



ENGINEERING DEPARTMENT

DATE: December 7, 2016
FROM: Gabe Schell, PE | City Engineer 
ITEM: Various Easements Related to Light of Christ Addition

REQUEST

Approval of a Sanitary Sewer Easement and a Water Main Easement with Five Guys Investments, LLP and approval of a Sanitary Sewer Easement with Ron Knutson.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The following easements represent the easements that were required as a condition in the Light of Christ Development Agreement. These easements give the City the means to provide utility service to Light of Christ Addition.

Sanitary Sewer Easement from Five Guys Investments, LLP is an easement connecting the sanitary sewer in Ridgeland Drive, Light of Christ Addition, to the City's sanitary sewer system in Calvert Drive, Sonnet Heights Addition. The sanitary sewer will not be installed at this time, but the easement ensures that as development requires this sewer, the City will have the means to provide service.

Sanitary Sewer Easement with Ron Knutson is an easement connecting the sanitary sewer in Saints Drive, Light of Christ Addition, to the City's sanitary sewer system in Mica Drive, Boulder Ridge 5th Addition. The sanitary sewer installation is currently under contract for installation to the Light of Christ Addition lot.

Water Main Easement with Five Guys Investments, LLP is an easement connecting the water main in Saints Drive, Light of Christ Addition, to the City's water main in Mica Drive, Boulder Ridge 5th Addition. The water main installation is currently under contract for installation to the Light of Christ Addition lot.

RECOMMENDED CITY COMMISSION ACTION

Approval of Sanitary Sewer Easement and Water Main Easement with Five Guys Investments, LLP.

Approval of Sanitary Sewer Easement with Ron Knutson

STAFF CONTACT INFORMATION

Gabe Schell, PE, City Engineer, 355-1505, gschell@bismarcknd.gov

SANITARY SEWER EASEMENT

This indenture, made this _____ day of _____, 2016, between **Five Guys Investment, LLP**, a North Dakota limited liability partnership, whose post office address is 4308 Boulder Ridge Rd, Bismarck, ND 58503-6128, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, Grantee.

WHEREAS, Grantee desires to acquire a certain sanitary sewer easement (the "Easement") covering only a portion of the Grantor's real property located in the N½, Section 16, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, and the location of which Easement is described below and depicted on Exhibit "A" ("Easement Area") which is attached hereto and made a part hereof.

NOW, THEREFORE,

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a non-exclusive easement to construct, operate, maintain, and repair a public sanitary sewer under and across the Easement Area, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said sanitary sewer. Grantee shall have the right of ingress and egress across the Easement Area for the purposes herein granted. Grantor expressly reserves for itself and its successors and assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.
2. This Easement and all rights of access are limited to the Easement Area described as follows:

A 30.00 foot wide tract of land lying in the North Half (N½) of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

A strip of land lying on and 15.00 feet on each side of the following described line:

Commencing at the northwest corner of Section 16; thence along the north line of said Section 16, S 89°56'10" E a distance of 2394.91 feet to the POINT OF BEGINNING; thence from said POINT OF BEGINNING, S 00°28'05" E a distance of 1022.81 feet; thence S 58°42'36" E a distance of 273.82 feet to the west boundary line of Sonnet Heights Subdivision, which is also the POINT OF TERMINATION.

The sidelines of said easement are to be prolonged or shortened to terminate on the west boundary line of Sonnet Heights Subdivision and the north line of Section 16.

Said Easement Area contains 38,892 square feet or 0.893 acres more or less.

