

Prepared by:
City of Spearfish
625 N. 5th Street
Spearfish, SD 57783
(605) 642-1335

EASEMENT AGREEMENT

This **EASEMENT AGREEMENT** (hereinafter "Agreement") is made and entered into the ___ day of _____, 20__ by and between **LAWRENCE COUNTY**, a political subdivision of the State of South Dakota, 90 Sherman Street, Deadwood, South Dakota 57732 (hereinafter "Owner") and the **CITY OF SPEARFISH**, a municipal corporation and political subdivision of the State of South Dakota, 625 North Fifth Street, Spearfish, South Dakota 57783 (hereinafter "Spearfish").

BACKGROUND AND PURPOSE

1. Owner is the owner of the following-described real property situated in the City of Spearfish, Lawrence County, South Dakota, to-wit:

NE1/4NW1/4 AND THE NW1/4NW1/4 OF SECTION 9, T.6N., R.2E., B.H.M., IN THE SW1/4SW1/4, SW1/4NW1/4 AND THE NW1/4NW1/4 OF SECTION 4, T.6N., R.2E., B.H.M., IN THE SE1/4NE1/4 OF SECTION 5, T.6N., R.2.E, B.H.M., ALL IN THE CITY OF SPEARFISH, LAWRENCE COUNTY, SOUTH DAKOTA

(hereinafter "Owner's Property").

2. Spearfish has requested an easement to use portions of Owner's Property, and Owner is willing to grant Spearfish an easement to use of portions of Owner's Property subject to the terms and conditions of this Agreement.

NOW THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) and the covenants, conditions, benefits, and obligations herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

3. The foregoing recitals are hereby incorporated and made a part of this Agreement.
4. **Grant of Easement.** Owner hereby grants Spearfish an easement on Owner's Property, as

more fully described hereafter.

5. **Description of Easement Area.** The location and boundaries of this easement are illustrated by Exhibit A, which is attached hereto and incorporated herein by reference (hereinafter referred to as the “Easement Area”). Subject to easements, restrictions, and reservations of record.
6. **Purpose and Allowed Use.** The purpose of this easement is to grant Spearfish the ability to utilize the Easement Area for the following purposes:
 - 6.1. **Construction of Path.** On or before April 5, 2021, Spearfish shall construct a 10-foot-wide hard surface pathway in accordance with standards and specifications to be approved in advance by Owner (hereinafter “Path”) in the location designated on Exhibit A. Although it will be located on Owner’s Property, such path shall be considered public for all intents and purposes until and unless the same is returned to Owner pursuant to Paragraph 9 herein.
 - 6.2. **Maintenance.** Once the Path described in Paragraph 6.1 has been constructed, Spearfish will maintain the Easement Area to include mowing, snow removal, weed control, tree clearing, irrigation, and other necessary maintenance.
7. **Construction Commencement.** If construction of the Path has not commenced by June 30, 2023 the easement will automatically extinguish on that date unless the parties agree to an extension.
8. **Non-exclusive Easement.** The rights granted to Spearfish hereby are non-exclusive. Owner may continue to use the Easement Area and grant others rights to use the Easement Area in a manner that does not interfere with Spearfish’s rights hereunder. Members of the public are not required to obtain Owner’s permission to use and occupy the Easement Area. Public occupation will be consistent with the intent of this Agreement and further will be consistent with the terms and conditions stated herein. The rights Owner retains include those set forth below:
 - (a) **Mitigating Risk.** Owner may cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to persons on or about the Easement Area.
 - (b) **Grants to Others.** Owner may grant leases, licenses, permits, easements, and rights-of-way affecting the Easement Area to persons other than Spearfish for those facilities, improvements, activities, and uses consistent with this paragraph.
 - (c) **Enforcement of Rights.** Owner may remove or exclude from the Easement Area persons who are (1) in locations other than the Path or other rec path facilities or (2) not engaged in permitted Path uses.

