

North Canton City Council
Water, Sewer and Rubbish Committee

Ordinance No. 48 - 2015

An ordinance approving, confirming and accepting a perpetual public waterline easement across parcel number 1619140, being part of the Southeast Quarter of Section 12, situated in Jackson Township, County of Stark, and State of Ohio, wherein New Berlin Company, LLC, has given and granted unto the City of North Canton said easement for and in consideration of \$1.00, and other good and valuable consideration, and declaring the same to be an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

- Section 1. That the City of North Canton approves, confirms, and accepts New Berlin Company, LLC's grant of a perpetual public waterline easement across parcel number 1619140, to lay, re-lay, construct, install, maintain, operate, alter, inspect, repair, remove, replace, and renew at will, a potable water main with the right of ingress and egress at any time to and from such utility and all appurtenances thereto, on, under and through the property known as being part of the Southeast Quarter of Section 12, situated in Jackson Township, for and in consideration of \$1.00 and other good and valuable consideration.
- Section 2. That attachments regarding this easement are attached hereto and incorporated herein as if fully rewritten herein.
- Section 3. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.
- Section 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton, and further necessary for the timely approval, confirmation, and acceptance of said easements so that the City may continue to provide potable water to its residents without a delay of service; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed in Council this 31st day of August 2015.



David Held, Mayor

Signed: 8/31, 2015

ATTEST:



Mary Beth Bailey, Clerk of Council

COPY

COPY

PERPETUAL WATER MAIN EASEMENT
Across Parcel No. 1619140

For and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, New Berlin Company, LLC, an Ohio limited liability company GRANTOR, does hereby give and grant unto THE CITY OF NORTH CANTON, an Ohio municipal corporation, GRANTEE, a perpetual easement to lay, re-lay, construct, install, maintain, operate, alter, inspect, repair, remove, replace, and renew at will a potable water main, and to perform any other tasks GRANTEE deems necessary or advisable in order to operate or maintain water mains, meters, connections, pipes and appurtenances in accordance with the ordinances, rules, and regulates of Grantee, which are now in effect or may be adopted hereafter, including the right of ingress and egress at any time to and from such utility and all appurtenances thereto on, under and through the following property, a/k/a the "Easement Area":

SEE ATTACHED EXHIBIT "A"

It is agreed by and between Grantor and Grantee as follows:

1. That the Grantee shall have the right to remove fences, shrubbery, plants, trees, landscaping, lawns, driveways, walkways, and paving within the Easement Area during initial construction or future maintenance of the utility and all appurtenances thereto. The Grantee shall be responsible to restore the surface area of the easement, disturbed by Grantee, to as closely as possible to its condition at the time of construction or maintenance. The Grantee will pay reasonable damages for items which cannot be restored or repaired. If the amount of said damages cannot be mutually agreed upon, the same shall be ascertained and determined by three disinterested persons; one appointed by the Grantor, one by the Grantee, and the third by the two so appointed. The award of such three persons shall be final and conclusive.
2. That no building or structure of any kind shall or will be erected within the easement area by Grantor, nor shall anything be placed in the vicinity of the easement which might be injurious to the utility. However, nothing herein shall interfere with the right of Grantor to place driveways, parking areas, or walkways in said easement. Grantor shall not change the ground elevation, within the easement area, without approval of Grantee.
3. That the Grantor may extend across, or grant easements to others to extend across said easement area to minimum acceptable clearances as determined by the Grantee.
4. That Grantor shall indemnify, defend and hold harmless Grantee from any and all claims, liabilities, damages, actions, costs and expenses or complaints, including reasonable attorney fees, arising out of Grantor's use of the Easement Area.
5. That upon removal of said utility and all appurtenances thereto, the Easement Area shall be restored as closely as possible to its then condition at the time of removal.
6. That this grant shall be binding upon the Grantor and Grantee and shall inure to the benefit of their respective heirs, executors, administrators, successors, and assigns forever.

7. As part of the settlement for Grantee's use of the water main easement, the Grantee shall waive the following for parcel nos. 10004282, 1619794, 1619140, and 1617964:

A. The front foot connection fee pursuant to the Grantee's Codified Ordinance 935.02(a)(1).

The Grantor shall be responsible for all meter fees, inspection fees, and tap-in fees associated with obtaining a plumbing permit with the Grantee.