3. Grantee shall give Grantor at least ninety (90) days' prior written notice of any proposed improvement, construction, or development of the Easement and the Easement Area for the development of the sanitary sewer system. Following receipt of the written notice from Grantee, the Grantor may elect to relocate the Easement and the Easement Area if in the sole opinion of Grantor the Easement and the Easement Area unreasonably interfere with the present or future use by Grantor of land owned by the Grantor adjacent and in close proximity to the Easement Area. The costs for such relocation shall be at the Grantor's sole cost and expense; provided, however, that Grantor shall provide to Grantee a substitute Easement Area reasonably suited to the Grantee's needs for the sanitary sewer at no cost to Grantee.
4. Grantee shall at all times maintain the Easement Area and the sanitary sewer Easement together with any and all improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area for the sanitary sewer. The operation and maintenance of such improvements and of the Easement Area shall be at the Grantee's sole cost and expense.
5. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, and licenses, easements, and rights-of-way pertaining to the Easement Area whether or not of record. The use of the word "grant" shall not imply any warranty on the part of Grantor with respect to the Easement or the Easement Area.
6. Grantee shall comply with all applicable laws, ordinances, rules and regulations, including, but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense.
7. Grantee shall not use, deposit, or permit the use or deposit of any hazardous material or toxic waste or other harmful substance on the Easement Area or on any other real property of Grantor located adjacent to in close proximity to the Easement Area.
8. Grantee shall not materially interfere with the use by and operation and activities of Grantor on Grantor's property, and the Grantee at all times shall use such routes and follow such procedures on Grantor's property within the Easement Area which will result in the least damage and inconvenience to Grantor.
9. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of Grantor's property, including, but not limited to, roads, utilities, and fences that may be altered, damaged, or destroyed in connection with the exercise of the Easement or the use of the Easement Area.
10. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this Easement, restore the Easement Area to

as near its original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands.

11. Grantor may terminate this Easement, the Easement Area, and all of the rights granted herein through a Plat of the land owned by Grantor, including the Easement Area, provided such a Plat is approved by the Grantee. In the event of such termination, the Easement shall be vacated through the recording of the approved Plat, and any and all interest in the Easement and Easement Area conveyed through this Easement shall automatically terminate.

12. This Easement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this Easement shall be of no further force or effect except as provided for in a subsequent modification in writing, signed by the party to be charged.

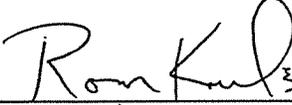
13. This Easement shall bind and insure to the benefit of the respective successors and assigns of the parties hereto.

14. Grantor and Grantee agree to not erect or permit any structure or obstruction other than fences, private drives, parking areas or driveways, and not to change the ground elevation without consent of the other party, or perform any act that interferes with each party's rights under this Easement within the Easement Area, except with the written consent of the other party.

15. Subject to any earlier termination as provided for herein, the term of this Easement herein reserved is ninety-nine (99) years, beginning upon execution in 2016 and ending in 2115.

16. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of the Easement Area.

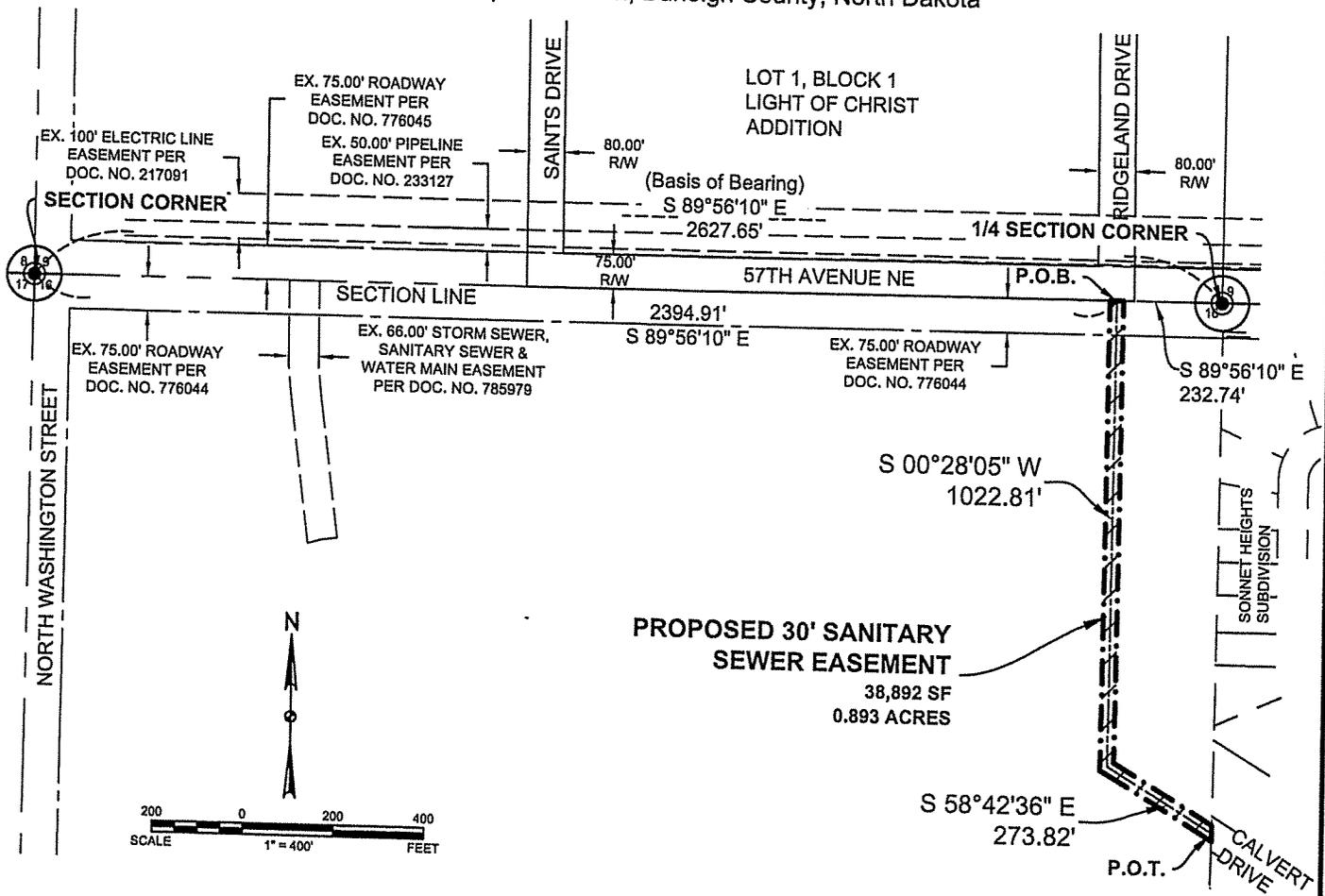
Dated this _____ day of _____, 2016.