9. **Abandonment of Path and Easement Area.** If Spearfish abandons the Path, the easement shall cease. Abandonment will be deemed to have occurred only upon Resolution entered into by the Common Council of the City of Spearfish. Upon abandonment, Spearfish will remove all improvements and restore and reclaim occupancy of the site to its natural state at Spearfish's sole expense.
10. **Maintenance of Path and Easement Area.** At all times while the easement is in existence, Spearfish shall be solely responsible for maintenance of the Easement Area, including mowing, snow removal, weed control, tree clearing, irrigation, and other necessary maintenance. Spearfish agrees not to use any deicing product or herbicide within the Easement Area. Spearfish will provide trash receptacles and trash removal services sufficient to service the intended use of the Easement Area.
11. **Fencing, Barriers and Signs Path and Easement Area.** Spearfish, with Owner's prior written consent, may erect and maintain fencing and barriers within the Easement Area as may be reasonably necessary to prevent access to the Easement Area by motor vehicles and/or to discourage pets from straying from the Easement Area onto Owner's properties. Spearfish, with Owner's prior written consent, shall have the right to erect reasonable signs, blazing or other markings within the Easement Area to inform the public of the Path location or other Path features. Owner shall not erect fences, barriers or signs that impede access to or use of the Path.
12. **Modification.** Modification. In the event it becomes desirable for Owner to improve, modify, alter, expand or maintain (collectively "change(s)") any portion of the Easement Area described herein, and such change(s) requires the relocation of any improvement installed or maintained by Spearfish as part of this Agreement, Spearfish will be required to bear the ensuing design and construction costs of relocating any and all such Spearfish improvements to facilitate Owner's change(s).
 - (a) For its part, Owner will be responsible for the design and construction costs for its change(s), as referenced above, exclusive of those associated with the relocation of Spearfish improvements.
 - (b) Concerning the relocation of its improvements, Spearfish reserves the right to select the design professional(s) and construction contractor(s) necessary to facilitate the relocation. If the parties use the same design professional(s) and/or construction contractor(s), each party will be responsible for its respective costs consistent with the foregoing.
 - (c) Owner agrees to provide Spearfish with a reasonable timeframe in which to complete the relocation of the improvements.

13. **Compliance with Laws.** Spearfish's use of the Easement Area shall comply with all federal, state, county, and municipal laws and regulations.
14. **Spearfish Insurance.** If Spearfish anticipates performing construction activities, Spearfish will be required to furnish Owner the following certificates of insurance and assure that the insurance is in effect for the life of this Agreement:
 - i. **Governmental Liability Insurance:**
Spearfish will maintain occurrence based governmental liability insurance or equivalent form with a limit of not less than \$2,000,000.00 for each occurrence.
 - ii. **Business Automobile Liability Insurance:**
Spearfish will maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance will include coverage for owned, hired, and non-owned vehicles.
 - iii. **Workers' Compensation Insurance:**
Spearfish will procure and maintain workers' compensation coverage as required by South Dakota law.
15. **Contractor Insurance.** In accordance with its standard practice, Spearfish will require the contractor who builds the Trail to maintain occurrence-based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the agreement with Spearfish or be no less than two times the occurrence limit. Such insurance must add Spearfish and its employees as additional insureds.

The contractor will also be required to maintain business automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. Such insurance must add Spearfish and its employees as additional insureds.

The contractor will be required to procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Spearfish will require the contractor to provide a certificate of insurance for the required insurance to Spearfish. The required insurance may not be cancelled without at least 30 days' prior written notice to Spearfish.
16. **Indemnification.** Spearfish agrees to indemnify and hold the Owner, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings of a kind or nature brought because of any injuries or damage received or

sustained by any person or property on account of the use or occupancy of Owner's property designated herein.