8. That Grantor covenants with Grantee that it is well seized of the Easement Area as a good and indefeasible estate in fee simple and has the right to grant and convey the Easement Area in the manner and form described above. Grantor further covenants that it will warrant and defend the premises with the appurtenances thereunto belonging to Grantee against all lawful claims and demands whatsoever for the purposes described herein.

9. That this easement is subject to all matters of record.

IN WITNESS WHEREOF, the undersigned grantor(s) have caused their name to be subscribed to this Perpetual Water Main Easement this 9th day of April, 20 15.

GRANTOR(S):

New Berlin Company, LLC

By: Richard L. Heiser, Operating Manager

Richard L. Heiser

(Signed Name)

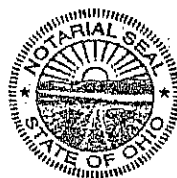
NOTARY:

STATE OF OHIO)
) SS:
COUNTY OF STARK)

Before me, a Notary Public in and for said County, personally appeared Richard L. Heiser, Operating Manager for New Berlin Company, LLC, who acknowledged that they did sign the foregoing instrument and that it is their free act and deed.

IN THE TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal a this 9th Day of April, 20 15.

Linda J. Tals
Notary Public



Linda J Tals Seal
Notary Public, State of Ohio
My Commission Expires 10-31-2017

This instrument prepared by: City of North Canton
145 North Main Street
North Canton, OH 47

EXHIBIT 'A'
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LEGAL DESCRIPTION
Water Main Easement
0.005 Acres
Parcel #1619140

Situated in the Township of Jackson, County of Stark and State of Ohio and known as being part of the Southeast Quarter of Section 12, Township 11 (Jackson), Range 9 as recorded in Official Image Record 199811250086291 of the Stark County Records and more fully described as follows:

Beginning at the southeast corner of said Southeast Quarter of Section 12, thence North $85^{\circ}03'12''$ West along the south line of said Section 12, a distance of 545.12 feet to the southwest corner of a tract of land now or formerly owned by New Berlin Company LLC, said point also being on the east line of Whipple Avenue N.W., an 80 foot public right-of-way, and also being the true place of beginning of the tract herein described;