RONALD KNOTSON, Partner
Five Guys Investment, LLP

SANITARY SEWER EASEMENT

A tract of land lying in the N 1/2 of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota



Note: Said tract of land is subject to any easement, restrictions or reservations, either existing or of record.

Bearings and distances may vary from previous plats due to different methods of measurements.

LEGEND

- Rebar and Cap Illegible Found
- ▨ Proposed 30' Sanitary Sewer Easement

LEGAL DESCRIPTION

A 30.00 foot wide tract of land lying in the North Half of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

A strip of land lying on and 15.00 feet on each side of the following described line:

Commencing at the northwest corner of Section 16; thence along the north line of said Section 16, S 89°56'10" E a distance of 2394.91 feet to the POINT OF BEGINNING; thence from said POINT OF BEGINNING, S 00°28'05" E a distance of 1022.81 feet; thence S 58°42'36" E a distance of 273.82 feet to the west boundary line of Sonnet Heights Subdivision, which is also the POINT OF TERMINATION.

The sidelines of said easement are to be prolonged or shortened to terminate on the west boundary line of Sonnet Heights Subdivision and the north line of Section 16.

Said easement contains 38,892 square feet or 0.893 acres more or less.



SANITARY SEWER EASEMENT

This indenture, made this _____ day of _____, 2016 between **Ronald Knutson**, whose post office address is 555 Hwy 1804, Bismarck, ND 58504, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, Grantee.

WHEREAS, Grantee desires to acquire a certain sanitary sewer easement (the "Easement") covering only a portion of the Grantor's real property located in the SW1/4, Section 9, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, and the location of which Easement is described below and depicted on Exhibit "A" ("Easement Area") which is attached hereto and made a part hereof.

NOW, THEREFORE,

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a non-exclusive easement to construct, operate, maintain, and repair a public sanitary sewer under and across the Easement Area, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said sanitary sewer. Grantee shall have the right of ingress and egress across the Easement Area for the purposes herein granted. Grantor expressly reserves for itself and its successors and assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.

2. This Easement and all rights of access are limited to the Easement Area described as follows:

A 75.00 foot wide tract of land lying in the Southwest Quarter of Section 9, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

The south 75.00 feet of the east 523.48 feet of the west 1087.34 feet of the Southwest Quarter of Section 9.

Said easement contains 39,261 square feet or 0.901 acres more or less.