17. **Authority.** Owner represents and warrants that it has full power and authority to enter into and perform this Agreement in accordance with its terms. Owner is a business corporation validly formed, qualified to do business, and in good standing under the laws of the State of South Dakota. The individual executing this Agreement on behalf of Owner has the power and authority to bind Owner to the terms and conditions of this Agreement.
18. **Legally Binding.** All agreements, covenants, conditions, and obligations contained in this Agreement shall be legally binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
19. **Complete Agreement.** This Agreement constitutes a written memorandum of the entire understanding and agreement between the parties and supersedes all prior understandings, negotiation, or agreements between them, whether written or verbal, with respect to the subject matter hereof.
20. **Amendments; Waivers.** No amendment or waiver of any provision of this agreement or consent to any departure from the terms of this agreement is effective unless the amendment, waiver, or consent is in writing and signed by an authorized signatory of the parties. A waiver or consent is effective only in the specific instance and for the specific purposes given. Failure by Spearfish or Owner to insist upon or enforce any of its rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of a party's right to insist upon strict compliance with the provisions hereof. Either party hereto may waive the benefit contained in this Agreement.
21. **Attorney's Fees and Costs.** In the event any legal action is filed to enforce or recover under any provision of this Agreement, the prevailing party in the suit shall be entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.
22. **Severability.** In the event that any portion of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision herein.
23. **Notice.** Notice, demand, or other communication made pursuant to this Agreement by any party to another shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally at the address stated above.
24. **Other Documents.** The parties hereby mutually agree to execute any and all other documents necessary or needed to effectuate the purposes of this Agreement.

25. **Governing Law; Forum Selection; Submission to Jurisdiction.** This Agreement shall be construed and governed in accordance with the laws of the State of South Dakota. Any legal suit, action, or proceeding arising out of, based upon, or relating to this Agreement or the transactions contemplated hereby shall be instituted and maintained in the Fourth Judicial Circuit in Deadwood, Lawrence County, South Dakota, and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding.
26. **Waiver of Jury Trial.** Each party acknowledges and agrees that any controversy that may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.
27. **Temporary Easement for Construction Area.** In connection with the aforementioned Agreement, the following temporary easements and/or rights are conveyed: The Owner, in consideration of One and No/100 Dollar (\$1.00) paid by Spearfish, do hereby convey a temporary easement to enter upon land of the Owner, during the period of construction, to install path materials and any project demarcation fences and erosion control barriers as necessary, and to keep the erosion control barriers clear of debris and functioning properly throughout the project construction. This temporary easement is conveyed for the aforementioned area, during the period of construction, to enter upon land of the Owner for such construction purposes, including the right to cut and dispose of trees, down timber, stubs, brush, bushes, and debris, as necessary and approved by the Owner. The temporary easement and/or rights conveyed will dissolve upon completion of project construction.
29. **Assignability.** Spearfish may not assign this Agreement and its rights and obligations hereunder without prior written consent of the Owner, and any purported assignment without such consent shall be void.

[Separate signature pages follow]

CITY OF SPEARFISH

By: _____
Dana Boke, Its Mayor

(Seal)

Attest:

Michelle DeNeui, Finance Officer

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

On this ____ day of _____, 2020, before me, the undersigned officer, personally appeared Dana Boke, the Mayor of the City of Spearfish and Michelle DeNeui, the Finance Officer of the City of Spearfish, known to me or satisfactorily proven to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

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

(Seal)

Notary Public

My commission expires: _____

LAWRENCE COUNTY

By: _____
Brandon Flanagan, Its Chairman

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

On this ____ day of _____, 2020, before me, the undersigned officer, personally appeared Brandon Flanagan, who acknowledged himself to be the Chairman of the Lawrence County Commission and that he, as such Chairman, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