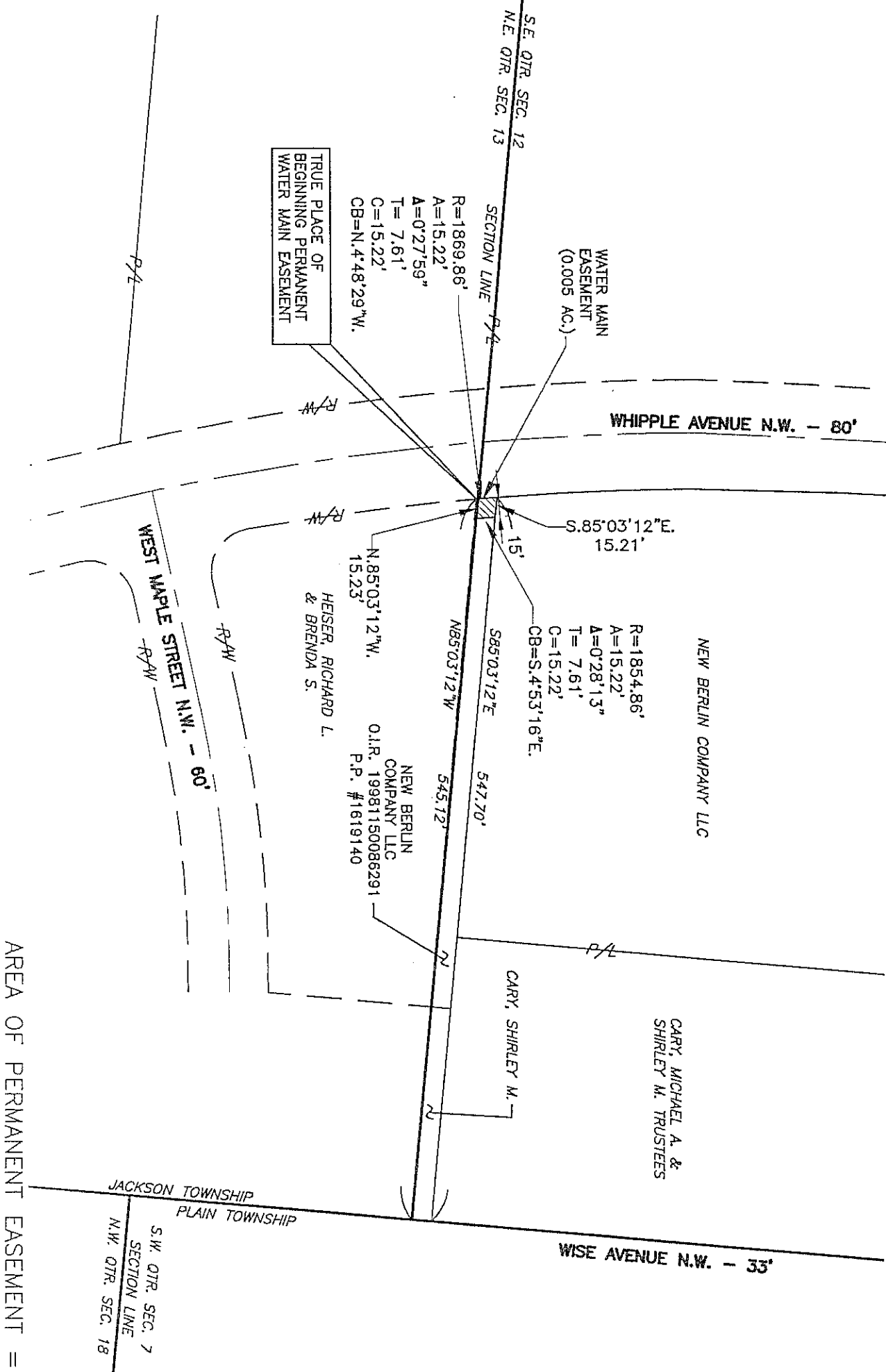
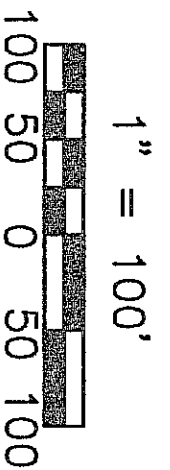
Thence continuing on the east line of Whipple Avenue N.W. along a curve to the right along an arc for 15.22', having a radius of 1869.86' and a chord length of 15.22' and a chord bearing of North $4^{\circ}48'29''$ West to a point at the northwest of said New Berlin Company LLC;

Thence South $85^{\circ}03'12''$ East along the northern property line of said New Berlin Company LLC parcel a distance of 15.21 feet to a point;

Thence along a curve to the left along an arc for 15.22', having a radius of 1854.86' and a chord length of 15.22' and a chord bearing of South $4^{\circ}53'16''$ East to a point on the south line of said New Berlin Company LLC;

Thence North $85^{\circ}03'12''$ West along the southern property line of said New Berlin Company LLC a distance of 15.23 feet to the True Place of Beginning and containing 0.005 Acres of land, more or less, as determined in January, 2015 by CT Consultants, Inc., but subject to all legal highways and any restrictions, reservations or easements of record.


SITUATED IN THE TOWNSHIP OF JACKSON, COUNTY OF STARK AND STATE OF OHIO, KNOWN AS BEING PART OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 11 (JACKSON), RANGE 9 AS RECORDED IN OFFICIAL IMAGE RECORD OF THE STARK COUNTY RECORDS



AREA OF PERMANENT EASEMENT = 0.005 ACRES

NEW BERLIN COMPANY LLC
 WATER MAIN EASEMENT
 EXHIBIT 'A'
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PREPARED BY:



CT Consultants
 engineers | architects | planners

2723 Abington Court, Suite 200, Fairlawn, Ohio 44333
 330.375.0800 www.ctconsultants.com

DATE: 1/7/15
 PROJECT NO. 14520
 DRAWN BY: B.E.K.