3. Grantee shall at all times maintain the Easement Area and the Sanitary sewer Easement together with any and all improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area for the sanitary sewer. The operation and maintenance of such improvements and of the Easement Area shall be at the Grantee's sole cost and expense.
4. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, and licenses, easements, and rights-of-way pertaining to the Easement Area whether or not of record. The use of the word "grant" shall not imply any warranty on the part of Grantor with respect to the Easement or the Easement Area.
5. Grantee shall comply with all applicable laws, ordinances, rules and regulations, including, but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense.
6. Grantee shall not use, deposit, or permit the use or deposit of any hazardous material or toxic waste or other harmful substance on the Easement Area or on any other real property of Grantor located adjacent to in close proximity to the Easement Area.
7. Grantee shall not materially interfere with the use by and operation and activities of Grantor on Grantor's property, and the Grantee at all times shall use such routes and follow such procedures on Grantor's property within the Easement Area which will result in the least damage and inconvenience to Grantor.
8. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of Grantor's property, including, but not limited to, roads, utilities, and fences that may be altered, damaged, or destroyed in connection with the exercise of the Easement or the use of the Easement Area.
9. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this Easement, restore the Easement Area to as near its original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands.
10. Grantor may terminate this Easement, the Easement Area, and all of the rights granted herein through a Plat of the land owned by Grantor, including the Easement Area, provided such a Plat is approved by the Grantee. In the event of such termination, the Easement shall be vacated through the recording of the approved Plat, and any and all interest in the Easement and Easement Area conveyed through this Easement shall automatically terminate.

11. This Easement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this Easement shall be of no further force or effect except as provided for in a subsequent modification in writing, signed by the party to be charged.

12. This Easement shall bind and insure to the benefit of the respective successors and assigns of the parties hereto.

13. Grantor and Grantee agree to not erect or permit any structure or obstruction other than fences, private drives, parking areas or driveways, and not to change the ground elevation without consent of the other party, or perform any act that interferes with each party's rights under this Easement within the Easement Area, except with the written consent of the other party.

14. Subject to any earlier termination as provided for herein, the term of this Easement herein reserved is ninety-nine (99) years, beginning upon execution in 2016 and ending in 2115.

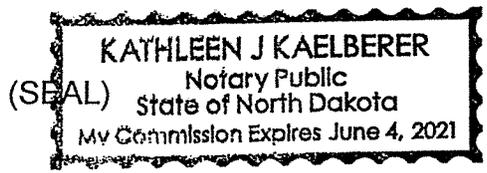
15. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of the Easement Area.

Dated this ____ day of _____, 2016.

Ronald Knutson
Ronald Knutson

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

On this 16 day of November, 2016, before me personally appeared Ronald Knutson known to me to be the person who is described in, and who executed the within and foregoing instrument and acknowledged to me that he executed the same.



Kathleen J Kaelberer
Notary Public
My commission expires: June 4, 2021

Acceptance of dedicated lands by the **City of Bismarck**:

Michael C. Seminary
President, Board City Commissioners

Attest: _____
Keith J. Hunke
City Administrator

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

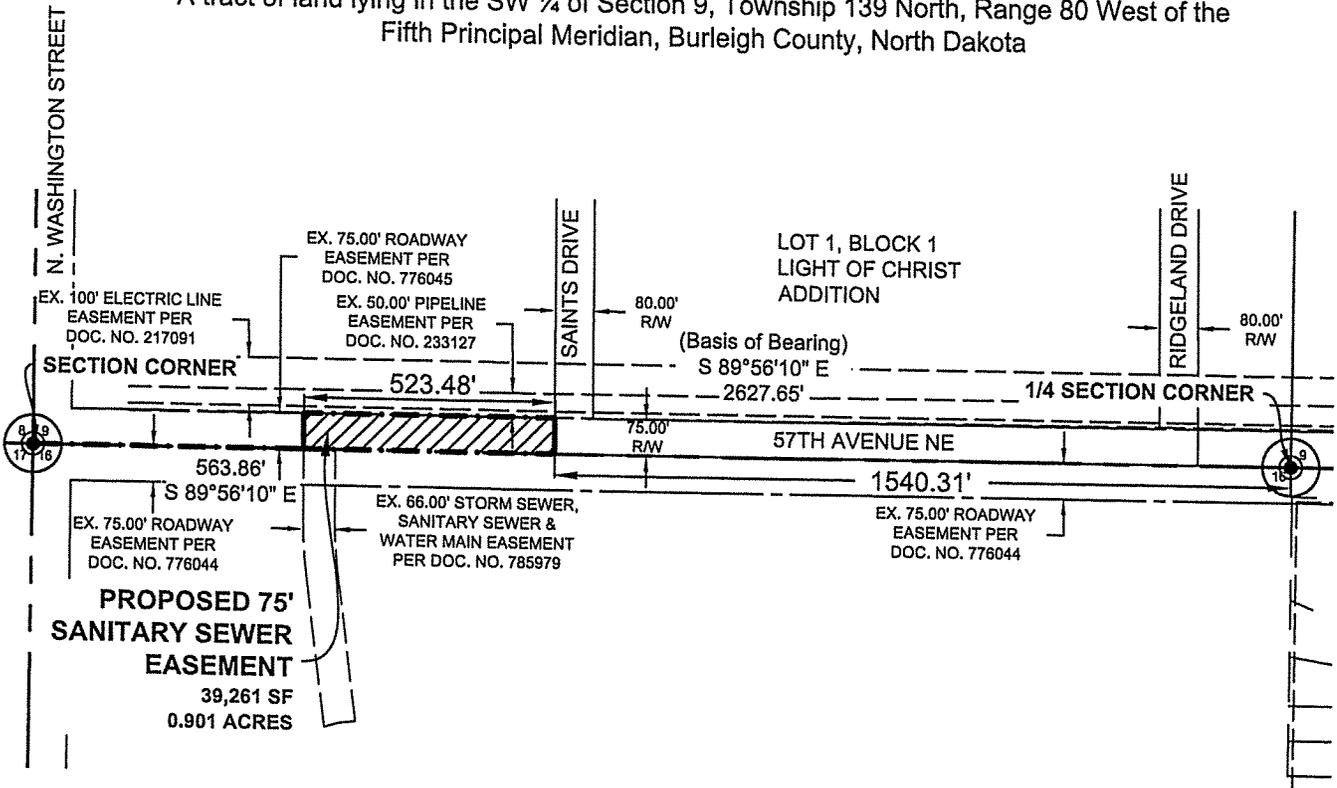
On this _____ day of _____, 2016, before me personally appeared Michael C. Seminary, President of Board of City Commissioners, and Keith J. Hunke, City Administrator, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

(SEAL) _____
Notary Public
My commission expires: _____

The legal description was prepared by Kent Orvik, PLS, KLJ, 4585 Coleman Street, Bismarck, North Dakota 58503 or obtained from a previously recorded instrument.
Burleigh County Recorder

SANITARY SEWER EASEMENT

A tract of land lying in the SW ¼ of Section 9, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota

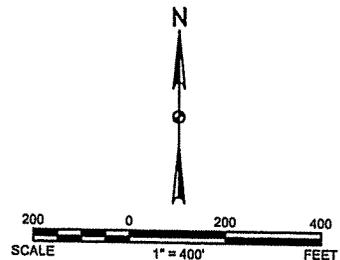


Note: Said tract of land is subject to any easement, restrictions or reservations, either existing or of record.

Bearings and distances may vary from previous plats due to different methods of measurements.

LEGEND

- Rebar and Cap Illegible Found
- Proposed 75' Sanitary Sewer Easement



LEGAL DESCRIPTION

A 75.00 foot wide tract of land lying in the Southwest Quarter of Section 9, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

The south 75.00 feet of the east 523.48 feet of the west 1087.34 feet of the Southwest Quarter of Section 9.

Said easement contains 39,261 square feet or 0.901 acres more or less.



WATER MAIN EASEMENT

This indenture, made this _____ day of _____, 2016, between **Five Guys Investment, LLP**, a North Dakota limited liability partnership, whose post office address is 4308 Boulder Ridge Rd, Bismarck, ND 58503-6128, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, Grantee.

WHEREAS, Grantee desires to acquire a certain water main easement (the "Easement") covering only a portion of the Grantor's real property located in the NW1/4, Section 16, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, and the location of which Easement is described below and depicted on Exhibit "A" ("Easement Area") which is attached hereto and made a part hereof.