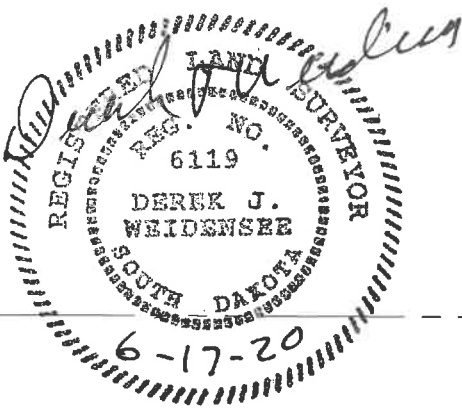
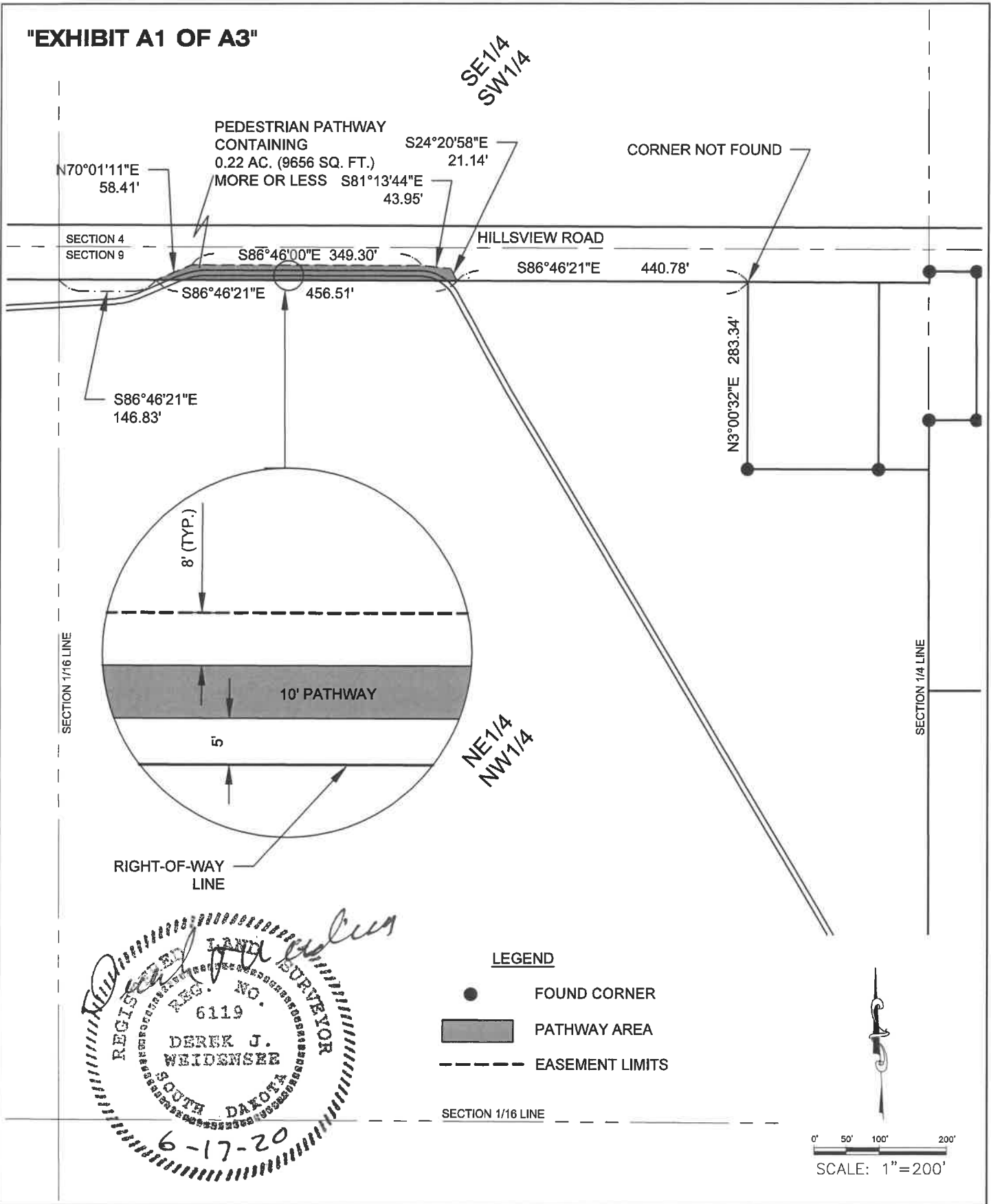
In Witness Whereof, I have set my hand and official seal.

