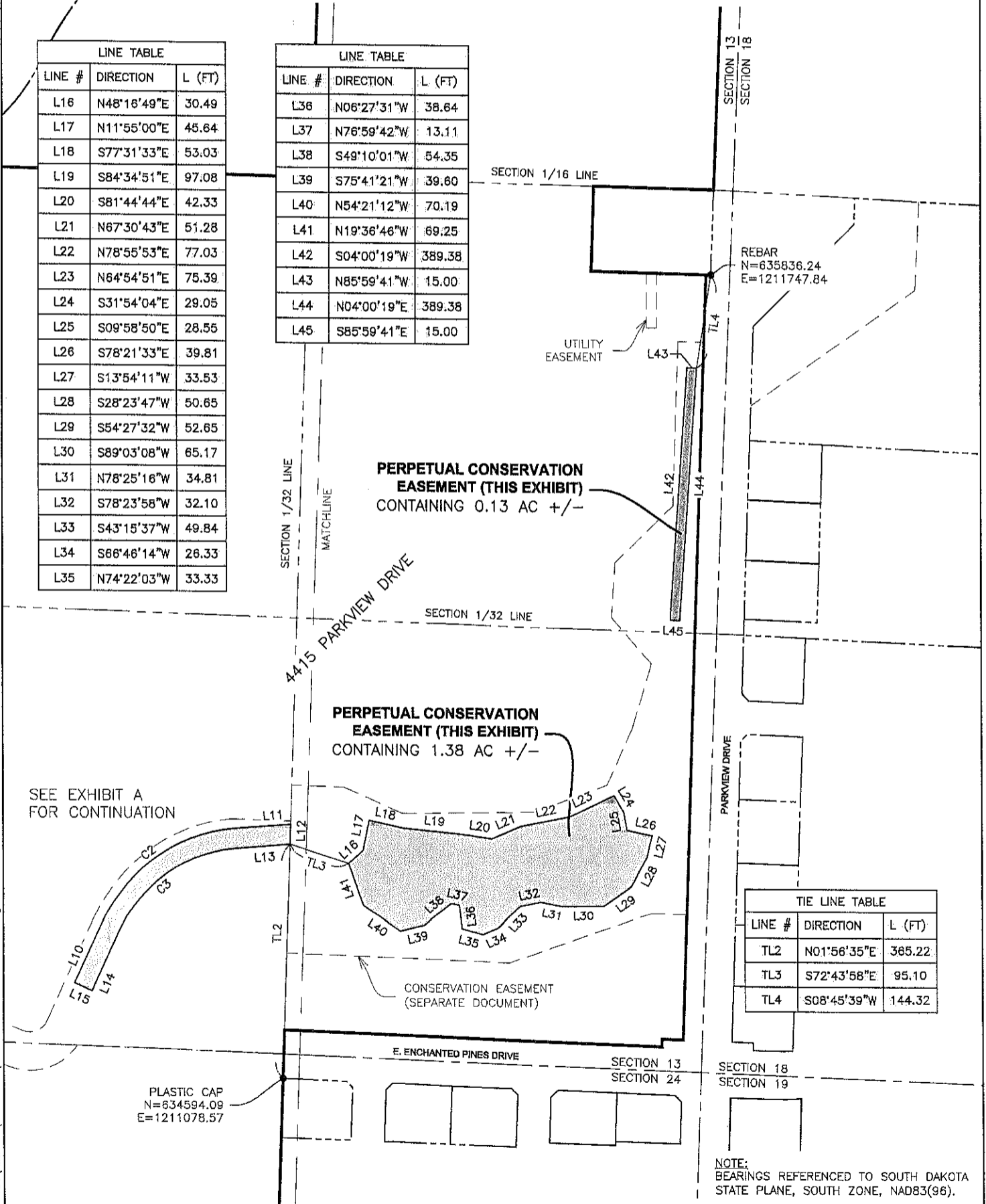


**LEGEND**

- FOUND MONUMENT
- DRAINAGE EASEMENT
- PROPERTY AS DESCRIBED
- PROPERTY LINE
- EXISTING EASEMENT

LINE #	DIRECTION	L (FT)
L16	N48°16'49"E	30.49
L17	N11°55'00"E	45.64
L18	S77°31'33"E	53.03
L19	S84°34'51"E	97.08
L20	S81°44'44"E	42.33
L21	N67°30'43"E	51.28
L22	N78°55'53"E	77.03
L23	N64°54'51"E	75.39
L24	S31°54'04"E	29.05
L25	S09°58'50"E	28.55
L26	S78°21'33"E	39.81
L27	S13°54'11"W	33.53
L28	S28°23'47"W	50.65
L29	S54°27'32"W	52.65
L30	S89°03'08"W	65.17
L31	N78°25'16"W	34.81
L32	S78°23'58"W	32.10
L33	S43°15'37"W	49.84
L34	S86°46'14"W	26.33
L35	N74°22'03"W	33.33

LINE #	DIRECTION	L (FT)
L36	N06°27'31"W	38.64
L37	N76°59'42"W	13.11
L38	S49°10'01"W	54.35
L39	S75°41'21"W	39.60
L40	N54°21'12"W	70.19
L41	N19°36'46"W	69.25
L42	S04°00'19"W	389.38
L43	N85°59'41"W	15.00
L44	N04°00'19"E	389.38
L45	S85°59'41"E	15.00



LINE #	DIRECTION	L (FT)
TL2	N01°56'35"E	365.22
TL3	S72°43'58"E	95.10
TL4	S08°45'39"W	144.32

NOTE: BEARINGS REFERENCED TO SOUTH DAKOTA STATE PLANE, SOUTH ZONE, NAD83(96).

08-22-13 P:\12-134\AutoCAD\Easements\CONSERVATION EASEMENT B.dwg

**Ferbr Engineering Company, Inc.**  
 Civil Engineering • Water Resources • Transportation • Land Surveying • GIS  
 229 West Washington St., Rapid City, SD 57701 • Phone: 605.343.9011

**EXHIBIT B**

PROJECT NO. J12-134  
 FIGURE NO. 1 OF 1