NOW, THEREFORE,

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a non-exclusive easement to construct, operate, maintain, and repair a public water main under and across the Easement Area, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said water main. Grantee shall have the right of ingress and egress across the Easement Area for the purposes herein granted. Grantor expressly reserves for itself and its successors and assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.

2. This Easement and all rights of access are limited to the Easement Area described as follows:

A 75.00 foot wide tract of land lying in the Northwest Quarter of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

The north 75.00 feet of the east 1997.79 feet of the Northwest Quarter of Section 16.

The sidelines of said easement are to be prolonged or shortened to terminate on the east easement line per Doc. No. 785979 and the east line of the Northwest Quarter of Section 16.

Said easement contains 149,834 square feet or 3.440 acres more or less.

3. Grantee shall at all times maintain the Easement Area and the Water Main Easement together with any and all improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area for the water main. The operation and maintenance of such improvements and of the Easement Area shall be at the Grantee's sole cost and expense.
4. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, and licenses, easements, and rights-of-way pertaining to the Easement Area whether or not of record. The use of the word "grant" shall not imply any warranty on the part of Grantor with respect to the Easement or the Easement Area.
5. Grantee shall comply with all applicable laws, ordinances, rules and regulations, including, but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense.
6. Grantee shall not use, deposit, or permit the use or deposit of any hazardous material or toxic waste or other harmful substance on the Easement Area or on any other real property of Grantor located adjacent to in close proximity to the Easement Area.
7. Grantee shall not materially interfere with the use by and operation and activities of Grantor on Grantor's property, and the Grantee at all times shall use such routes and follow such procedures on Grantor's property within the Easement Area which will result in the least damage and inconvenience to Grantor.
8. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of Grantor's property, including, but not limited to, roads, utilities, and fences that may be altered, damaged, or destroyed in connection with the exercise of the Easement or the use of the Easement Area.
9. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this Easement, restore the Easement Area to as near its original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands.
10. Grantor may terminate this Easement, the Easement Area, and all of the rights granted herein through a Plat of the land owned by Grantor, including the Easement Area,

provided such a Plat is approved by the Grantee. In the event of such termination, the Easement shall be vacated through the recording of the approved Plat, and any and all interest in the Easement and Easement Area conveyed through this Easement shall automatically terminate.

11. This Easement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this Easement shall be of no further force or effect except as provided for in a subsequent modification in writing, signed by the party to be charged.

12. This Easement shall bind and insure to the benefit of the respective successors and assigns of the parties hereto.

13. Grantor and Grantee agree to not erect or permit any structure or obstruction other than fences, private drives, parking areas or driveways, and not to change the ground elevation without consent of the other party, or perform any act that interferes with each party's rights under this Easement within the Easement Area, except with the written consent of the other party.

14. Subject to any earlier termination as provided for herein, the term of this Easement herein reserved is ninety-nine (99) years, beginning upon execution in 2016 and ending in 2115.

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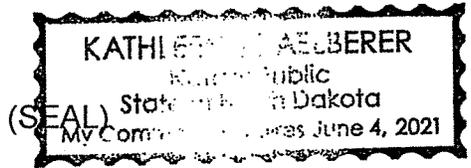
Dated this _____ day of _____, 2016.

Ronald Knutson

RONALD KNUTSON, Partner
Five Guys Investment, LLP

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

On this 16 day of November, 2016, before me personally appeared Ronald Knutson, known to me to be a Partner of Five Guys Investment, LLP, the limited liability partnership that is described in and that executed the within and foregoing instrument, and acknowledged to me that such limited liability partnership executed the same.