(Seal)

Notary Public

My commission expires: _____

"EXHIBIT A1 OF A3"



Z:\180668.01 Spearfish Exit & Area Community Path\CAD\Plats & Easements\180668.01 Exhibit South.dwg, Exhibit NE NW Phase 1, 6/17/2020 1:47:21 PM, 1:1

PATHWAY EASEMENT
 NE1/4 NW1/4 SECTION 9, T6N, R2E, BHM
 LAWRENCE COUNTY, SD

Surveyed By: _____
 Date: _____
 Drawn By: KJS
 Checked By: RAS
 Location:
 NE1/4 NW1/4 SECTION 9
 T6N, R2E, BHM



FMG ENGINEERING

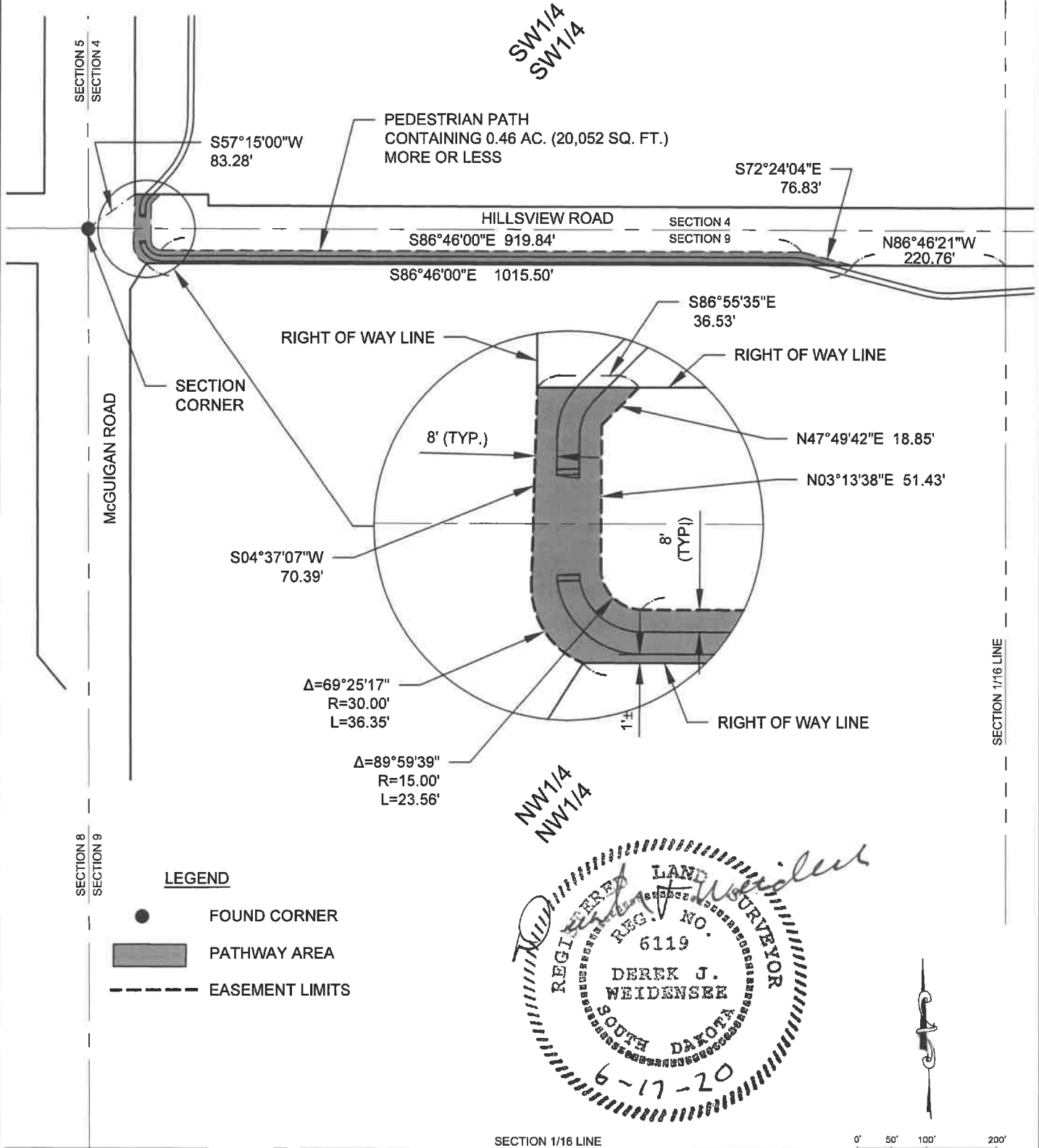
3700 Sturgis Road, Rapid City, SD 57702-0317
 fmgengineering.com
 (605) 342-4105