Kathleen J. Kalberer
Notary Public
My commission expires: June 4, 2021

Acceptance of dedicated lands by the **City of Bismarck:**

Michael C. Seminary
President, Board City Commissioners

Attest: _____
Keith J. Hunke
City Administrator

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

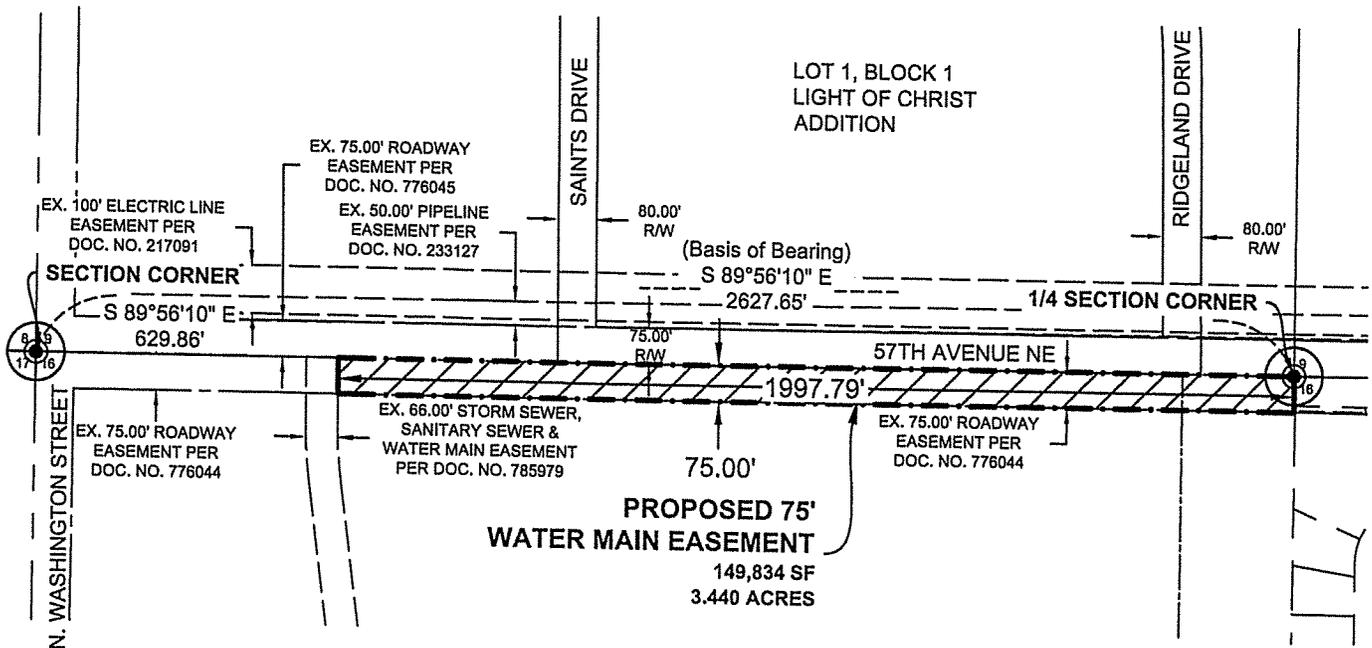
On this ___ day of _____, 2016, before me personally appeared Michael C. Seminary, President of Board of City Commissioners, and Keith J. Hunke, City Administrator, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

(SEAL) _____
Notary Public
My commission expires: _____

The legal description was prepared by Kent Orvik, PLS, KLJ, 4585 Coleman Street, Bismarck, North Dakota 58503 or obtained from a previously recorded instrument.
Burleigh County Recorder

WATER MAIN EASEMENT

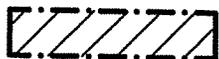
A tract of land lying in the N ½ of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota

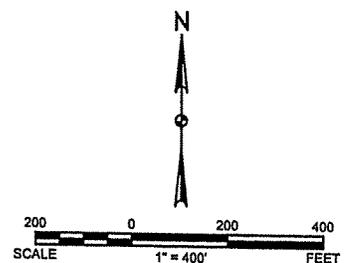


Note: Said tract of land is subject to any easement, restrictions or reservations, either existing or of record.

Bearings and distances may vary from previous plats due to different methods of measurements.

LEGEND

-  Rebar and Cap Illegible Found
-  Proposed 75' Water Main Easement



LEGAL DESCRIPTION

A 75.00 foot wide tract of land lying in the Northwest Quarter of Section 16, Township 139 North, Range 80 West of the Fifth Principal Meridian, Burleigh County, North Dakota, being more particularly described as follows:

The north 75.00 feet of the east 1997.79 feet of the Northwest Quarter of Section 16.

The sidelines of said easement are to be prolonged or shortened to terminate on the east easement line per Doc. No. 785979 and the east line of the Northwest Quarter of Section 16.

Said easement contains 149,834 square feet or 3.440 acres more or less.