Sheet Number: **1**
 Total Sheets: **1**

MAY 2020

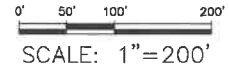
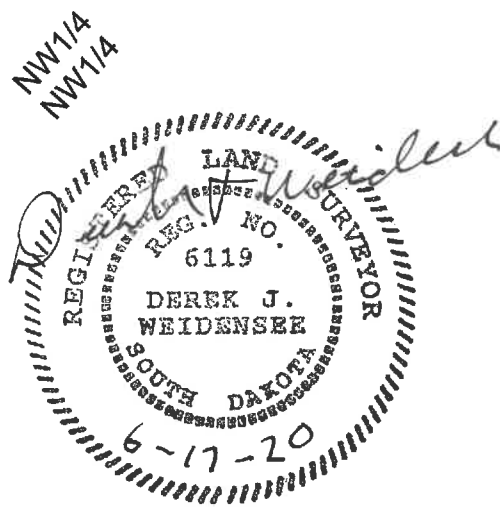
180668.01

"EXHIBIT A2 OF A3"



LEGEND

- FOUND CORNER
- PATHWAY AREA
- - - EASEMENT LIMITS



PATHWAY EASEMENT
 NW1/4 NW1/4 SECTION 9, T6N, R2E, BHM
 AND SW1/4 SW1/4 SECTION 4, T6N, R2E, BHM
 LAWRENCE COUNTY, SD

| | |
|--------------|--|
| Surveyed By: | |
| Date: | |
| Drawn By: | KJS |
| Checked By: | RAS |
| Location: | NW1/4 SEC. 9 T6N R2E BHM SW1/4 SEC. 4 T6N R2E BHM |

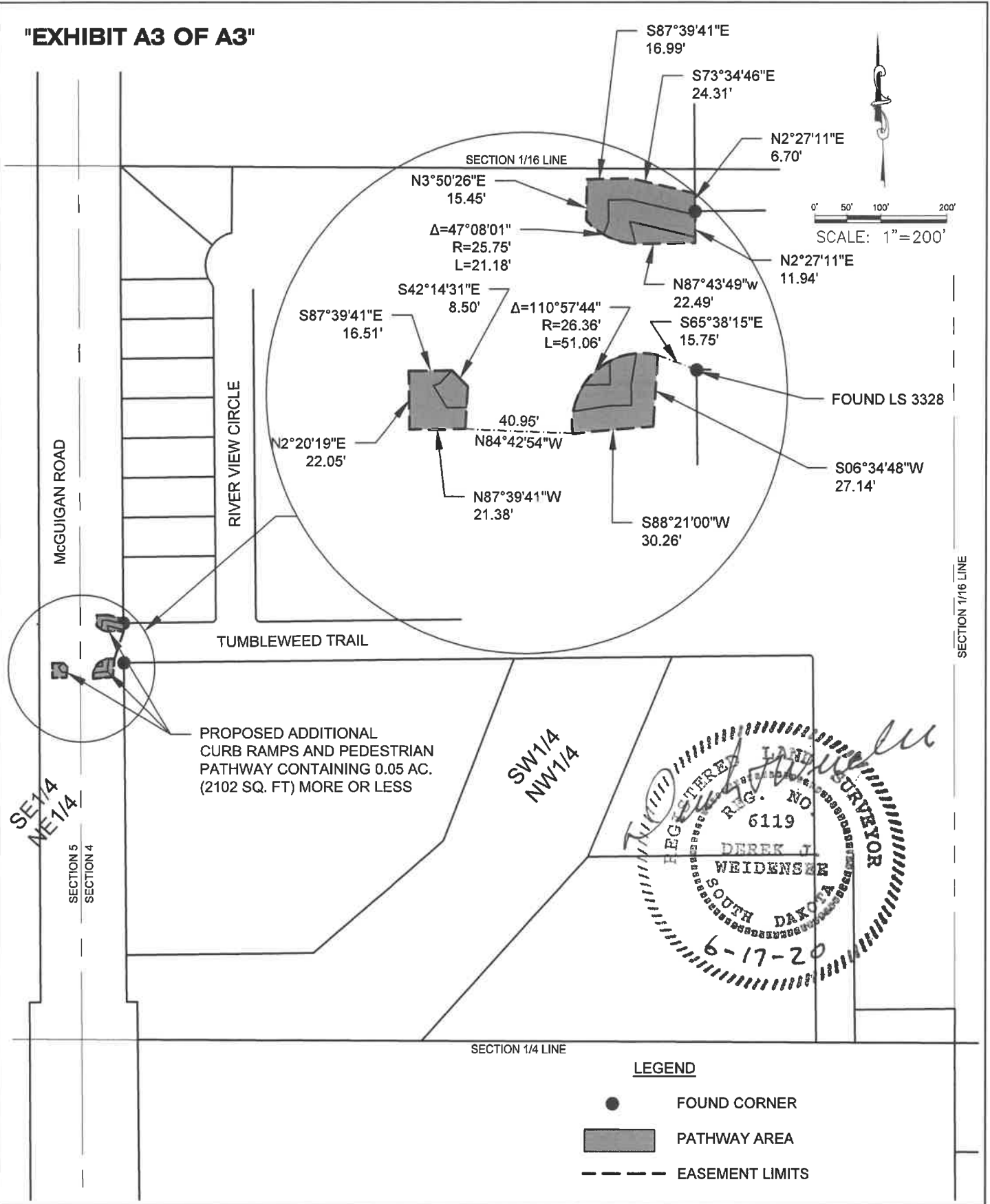


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3700 Sturgis Road, Rapid City, SD 57702-0317
 fmgengineering.com
 (605) 342-4105

Sheet Number:
1
Total Sheets:
1

"EXHIBIT A3 OF A3"



PATHWAY EASEMENT
 SW1/4 NW1/4 SECTION 4, T6N, R2E, BHM
 SE1/4 NE1/4 SECTION 5, T6N, R2E, BHM
 LAWRENCE COUNTY, SD

Surveyed By: _____
 Date: _____
 Drawn By: KJS
 Checked By: RAS
 Location:
 SW1/4 NW1/4 SECTION 4
 T6N, R2E, BHM



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 fmgengineering.com
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Sheet Number: **1**
 Total Sheets: **1**